

Decision Summary LA20033

This document summarizes my reasons for issuing Approval LA20033 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20033. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

1. Background

On July 28, 2020, North Albion Farms Ltd. (North Albion) submitted a Part 1 application to the NRCB to get permission to use already constructed pens, to permit the expansion of existing pens and increase beef feeder numbers from 1,300 to 1,900 at an existing beef CFO. The Part 2 application was submitted on September 29, 2020. On October 6, 2020, I deemed the application complete.

Therefore, the application involves granting permission to use:

- four already constructed pens (total: 128.0 m x 54.9 m),
- expansion of existing pens (to a final size of the overall footprint: 136 m x 48 m + 45 m x 67 m + 65 m x 42 m)

The application is in response to NRCB Compliance Directive 20-04, issued on July 16, 2020 to Ken Slingerland, owner and operator of North Albion Farms Ltd. The directive stated that the construction of four pens, permitted under Development Permit 98-33 was no longer covered by said permit. The directive therefore directed North Albion to submit an application and get a permit for these pens. In addition, the compliance directive also noticed a change in footprint of some of the existing pens over the years. I have determined that this pen expansion also requires a permit and will include it in this approval (Technical Document LA20033).

Under AOPA, this type of application requires an approval. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see www.nrcb.ca.)

a. Location

The existing CFO is located at NE 31-11-21 W4M in Lethbridge County, roughly 9.5 km north of the Town of Picture Butte. The terrain is mostly flat with a slight slope to the southeast. An irrigation channel is located 44 m to the west of the closest manure storage and collection area.

b. Existing permitted facilities

The CFO has Development permit 98-33, issued by Lethbridge County on April 14, 1998. This permit allowed the expansion of an existing beef feeder operation by 900 head to a total of 1,900 head beef feeders. Only two of the six permitted feedlot pens were built at that time and no further construction occurred for a total of 16 years. As determined by an NRCB inspector,

the four pens that were not constructed were considered as 'abandoned' under section 29(1)(b) under AOPA. In the compliance directive that was issued, the construction of these remaining four pens were determined as 'unauthorized construction'. With the four pens considered abandoned, the inspector adjusted the permitted animal numbers at this CFO to reflect the available livestock housing facilities covered by a permit. He determined that the permitted animal numbers at this site should be 1,300 head cattle feeders.

The CFO's deemed facilities are listed in the appendix of LA20033

2. Notices to affected parties

Under section 19 of AOPA, the NRCB is required to notify (or direct 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:

- the municipality where the CFO is 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 individuals who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For this application, the distance is one mile. (The NRCB refers to this distance as the "affected party radius.")

Municipalities that are affected parties are defined by the act to be "directly affected" and are entitled to provide evidence and written submissions. Lethbridge County is an affected party (and therefore also a directly affected party) because the proposed expansion is located within its boundaries.

All other parties who receive notice of the application may request to be considered "directly affected." Under NRCB policy, all individuals who own or reside on land within the affected party radius 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.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer's decision on the approval application.

The NRCB published notice of the application in the Sunny South News on October 6, 2020 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 Lethbridge County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Transportation, and the Lethbridge Northern Irrigation District (LNID). Thirteen courtesy letters were sent to people identified by Lethbridge County as owning or residing on land within the affected party radius.

3. Responses from the municipality, referral agencies, and directly affected parties

I received responses from Lethbridge County, Alberta Transportation, the LNID, and AEP. No response was received from AHS. No responses were received from individuals or other non-government parties.

Ms. Hilary Janzen, Senior planner with Lethbridge County, provided a written response on behalf of Lethbridge County. As noted in section 2, Lethbridge County is a directly affected party.

Ms. Janzen stated that the application is consistent with Lethbridge County's municipal development plan. The application's consistency with Lethbridge County's municipal development plan, is addressed in Appendix A, attached.

Ms. Janzen also listed the setbacks required by Lethbridge County's land use bylaw (LUB) and noted that the application meets these setbacks.

The NRCB received a written response from Leah Olsen, development/planning technologist with Alberta Transportation (AT), and Mr. Jeff Gutsell, hydrogeologist with AEP, and Alan Harrold, general manager of the LNID.

Ms. Olsen stated in her response that a permit from her department is not required and there are no concerns with this application.

Mr. Gutsell stated that the CFO is within the LNID and that it is likely that North Albion has a water conveyance agreement. He requested proof that adequate water is available for the expansion.

Mr. Harrold stated that the increase in animal numbers would require an additional water conveyance agreement. He also pointed out that all permanent structures (including feedlot pens) require a 30 meter setback from all irrigation works and that land application of manure is not permitted within 30 meters of a canal/drain. He also reminded the applicant to not allow any manure contaminated runoff to enter the district works. A copy of the response was provided to North Albion Farms.

Because Evert and Treena Van Hierden signed a waiver, waiving the MDS to their residence, both persons are considered a directly affected party.

