



BOARD REQUEST FOR REVIEW DECISION

RFR 2022-11 / RA21045

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

G&S Cattle Ltd.

October 21, 2022

The Board issues this decision document under the authority of the *Agricultural Operation Practices Act (AOPA)*, following its consideration of a request for Board review of Decision Summary RA21045.

Background

On October 6, 2022, the Board issued a Decision Letter, advising that it found that the approval officer adequately dealt with all issues raised in the applicant's filed request for review, and that the issues raised were of little merit. Therefore, the request for review of Decision RA21045 was dismissed. The reasons for the denial are provided in this document, Board Decision Report RFR 2022-11.

On August 31, 2022, a Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary RA21045 (the Decision) in relation to an application by G&S Cattle Ltd. (G&S Cattle or the applicant) to construct a new 4,000 head beef finisher confined feeding operation (CFO), including 4 row of pens (304.8 m x 32.97 m each), and 1 catch basin (96 m x 66 m x 1.75 m). The proposed CFO would be located at NW 3-47-2 W5M in the County of Wetaskiwin No. 10 (the County). The approval officer denied the application, finding that the proposed CFO would pose materially negative and long-lasting effects on the community, and would not be an appropriate use of the land.

Requests for Board review (RFRs) were received from G&S Cattle; the Summer Villages of Grandview, Poplar Bay, Crystal Springs, Norris Beach, and Ma-Me-O Beach; and John and Verna Phippen. The RFRs were filed by the September 22, 2022 deadline set out in the approval officer's decision letter. On September 23, 2022, the NRCB sent a Notice of Filed Requests for Board Review and Rebuttal Opportunity to the directly affected parties, as established by the approval officer, and to the not directly affected parties requesting status reconsideration. The directly affected parties having an adverse interest to the matters raised in the RFRs were given the opportunity to submit a rebuttal.

The Board considers that a party requesting a review has the onus of demonstrating that there are sufficient grounds to merit review of the approval officer's decision. Section 13(1) of the AOPA Administrative Procedures Regulation describes the information that must be included in each request for Board review.

Portions of the public record maintained by the approval officer were filed on September 23, 2022. Thirty-five rebuttals were received within the filing deadline of September 29, 2022.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board consisting of Peter Woloshyn (chair), Sandi Roberts, L. Page Stuart, and Walter Ceroici was established on September 21, 2022, to consider the RFRs and decide whether a review is warranted. As used here, a "review" is a de novo, quasi-judicial hearing in which the parties can generally submit expert and other witness testimony, and other evidence, when relevant to the issues selected by the Board for the hearing.¹ (References to the "Board" below

¹ For more information on Board reviews, see NRCB, *Board Reviews & Court Decisions – Board Review Process*, online: <https://www.nrcb.ca/confined-feeding-operations/board-reviews-court-decisions-revamp>.

are to divisions of one or more of the NRCB’s board members and to findings of the panel of board members established specifically for this file.)

Acronyms and Abbreviations

Applicant	G&S Cattle Ltd.
Approvals Policy	NRCB Operational Policy 2016-7: Approvals
AOPA	<i>Agricultural Operation Practices Act</i>
Board	Division/Panel of the NRCB Board established specifically for this file
CFO	confined feeding operation
County	County of Wetaskiwin No. 10
DAP	directly affected party
Decision	Approval Officer’s Decision Summary RA21045
Field Services	NRCB approval officers and inspectors
G&S Cattle	G&S Cattle Ltd.
IDP	intermunicipal development plan
LUB	land use bylaw
PLWA	Pigeon Lake Watershed Association
PLWACP	Pigeon Lake Watershed Association Concept Plan
PLWMP or Plan	Pigeon Lake Water Management Plan
MDP	municipal development plan
NRCB	Natural Resources Conservation Board
NRCBA	<i>Natural Resources Conservation Board Act</i>
RFR	request for review
Standards	AOPA Standards and Administration Regulation
Summer Villages	Summer Villages of Grandview, Crystal Springs, Ma-Me-O Beach, Norris Beach, and Poplar Bay
s. (ix)	AOPA section 20(1)(b)(ix)

Documents Considered

The Board considered the following information in making its directly affected status determinations:

