



## Decision Summary LA18066

This document summarizes my reasons for issuing Registration LA18066 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA18066. That document and the full application are available from the decisions search engine on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://www.nrcb.ca). 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.

### 1. Background

On November 15, 2018, Keho Poultry Farms Ltd. submitted a Part 1 application to the NRCB to construct a breeder barn for a poultry confined feeding operation (CFO). The Part 2 application was submitted on November 16, 2018. On November 28, 2018, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 0 to 5,000 chicken breeders
- Reducing livestock numbers from 110 to 0 sows (farrow to finish)
- Constructing a new poultry breeder barn (65.6 m x 12.8 m).
- Decommissioning all existing hog facilities prior to populating the new poultry breeder barn.

Keho Poultry also proposes to construct a service area (egg storage, office, mechanical room) with an area of 12.8 m x 6.7 m which will encompass the west portion of the end of the barn. Under sections 1(b.6) of AOPA and 1(1)(a.1) of the Agricultural Operations, part 2 Matters Regulation, because it will not be used to store or collect manure or to confine livestock this structure is considered an ancillary structure. Under section 4.1 of that regulation, ancillary structures do not need to be permitted under the act.

Under AOPA, this type of application requires a registration. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see <https://www.nrcb.ca/CFO/Permits/Types of Permits>)

#### a. Location

The existing CFO is located at SW 22-009-25-W4M in the Municipal District of Willow Creek, roughly 5.5 km northeast of Fort Macleod, Alberta. The terrain is undulating with a general slope to the southeast.

#### b. Existing permitted facilities

There is a Municipal Permit, 98-90, issued by the Municipal District of Willow Creek on November 23, 1990 to operate a 110 sow operation (farrow to finish). All facilities associated with this permit will be decommissioned, and no livestock as permitted in the municipal permit will be allowed on site following the issuance of this permit. Therefore, municipal development permit 98-90 is no longer valid and is not carried forward.

## **2. Notices to affected parties**

Under section 21(1) of AOPA, the approval officer must notify all “affected parties” of a registration application. Section 5 of AOPA’s Part 2 Matters Regulation lists the categories of municipalities that are affected parties. These categories include the municipality where the existing CFO is located. The Municipal District of Willow Creek is an affected party under the Part 2 Matters Regulation because the CFO is located within its boundaries.

Under section 21(1) of the act, affected parties also include owners and occupants of land that is within the “minimum distance separation” or 0.5 miles from the parcel of land where the CFO is located, whichever distance is greater. (The NRCB refers to this distance as the “affected party radius.”)

Under section 21(3) of the act, all affected owners and occupants of land are entitled to provide written submissions regarding whether the application meets the requirements of the regulations under the act. (The NRCB interprets this section as implying that it includes municipalities. See Operational Policy 2016-7: *Approvals*, part 7.9.2.)

Under section 21(2) of the act, affected municipalities are automatically also considered “directly affected” parties. Under section 21(3), all owners or occupiers of land who are affected parties may apply for a determination as to whether they are directly affected parties. However, under NRCB policy, all affected parties are presumed to be directly affected, if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

All directly affected parties are entitled to request that the NRCB’s board members review the approval officer’s decision on the registration application.

The NRCB published notice of the application in the Macleod Gazette on November 28, 2018 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the complete application to the Municipal District of Willow Creek, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Transportation and the Lethbridge Northern Irrigation District. Five courtesy letters were sent to people identified by the Municipal District of Willow Creek as owning or residing on land within the affected party radius.

## **3. Responses from the municipality and referral agencies**

I received responses from the Municipal District of Willow Creek, AEP, LNID and Alberta Transportation. No responses were received from AHS, other individuals or other non-government parties.

Ms. Brenda Stockton, a development officer with the Municipal District of Willow Creek, provided a written response on behalf of the county. As noted in section 2, the municipality is a directly affected party.

Ms. Stockton stated that the application is consistent with the intent of the county’s municipal development plan (MDP) policies that address CFOs. The application’s consistency with the municipality’s MDP is addressed in Appendix A, attached.

Ms. Stockton also stated that the application meets the setbacks required by the municipality’s land use bylaw (LUB).

Mr. John Thomas, a development/planning technologist, provided a written response on behalf of Alberta Transportation. Mr. Thomas stated that Alberta Transportation did not have any issues with the proposed barn and an Alberta Transportation permit is not required.