4. Environmental risk screening of existing and proposed facilities

As part of my review of this application, I assessed the risk to surface water and groundwater posed by the CFO's existing and proposed manure storage facilities. I used the NRCB's environmental risk screening tool for this purpose (see NRCB Operational Policy 2016-7: *Approvals*, part 8.13). The 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 under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.)

All of the CFO's existing and constructed but not yet permitted facilities pose a low potential risk to groundwater and surface water: (The CFO's existing facilities are listed in the appendix to LA20033.)

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.

In addition, the proposed expansion is consistent with the land use provisions of Lethbridge County's municipal development plan and with Lethbridge County's land use bylaw. (See Appendix A for a more detailed discussion of the county's planning requirements.)

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

- Meets the required AOPA setbacks from all nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owner of that residence has signed a written waiver of the MDS requirement to their residence
- 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

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.

In addition, I assessed the effects of the proposed expansion on the environment. Consistent with NRCB policy, I determined that these effects are acceptable because the application meets all of AOPA's technical requirements. I also determined that the application's effects on the economy and community are acceptable, and that the proposed expansion is an appropriate use of land. Under NRCB policy, these determinations are based on the application's consistency with the municipal development plan and land use bylaw. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.)

6. Terms and conditions

Approval LA20033 specifies the new permitted livestock capacity as 1,900 beef feeders and allows the use of the constructed and expanded pens.

Approval LA20033 also 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.

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA20033: development permit 98-33 (see NRCB Operational Policy 2016-7: *Approvals*, part 10.5). 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, and then cancelling all existing permits once the new permit is issued. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion.

Therefore, in addition to containing the new terms and conditions summarized above, Approval LA20033 includes all existing terms and conditions in development permit 98-33, except the terms and conditions noted below. Construction conditions that are being carried forward included in an appendix to the new approval.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #6, 8, 9, and 10 (- or portions of these conditions) from development permit 98-33 should be deleted and therefore are not carried forward or are not carried forward as written into Approval LA20033. My reasons for deleting or rewording these conditions are provided in Appendix B.

7. Conclusion

Approval LA20033 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20033.

North Albion's deemed permits, including municipal development permit # 98-33, are therefore cancelled, unless Approval LA20033 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed permit and development permit 98-33 will remain in effect.

November 5, 2020

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA20033

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may approve an application for an approval 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 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, 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.”)

North Albion’s CFO is located in Lethbridge County and is therefore subject to that county’s MDP. Lethbridge County adopted the latest revision to this plan on December 5, 2019, under Bylaw #19-043.

Section 6.6 Confined Feeding Operations lists several policies under subsection 6.6.3:

a) Urban Fringe: *“The County shall exclude the development of CFOs in the Urban Fringe land use districts.”*

The CFO is not within this zoning category as shown on Map 11B.

b) Impacts

This policy refers to lobbying for funding to counteract the impact of CFOs on county infrastructure. Municipal funding is not under the jurisdiction of the NRCB. Therefore, I will not include this policy in my MDP consistency determination.

c) Location

The three listed items under this policy section refer to a reciprocal MDP for residential development in the vicinity of CFOs. Development permits for residential development are under the jurisdiction of the respective municipality. Therefore, I will not discuss this policy any further.

d) NRCB

I) Given the County’s unique perspective regarding CFOs, the county will be proactive when discussing regulation amendments regarding CFOs with Alberta’s NRCB.

This policy is likely not a land use provision but rather a ‘mode of action’. I will therefore not discuss this policy in any more detail.

II) The NRCB in its approval review should also consider:

- *The cumulative effect of a new approval on any area new other existing confined feeding operations*

- *Environmentally sensitive areas as shown in the report, County of Lethbridge: Environmentally Sensitive areas in the Oldman River Region (see maps in Appendix C)*
- *Giving notice to adjacent landowners even in the case of applications for registration or authorizations, and*
- *Applying MDS calculations to all county residential clusters whether or not designated in the land use bylaw.*

The first of these four considerations is likely not a land use provision because of its project-specific focus (viewed cumulatively with other existing CFOs), and its request for the NRCB to make a discretionary judgement about the degree of cumulative effects that are acceptable. Therefore, this consideration is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: *Approvals*, part 8.2.5.)

As for the second consideration, this provision is likely not a land use provision because of its referral to a specific site. However, I considered it in respect to the CFOs impact on the environment as discussed in sections five above. At any rate, the CFO is not located close to any of the environmentally significant areas noted in the county's report.

The third of these four considerations is likely not a land use provision because it requests notification to adjacent landowners about registration and authorization applications. Sections 19 and 21 of AOPA determine the required notification process. In this case, the application was for an approval which triggered public notification requirements.

The fourth consideration appears to refer to AOPA's "minimum distance separation" (MDS) requirements. Under NRCB policy, approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. (See also Operational Policy 2016-7: *Approvals*, part 8.2.5.) At any rate, there are no country residential clusters in the immediate vicinity of the CFO, so this MDP consideration does not apply to North Albion's application.

III) The NRCB is requested to take into consideration the requirements and policies of the County Council when making decision on such applications.