- RFR#1 filed by the Summer Village of Grandview, received September 16, 2022
- RFR#2 filed by the Summer Village of Poplar Bay, received September 20, 2022
- RFR#3 filed by the Summer Village of Crystal Springs, received September 20, 2022
- RFR#4 filed by the Summer Village of Norris Beach, received September 20, 2022
- RFR#5 filed by the Summer Village of Ma-Me-O Beach, received September 20, 2022
- RFR#7 filed by John and Verna Phippen, received September 3, 2022

The Board considered the following information in making its AOPA section 25(1) request for review determination:

- Decision Summary RA21045, dated August 31, 2022
- Technical Document RA21045, dated August 31, 2022
- Decision Letter RA21045, dated August 31, 2022
- RFR#6 filed by G&S Cattle Ltd. (c/o Shawn Munro), received September 22, 2022
- Portions of the public record maintained by the approval officer, dated September 23, 2022
- County of Wetaskiwin Pigeon Lake Watershed Area Concept Plan, dated February 6, 2014
- Pigeon Lake Watershed Management Plan, dated May 4, 2018
- Pigeon Lake Watershed Management Plan Appendices, dated August 24, 2018
- County of Wetaskiwin No. 10 Municipal Development Plan, Bylaw No. 2016/55, dated 2010
- Leduc County/Wetaskiwin County No. 10 Intermunicipal Development Plan, Bylaw No. 2018/08, dated May 10, 2018
- Rebuttal #1 filed by Audrey Klein and Wayne Archibald, received September 23, 2022
- Rebuttal #3 filed by the Bucznys, received September 23, 2022
- Rebuttal #4 filed by the Mike and Gaylene Bodnaresk, received September 28, 2002
- Rebuttal #5 filed by Martin Klatt, received September 28, 2022
- Rebuttal #7 filed by Jim and Nina Thomas, received September 28, 2022
- Rebuttal #8 filed by Patti Silliker, received September 28, 2022
- Rebuttal #9 filed by Hans and Jolanda Appelman, received September 28, 2022
- Rebuttal #10 filed by Julie Roussel, received September 28, 2022
- Rebuttal #11 filed by Richard Paradis and Patricia Paradis, received September 28, 2022
- Rebuttal #12 filed by Dawna and Raymond Thomas, received September 28, 2022
- Rebuttal #14 filed by Ken and Sharon LeLacheur, received September 29, 2022
- Rebuttal #15 filed by Deanna Klatt, received September 29, 2022
- Rebuttal #16 filed by Nicole, Madison, Makenna and Jaxon Klatt, received September 29, 2022
- Rebuttal #21 filed by Stephanie Labutis, received September 29, 2022
- Rebuttal #22 filed by Ernie Leonhardt, received September 29, 2022
- Rebuttal #23 filed by Ken and Leslie Nieradka, received September 29, 2022
- Rebuttal #24 filed by Lance and Haimie Mitchell (& Sons), received September 29, 2022
- Rebuttal #25 filed by Mike Labutes, received September 29, 2022
- Rebuttal #26 filed by Tom and Roxanne Rose, received September 29, 2022
- Rebuttal #27 filed by JoAnne and Bernie Brodersen and family, received September 29, 2022
- Rebuttal #28 filed by Montana First Nation, received September 29, 2022
- Rebuttal #29 filed by Ron Baumann, received September 29, 2022
- Rebuttal #30 filed by G & S Cattle Ltd., received September 29, 2022
- Rebuttal #31 filed by Ozzie and Jennie Labutis, received September 29, 2022
- Rebuttal #32 filed by Martin Klatt, received September 29, 2022
- Rebuttal #33 filed by Métis Nation of Alberta, received September 29, 2022
- Rebuttal #34 filed by Heidi Hokanson, received September 29, 2022
- Rebuttal #35 filed by Gloria Booth, Randy Booth and David Labutis, received September 29, 2022

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.