Mr. Jeff Gutsell, a hydrogeologist, provided a written response on behalf of AEP. Mr. Gutsell stated that there is no water licence associated with Well ID #209907, on SE 21-009-25 W4M, a well that Keho Poultry Farms Ltd. has identified as a potential water source for their operation. He also noted that there is no easement agreement in place to allow the water pipeline to cross Bouvery Exports Calgary Ltd. property to the location of Keho Poultry Farms Ltd.'s proposed poultry operation on SW 22-009-25 W4M. These concerns were forwarded to the applicant for their consideration and action. It is the responsibility of Keho Poultry Farms Ltd. to ensure that they have a sufficient water allocation available for their CFO prior to its operation.

Ms. Joanne Pohl, provided a written response on behalf of the LNID stating that the location of the proposed poultry operation is not within the Lethbridge Northern Irrigation District.

#### **4. Environmental risk screening of existing and proposed facilities**

When reviewing a new registration application for an existing CFO, NRCB approval officers normally assess the CFO's existing buildings, structures, and other facilities, using the NRCB's environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This tool 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 on the NRCB website, at [www.nrcb.ca/Guides](http://www.nrcb.ca/Guides).) 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 done with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: *Approvals*, part 8.13.

In this case, the risks posed by Keho Poultry Farms Ltd.'s existing CFO facilities were assessed in 2013. According to that assessment, the facilities posed a low risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required. Nonetheless the applicant has indicated that all hog facilities are being decommissioned. The decommissioning of these facilities in accordance with the requirements set out in AOPA will mitigate potential risks posed by the hog facilities.

I also assessed the proposed new poultry breeder barn, using the NRCB's risk screening tool, and determined that it poses a low risk to groundwater and surface water.

#### **5. Other factors considered**

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.<sup>1</sup>

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1. For a summary of these requirements, please see the [2008 AOPA Reference Guide](http://www.nrcb.ca/AOPA/ReferenceGuide), available on the NRCB website at [www.nrcb.ca/CFO/Guides](http://www.nrcb.ca/CFO/Guides).

In addition, the proposed expansion is consistent with the land use provisions of The Municipal District of Willow Creek's municipal development plan and with its land use bylaw. (See Appendix A for a more detailed discussion.)

With respect to the act's technical requirements, the proposed expansion:

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The closest neighbor located just outside of the required MDS has also provided a written MDS waiver.
- Meets the required AOPA setbacks from water wells, springs and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners of manure storage facilities

## **6. Terms and conditions**

Registration LA18066 specifies the new permitted livestock capacity as 5,000 chicken breeders and permits the construction of a poultry breeder barn.

Registration LA18066 also contains terms that the NRCB generally includes in all AOPA registrations, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

In addition to the terms described above, Registration LA18066 includes conditions that:

- Set a deadline of December 31, 2021 for the approved construction to be completed.
- Require the concrete used to construct the liner of the manure collection and storage portion of the poultry breeder barn to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas".
- Require Keho Poultry Farms Ltd. to provide written documentation confirming that the concrete used for the manure collection and storage areas meets the required specifications
- Prohibit Keho Poultry Farms Ltd. from placing manure or livestock in the new poultry breeder barn until the facility has been inspected by the NRCB following its construction
- Require Keho Poultry Farms Ltd. to decommission the hog facilities prior to populating the new poultry breeder barn.

For an explanation of the reasons for these conditions, see Appendix B, attached.

## **7. Conclusion**

Registration LA18066 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA18066.

Keho Poultry Farms Ltd.'s deemed approval associated with this site is therefore cancelled, unless Registration LA18066 is held invalid following a review and decision by the NRCB's board members or by a court, in which case municipal development permit #98-90 will remain in effect.

February 27, 2019



Adria Snowdon  
Approval Officer

**Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration LA18066

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

Under section 22 of AOPA, an approval officer may approve an application for a registration only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 6.4.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, section 22(2.1) 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.”)

Keho Poultry Farms Ltd.’s CFO is located in The Municipal District of Willow Creek and is therefore subject to that county’s MDP. The Municipal District of Willow Creek adopted the latest revision to this plan on June 14, 2017, under Bylaw #1765

As relevant here, section 9.2 of the MDP directs the NRCB to consider six provisions. These are quoted below (in italics); each one is followed by my discussion/analysis of how the provision related to this application. The requested considerations are:

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

This policy is likely not a “land-use provision,” as it calls for project-specific, discretionary judgements about the types of cumulative effects that should be considered and the acceptable maximum levels of each of those effects. For this reason, I do not consider this MDP provision to be relevant to my MDP consistency determination. In any case, the application meets the AOPA requirements for minimum distance of separation which is intended to mitigate nuisance impacts of CFO’s such as odours. Additionally, all CFO operators are required to meet AOPA nutrient loading limits for manure spreading which further mitigates the potential cumulative effects of a CFO.