Board Deliberations

Request by Summer Villages and the Phippens for Directly Affected Party Status

The Board received requests for review for directly affected party (DAP) status from the Summer Villages of Grandview, Crystal Springs, Ma-Me-O Beach, Norris Beach, and Poplar Bay (collectively, the Summer Villages) and from John and Verna Phippen. Given the Board is dismissing G&S Cattle's application for review, the Board considers the DAP requests moot. Neither is the Board persuaded that a decision on DAP status is required to remedy a prejudicial precedent to the Summer Villages, as suggested by the Summer Villages, as each decision regarding DAP status is made in the unique circumstances of a particular case. For the same reasons, the Board has not determined whether John and Verna Phippen are directly affected parties to this decision. Neither the DAP review applications nor the associated rebuttals were relied on by the Board in dismissing G&S Cattle's application for review.

Board Findings on G&S Cattle's Grounds for Review (#1 - #5)

The approval officer denied G&S Cattle's application based on AOPA section 20(1)(b)(ix). (For purposes of brevity, the Board will refer to s. 20(1)(b)(ix) as 's. (ix)' throughout the remainder of this document.) The Board notes that a number of the applicant's review grounds raised concerns with the approval officer's interpretation and application of s. (ix). Accordingly, the Board finds it helpful to address s. (ix) at the outset. The grounds for review expressed by G&S Cattle are discussed in later sections of this document.

AOPA s. 20(1), s. 20(1)(a), and s. 20(1)(b)(ix) state:

- 20(1) In considering an application for an approval or an amendment of an approval, an approval officer must consider whether the applicant meets the requirements of this Part and the regulations and whether the application is consistent with the municipal development plan land use provisions, and if in the opinion of the approval officer,
- (a) the requirements are not met or there is an inconsistency with the municipal development plan land use provisions, the approval officer must deny the application, or
 - (b) there is no inconsistency with the municipal development plan land use provisions and the requirements are met or a variance may be granted under section 17 and compliance with the variance meets the requirements of the regulations, the approval officer

(ix) must consider the effects on the environment, the economy and the community and the appropriate use of land.

For every CFO application requiring an approval (i.e., not applications for registration sized operations nor authorizations), approval officers must consider the potential effects of the proposed CFO on the environment, economy, and community and whether it is an appropriate use of land. The Board recognizes that approval officers have rarely relied on s. (ix) to deny an application. This Board is aware of one other approval officer Decision, LA20004 Hutterian Brethren Church of Granum, which relied upon s. (ix) in denying an application.

For reference, the relevant excerpt from Decision Summary LA20004 Hutterian Brethren Church of Granum:

“....reviewing the application from Granum Colony, I considered all applicable AOPA requirements. While I have determined that the application:

- 1) Has the ability to meet the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS) with a survey
- 2) Meets the required AOPA setbacks from water wells, springs and common bodies of water
- 3) Has sufficient means to control surface runoff of manure
- 4) Meets AOPA’s nutrient management requirements regarding the land application of manure
- 5) Meets AOPA groundwater protection requirements for the design of floors and liners of manure storage facilities with conditions, and
- 6) Is consistent with the land use provisions of the MD of Willow Creek’s MDP.

I have also determined that the proposed CFO is likely to pose materially negative and long-lasting effects on the community that can also include a negative impact on the MD’s overall economy. Additionally, because the existing transportation infrastructure is inadequate to support this proposed CFO, it is also not an appropriate use of the land.”

The Board notes that in considering s. (ix) approval officers have primarily relied upon whether an application is consistent with the municipal development plan (MDP), intermunicipal development plan (IDP), and land use bylaws (LUB) and meets the AOPA Standards and Administration Regulation (the Standards). This is because, if an application is consistent with municipal planning documents and meets all appropriate Standards, the approval officer presumes that confined feeding operation (CFO) effects under s. (ix) are acceptable. If, and only if, this presumption is sufficiently rebutted through submissions in the application process do approval officers have discretion to deny an application under s. (ix). This presumption, and the ability to rebut the presumption, is codified in NRCB Operational Policy 2016-7: Approvals (the Approvals Policy).

An application must first be tested as to whether it is consistent with municipal planning documents, and then whether it meets the requirements of the Standards. This is a logical order to proceed since, should an application not meet the appropriate Standards or is inconsistent with the MDP/IDP, the application must be denied. Under this scenario, the

requirements in s. 20(1)(b) do not apply. However, once approval officers are satisfied that an application is consistent with the MDP/IDP and meets the Standards, then s. (ix) must be considered. Consistent with the test established in Decision Summary LA20004, the presumption is rebutted if, for example, there is sufficient evidence establishing material long lasting unacceptable effects on the community, economy, and environment.

It follows then that s. (ix) is an independent test and is not restricted to whether an application meets the Standards and whether it is consistent with the MDP/IDP. In other words, an application may be consistent with the MDP/IDP and meet relevant Standards, but still pose an unacceptable effect under s. (ix). To conclude otherwise would render s. (ix) redundant. Under commonly accepted rules of statutory interpretation, the legislature does not include words in an act that have no meaning or are redundant. To ignore or find legislation redundant, it must be found that its strict application would lead to absurd outcomes.

The Board notes that Field Services has taken an abundantly cautionary approach in rebutting the presumption applying under s. (ix), illustrating the importance and weight that should be given consistency with the MDP/IDP. The Board finds that Field Services and indeed this approval officer understand the statutory scheme of s. 20(1) and have appropriately set the bar high for an application to be denied based on s. (ix).

The Board finds that Field Services' approach in considering s. (ix), including in this application, is sound and reasonable.

G&S Grounds for Review #1

G&S Cattle Views

G&S Cattle asserted in its RFR that the Decision's assessment with respect to potential adverse effects on the community and whether the CFO is an appropriate use of land is based on conclusions not supported by the information before the approval officer:

- *The Decision did not undertake an independent review of whether the CFO would have "materially negative and long-lasting effects on the community," or whether the CFO is an appropriate use of the Lands, but rather adopts the generalized and unsubstantiated conclusions in the PLWMP.*
- *The Decision also points to a number of factors as being part of the 'unacceptable negative impacts on the community' resulting in the proposed CFO not being an appropriate use of Land, which the Applicant submits are not made out, and are adequately addressed by setback distances and other requirements.*

Board Views

Under section 20(1)(b), there is no requirement for approval officers to undertake independent reviews. In practice, approval officers do not normally exercise their discretion under s. 20(1)(b)(ii) to conduct independent reviews that would generate new evidence in support of, or in opposition to, an application for a CFO. Rather, it is more common for approval officers under s. 20(1)(b)(ii), to exercise their discretion to require the applicant to make studies and reports stemming from investigations and inquiries. The Board notes that Field Services

routinely requests investigations from applicants in support of information requirements related to the AOPA requirements.

In this context, the Board does not view it as required by statute, and neither practical nor appropriate, for the approval officer to have either sought on their own motion or required the applicant to conduct a broad-based community impact assessment on the potential impact of a CFO. In this case, the approval officer relied on input and evidence furnished by the applicant, responses to the application, directly affected parties, and the municipality (or municipalities). The Board finds this was an appropriate approach in this circumstance, and finds the issue raised by G&S Cattle has been adequately dealt with by the approval officer.

As noted earlier, in this case the application was denied on the basis of s. (ix). The fact that the proposed site of the CFO met setback distances and other technical AOPA requirements is not determinative or necessarily indicative of the potential broader effects of the CFO and associated spreading lands on the Pigeon Lake watershed community and environment. While G&S Cattle argued that the reasons in the Decision are not supported, the Board considers that the approval officer's reasons are extensive, and adequately explain why the approval officer determined that the proposed CFO would not be an appropriate use of land. In reaching his Decision, the approval officer relied upon the Pigeon Lake Watershed Management Plan (PLWMP) and the many responses by directly affected parties that referenced the submission of the PLWA, including its "CFO Adverse Effects Background Report" of April, 2022.

The Board finds that the Pigeon Lake Watershed Area Concept Plan (PLWACP) and the PLWMP are credible and highly useful in assessing whether a given activity is an appropriate use of land in the Pigeon Lake watershed. The credibility of the PLWMP is substantiated by the contributions of professional planners, multi-stakeholder technical plan advisors (including Alberta Environment and Parks staff), the 12 municipalities of Pigeon Lake, the four bands of the Maskwacis Nations, and the PLWA that includes over 1,100 members. Notably, the PLWMP was also informed by results from several studies that examined the complex interactions between watershed activities and Pigeon Lake's ecological health. Accordingly, the Board finds that the approval officer adequately dealt with the issue.