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

Keho Poultry Farms Ltd.’s CFO is not within any areas designated “environmentally significant” in the referenced report.

*(c) Providing notice to adjacent landowners including applications for registration or authorization*

This is likely not a “land use provision” because of its procedural focus and thus I do not consider it to be relevant to my MDP consistency determination. At any rate, as explained above, the NRCB met the notification requirements of AOPA. The NRCB emailed referral letters and a copy of the complete application to the Municipal District of Willow Creek, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Transportation and the Lethbridge Northern Irrigation District (LNID). In addition, 5 courtesy letters were sent to people identified by the Municipal District of Willow Creek as owning or residing on land within the affected party radius. (See also Operational Policy 2016-7: *Approvals*, part 6.7.3).

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

I interpret “minimum distance separation” as referring to the minimum distance separation (MDS) requirements in section 3 of the Standards and Administration Regulation under AOPA. There is no country residential development located within the MDS for Keho Poultry Farms Ltd.’s CFO and the application meets the AOPA MDS requirements.

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

As discussed in Technical Document LA18066 and Decision Summary LA18066, Keho Poultry Farms Ltd.’s new CFO facility meets the AOPA setbacks to common bodies of water and is not located in a known flood plain. There are also no wetlands or riparian areas located adjacent to the proposed CFO facility. This provision is therefore met by the application.

For these reasons, I conclude that the application is consistent with the land use provisions of the Municipal District of Willow Creek’s MDP. The district’s response supports my conclusion.

Under the Municipal District of Willow Creek’s Land use Bylaw (#1743), the subject land is currently zoned as Rural General. CFOs are not listed as prohibited, permitted, or discretionary land use under this zoning. Ordinarily, a land use bylaw intends to preclude land uses that are not listed as permitted or discretionary (and that do not meet any other relevant criteria). However, the land use bylaw lists “intensive livestock operations” (ILOs), defined essentially as CFOs below AOPA’s permit thresholds, as a discretionary use within areas zoned Rural General. In addition, there is a provision in the Rural General part that limits parcel sizes for CFOs. If the municipality had really intended to outlaw CFOs in this district, this lot size restriction would be pointless.

Therefore, I interpret the omission of CFOs from the lists of permitted and discretionary land uses as simply the municipal district’s recognition that, since AOPA came into effect in 2002, the NRCB is responsible for permitting CFOs.

As for the lot size restriction, section 2(d) of the Rural General part of the bylaw states that the “parcel size shall remain the same size for which the development approval was originally issued.” Since CFOs are not listed in the LUB, it is my interpretation that the lot restrictions are intended to apply to ILOs that are permitted by the municipal district, and are not intended to apply to CFOs above AOPA’s permit thresholds. Whatever the case, the proposed expansion meets this restriction.

Setbacks in the land use bylaw for all developments are met by this application. For these reasons, I conclude that the application is not inconsistent with the land use bylaw.

## **APPENDIX B: Explanation of conditions in Registration LA18066**

Registration LA18066 includes several conditions.

### **1. New conditions in Registration LA18066**

#### **a. Construction Deadline**

Keho Poultry Farms Ltd. proposes to complete construction of the proposed new poultry breeder barn by December 2019. In my opinion, a construction schedule that allows three full construction seasons is more practical and realistic for the proposed development. Therefore, a deadline of December 31, 2021 is included as a condition in Registration LA18066.

#### **b. Post-construction inspection and review**

The NRCB's general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Registration LA18066 includes a condition requiring Keho Poultry Farms Ltd. to construct the concrete liner of the manure collection and storage portion of the poultry breeder barn to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas." Keho Poultry Farms Ltd. shall provide written confirmation that the concrete used for the manure collection and storage area meets the required specifications.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facility. Registration LA18066 includes a condition stating that Keho Poultry Farms Ltd. shall not place livestock or manure in the manure storage portions of the new poultry breeder barn until NRCB personnel have inspected the facility and confirmed in writing that it meets the registration requirements.

#### **c. Decommissioning of the existing barn**

Keho Poultry Farms Ltd. has proposed to decommission all existing hog facilities. A condition is included in Registration LA18066 stating that prior to populating the new poultry breeder barn, Keho Poultry Farms Ltd. shall decommission the hog barns and cement manure storage pit, according to Technical Guideline Agdex 096-90, "Closure of Manure Storage Facilities and Manure Collection Areas".