In an earlier case in front of the Board, the following observation is made in Review Decision LA02002 Goldcrest Farms Inc. in relation to consideration of the effects on the environment, the economy and the community and the appropriate use of land:

The Board expects that economic and community impacts will continue to be an issue with future developments of this nature and feels that the concerns raised at this hearing will need to be eventually addressed. However, it is likely that a framework first needs to be established by which these effects can be compared in a more technically credible manner. This likely needs to be accomplished in a broader forum that [*sic*] normally provided by a single hearing, with opportunities for broader stakeholder input.

The Board respectfully disagrees with G&S Cattle's assertion that the two watershed Plans are generalized and unsubstantiated and are therefore not appropriate for assessing community impacts or appropriate use of land. Specifically, the Board notes the PLWMP was informed by a robust stakeholder engagement framework that included contributions from technical advisors, steering committee members, Indigenous peoples, and the community. The Board views that

this approach in creating the watershed Plans is commendable, and closely reflects the type of process contemplated by the Board in Review Decision LA02002.

In the Board's view, the nature in which the watershed Plans were developed and the commitment to those Plans as represented by the signatories represent a solid example of best practice in formalizing community interests.

G&S Grounds for Review #2

(a) G&S Cattle Views

“The Decision disregards established processes and principles for approvals under subsection 20(1) of the AOPA”

G&S Cattle stated that the approval officer strayed from NRCB policy where an application's consistency with the MDP presumes it is an appropriate use of land. G&S Cattle acknowledged that this presumption is rebuttable. However, G&S Cattle argued that denial of the application should not have been based on a single factor—community approval—as expressed in broad, non-binding statements of public policy contained in the PLWMP.

(a) Board Views

The Board recognizes that Field Services routinely use an application's consistency with the MDP as a proxy for the potential effects of the CFO in relation to s. (ix), as reflected in the Approvals Policy (section 8.7.3), which states that in general if an application is consistent with the MDP “the proposed development is presumed to pose acceptable effects on the community and to be an appropriate use of land under AOPA section 20(1)(b)(ix).”

However, section 8.7.3 of the Approvals Policy does not restrict the approval officer's discretion to consider and decide on s. (ix). The Policy states:

The presumptions (regarding acceptable effects of the environment, community and appropriate use of land, and economy) are decision-making guides and are not meant to be definitive or unchangeable. The presumptions can be overcome by contrary evidence obtained by an approval officer, or provided by a municipality, other directly affected parties, or by referral agencies. In order to apply these presumptions, approval officers will not limit their consideration of a municipality's MDP or LUB to the land use provisions in those documents. However, AOs have discretion to determine how much weight should be given to the relevant MDP and LUB provisions.

Approval officers must make a determination of the potential effect that a proposed CFO may have on the community, economy and environment [i.e., s. (ix)] independently from the MDP consistency test under s. 20(1).

The Board finds that the approval officer appropriately made a determination of section 20(1) and 20(1)(b)(ix).

(b) G&S Cattle Views

The G&S Cattle RFR further asserted that:

“The approval officer’s interpretation of 20(1)(b)(ix) “...reflects an unreasonably narrow interpretation of the Board’s public interest mandate under section 2 of the Natural Resources Conservation Board Act.”

(b) Board Views

The NRCB was formed in 1991 when the Government of Alberta passed the *Natural Resources Conservation Board Act* (NRCBA). The NRCB is also responsible for the administration of AOPA and its associated regulations with respect to those operations that fall within the scope of AOPA as set out in section 22(2) of the NRCBA, which states:

22(2) The Board may administer a regulatory system imposed on it by this or any other enactment.

The Board has reviewed this issue in detail. Section 2 of the NRCBA referenced by the G&S Cattle RFR reads in full as follows:

Purpose of Act

2 The purpose of this Act is to provide for an impartial process to review projects that will or may affect the natural resources of Alberta in order to determine whether, in the Board’s opinion, the projects are in the public interest, having regard to the social and economic effects of the projects and the effect of the projects on the environment.

However, section 4 of the NRCBA sets out the projects that are reviewable within the scope of the NRCBA, as distinct from AOPA. Section 4 of the NRCBA states:

- 4 The following are subject to a review in accordance with this Act and the regulations:
- (a) forest industry projects;
 - (b) recreational or tourism projects;
 - (c) metallic or industrial mineral projects;
 - (d) water management projects;
 - (e) any other type of project prescribed in the regulations;
 - (f) specific projects prescribed by the Lieutenant Governor in Council.

Confined feeding operations are not identified in the foregoing list of reviewable projects pursuant to the provisions of the NRCBA.

The Board is satisfied that the public interest determination referenced in section 2 of the NRCBA applies only to reviewable projects as defined in section 4 of the NRCBA, whereas AOPA and its associated procedures and regulations apply to the approval of confined feeding operations.

The Board finds that the assertion of the approval officer’s non-compliance with the NRCBA is without merit and therefore is not a reviewable issue.

G&S Grounds for Review #3

G&S Cattle Views

“The Decision misinterprets the authority of the Pigeon Lake Watershed Management Plan (the “PLWMP”) and the extent to which it represents the community interest,”

G&S Cattle asserted that the PLWMP is not a statutory plan, and the County’s resolution to implement the Plan and to reference and consider recommendations of the Plan when revising bylaws, does not equate to an acknowledgement that the requirements of the PLWMP will be followed. G&S Cattle contended that the goal of Plan Objective OB-2e to restrict new or expanding CFOs in the watershed is a proposed legislative reform for a collection of municipalities and is not a “municipal development plan land use provision”.

Board Views

The Board finds that the approval officer did not misinterpret the authority of the PLWMP. There are several statements in the Decision that clearly indicate the approval officer is well aware of the nature and standing of the PLWMP and the PLWACP, and that they were not part of the County’s MDP.

At page 36 of the Decision:

“The County’s last revision of the MDP was in 2012 prior to the 2018 PLWMP being released. In the County’s second response to the CFO application (April 19, 2022), they indicated a willingness to consider the 2018 PLWMP in updates to statutory plans. It is unclear if the County will update the MDP (it is currently under review) to include further restrictions for new or expanding CFOs in the Pigeon Lake watershed area or alternatively, consider each application on a case-by-case basis. As noted above, the County council resolved in June 2018 to consider the PLWMP both in updating statutory plans and “in the ordinary business of the municipality.”

At page 37 of the Decision:

*“As the PLACP is not a statutory plan, I have not considered the consistency of the application with the PLACP to assess consistency with the MDP land use provisions. However, in considering whether the proposed CFO would be an appropriate use of land, I am not restricted to looking at statutory plans under the *Municipal Government Act*. In my view, the PLACP – like the PLWMP – demonstrates that the County is well aware of, and supports, the objectives and land use principles in the PLACP. In that sense, the PLACP is highly relevant in considering whether the proposed CFO would be an appropriate use of land.”*

For these reasons, the Board finds the issues raised were of little merit.

G&S Grounds for Review #4

G&S Cattle Views

“Unfair Focus on the Concerns of Unaffected Persons”

G&S Cattle further asserted that:

“As a result of the Decision’s reliance on the PLWMP the definition of “community” employed in the Decision effectively excludes agricultural business in the area directly affected by the Decision, such as G&S, and instead focusses heavily on the recreational users of Pigeon Lake.”

Board Views

The Board understands that the Plan recommends restrictions on some new or expanding agricultural operations (i.e., CFOs). The Board notes, however, that G&S Cattle's claim that the definition of community in the Decision "effectively excludes agricultural business in the area" is unfounded. The approval officer relied on the PLWMP to determine potential impacts that the G&S Cattle CFO may have on the community and the appropriate use of land. However, the PLWACP at page 10 states, "...we must be clear that no farmer will be forced to sell his land, or to convert it to non-agricultural uses, and he will not be forced to curtail legitimate farm operations because of objections by his neighbours." While Objective 2e of the PLWMP recommends restricting large scale intensive livestock operations within the defined watershed, the PLWMP and PLWACP both recognize and support other types of agricultural business operations. The Board finds that irrespective of whether the Pigeon Lake watershed is incorporated into the MDP via a CFO exclusion zone, Objective OB-2e is reasonable given the overall community objectives for the watershed under the PLWMP.

By definition, exclusion zones 'favour' other agricultural and non-agricultural land uses over CFOs. While approval officers must deny applications that are inconsistent with MDPs, the Board can approve a CFO despite an inconsistency with the MDP. The Board exercises caution in doing so, and relies on whether appropriate planning objectives were used in deriving the CFO exclusion zone and whether the planning objective can be achieved notwithstanding the approval of the CFO.

The Board finds that the approval officer fairly balanced the application against the objectives and findings of the PLWMP. The Board finds that the issue raised is of little merit.

G&S Grounds for Review #5

G&S Cattle Views

G&S Cattle state:

"A ban on confined feeding operations throughout the Pigeon Lake Watershed is inconsistent with the County's current MDP, which, as the Approval Officer correctly determined, clearly permits the CFO on the Lands. In G&S' respectful submission, the Decision effectively disregards the Application's compliance with the AOPA and the MDP by relying on the PLWMP as being the foremost authority on whether the CFO constitutes an appropriate use of the Lands."

Further, G&S Cattle state:

"A statutory decision maker cannot fetter their discretion afforded under the enabling legislation by mechanically applying a policy or guideline without considering the particulars of an individual case. Simply put, the Decision prioritizes a policy objective of achieving future statutory provisions over actual statutory provisions now in effect. This is not the intention of the residual discretion afforded to approval officers under subparagraph 20(1)(b)(ix) to consider the effect of a CFO on the community and its appropriateness to the lands, and amounts to fettering of that discretion?"

Board Views

The Board understands G&S Cattle's preference that the approval officer, and indeed this Board, should ultimately rely on the application's consistency with the MDP as determinative

for the appropriate use of land. Nonetheless, the Board views that the statutory scheme and Field Services' Approval Policy fully support the approach taken by the approval officer.

The Board finds that Field Services has taken an abundantly cautionary approach in applying s. (ix), illustrating the importance and weight that should be given to MDPs and IDPs. The Board finds that Field Services and indeed this approval officer understand the statutory scheme of s. 20(1) and have appropriately set the bar high for an application to be denied based on s. (ix). The Board finds sufficient evidence in the Decision to establish that the approval officer applied the rebuttable presumption set out in the Approvals Policy. In the Board's view, the approval officer provided extensive reasons explaining why the presumption was rebutted in this circumstance.

The Board sees no evidence that the approval officer simplified his decision making to a 'yes or no' based on the application's consistency with the PLWMP. There is sufficient evidence that the approval officer applied the rebuttable presumption that consistency with the MDP assumes acceptable community effects. Throughout the application process, the approval officer rightly considered the significant emphasis and importance placed on the Pigeon Lake watershed by directly affected parties, and the PLWMP and the PLWACP. The approval officer also considered submissions by directly affected parties including the County of Wetaskiwin. Further, while the approval officer acknowledged the County of Wetaskiwin's resolutions to adopt the watershed Plans into its MDP, this was not a consideration in the decision. The Board finds no evidence supporting a fettering of the approval officer's discretion.

The Board finds that the issue raised was adequately dealt with by the approval officer.

* * * * *

Board Decision

For reasons stated above in this document, G&S Cattle failed to convince the Board that the approval officer

- improperly assessed community effects and land use
- disregarded established principles and processes
- misinterpreted the authority of the PLWMP
- unfairly focused on the concerns of unaffected persons to the exclusion of agricultural operators, and/or
- improperly relied on the PLWMP

in reaching his decision to deny the G&S Cattle application.

As a result of its deliberations and for the reasons stated in this document, the Board has determined that the issues raised by G&S Cattle Ltd. in its Request for Review were either adequately considered by the approval officer, are not relevant Board considerations under AOPA, or are without merit. Therefore, the Board has determined, pursuant to section 25(1)(a) of AOPA, that there are no matters to be directed to a review and, therefore, the Request for Review by G&S Cattle Ltd. is denied.

DATED at EDMONTON, ALBERTA, this 21st day of October, 2022.

Original signed by:

Peter Woloshyn (chair)

Sandi Roberts

Walter Ceroici

L. Page Stuart