This provision is likely not a land use provision because it requests the consideration of policies and requirements of the county's council. AOPA is very specific in what approval officers must consider when determining consistency with the MDP (section 20(1)) and only refers to the MDP document. It is implied that this also includes any planning documents that are directly incorporated into the MDP. At any rate, the deemed application was sent to Lethbridge County for their input.

IV) CFOs "shall not be approved in the areas shown and designated on Figure 11B as exclusion areas".

North Albion's CFO is not located in any of the designated CFO exclusion areas, so the application is consistent with this provision.

V) CFOs "shall not be approved on parcels less than 64.7 hectares (160 acres) or an unsubdivided quarter section, having a minimum of 4.0 hectares (10 acres) of registered exceptions of rights-of-way"

This provision is likely not a land use provision because it refers to specifics in respect to a site of a CFO, rather than the use of a specific land. At any rate, the quarter section on which the CFO is located meets this requirement.

VI) The NRCB should consider the requirements and regulations as stipulated in the Lethbridge County Land Use Bylaw and Animal Control Bylaw, including the exclusion of confined feeding operations on parcels less than the specified sizes as specified in those bylaws.

In my view, this section provides a clear intent to adopt provisions from the land use bylaw (LUB). Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I therefore also considered Lethbridge County's Land Use Bylaw #1404 (consolidated to Bylaw 20-002 and Bylaw 20-014 (maps)). Under those bylaws, the subject land is currently zoned Rural Agriculture. CFOs are a discretionary use under this zoning category.

As stated in Part 2 (RA) section 3(3) in this bylaw, the minimum parcel size for CFOs is 64.7 hectares (160 acres).

This provision is the same as section 6.6.3 (IV) in the MDP. Hence, I will look at it in a similar manner as the MDP provision.

The subsequent sections (Rural Agriculture) in this land use bylaw, require minimum setbacks (sections 4 to 7). These include setbacks to property lines, roadways, canals and distance to neighbouring residences (section 6(6)). Apart from the MDS requirement which has been discussed previously, these requirements could be defined as being 'siting' requirements and would subsequently be exempt from consideration by an approval officer. Nevertheless, I am on the opinion that they ensure proper development of the rural areas in respect to future development and hence dictate a land use or are related to safety issues and will therefore be considered as impact on the community. At any rate, the already constructed facilities meet these setbacks.

The above subsection of the MDP also seems to clearly incorporate the Animal Control Bylaw (Bylaw 17-008). Given that this is not a land use provision and the application is for a CFO that triggered an application process under AOPA and therefore falls under the jurisdiction of the NRCB, I determined that the animal control bylaw does not apply under this circumstance.

e) Development Setbacks

This provision requires CFO developments to meet the setbacks to roadways and property lines as set out in the LUB.

The development meets all of these setbacks.

I therefore conclude that this application is consistent with Lethbridge County's MDP, a conclusion that is supported by the comments provided by Lethbridge County's development officer.

APPENDIX B: Explanation of conditions in Approval LA20033

Approval LA20033 does not include any new conditions other than the general terms and conditions but carries forward (with a new number) a number of conditions from development permit 98-33.

Conditions that are carried forward as written (as construction conditions):

Conditions 1, 3, 4, and 5 will be carried forward into the appendix of Approval LA20033.

On-going conditions:

Condition 7: “Stockpiling of solid manure is not to be done next to roadways and/or water courses, all runoff from stockpiles must be contained in the immediate area of the stockpile.”

Condition 2: “A minimum of 280 irrigated and cultivated acres or 560 dryland acres is to be maintained as an adequate land base for manure utilization.”

This condition is more stringent than the land base required under AOPA and its regulations (as per NRCB policy 2016-1 ‘Amending municipal permit conditions’)

Conditions that are either not carried forward as written or deleted from development permit 98-33

Condition 6: “*A specific site is to be selected and maintained as interim storage of dead animals. The area must include runoff control and not be visible by the general public. Deads would best be handled by rendering pick up.*”

Given AF’s regulatory role relating to dead animal disposal under the *Animal Health Act*, concurrent oversight of dead animal disposal by the NRCB would be inefficient and might lead to inconsistencies with AF requirements. Therefore, this condition will not be carried forward.

Condition 8: “Consideration of neighbouring residences must be included in land application of manure. This includes allowing for an adequate separation distance from neighbours and incorporation within 48 hours of spreading.”

This condition consists of two components: a) allowing for an adequate separation distance from neighbours during land application of manure and b) incorporation within 48 hours of spreading.

The first part of this condition (a) is difficult to enforce due to its subjective nature. The term ‘adequate’ is not a concrete term and depends on personal judgement. While this condition is more stringent than AOPA for manure spreading with incorporation, it is difficult to enforce due to its subjective nature. Because of this, I will not carry this condition forward into the new approval. However, I would like to remind the operator that all applicable manure setbacks for manure spreading apply.

The second part of this condition requires the incorporation of manure within 48 hours of application. Although this condition is in line with requirements of manure application under AOPA, it is more stringent because it precludes spreading on forage and zero till croplands

where incorporation of manure is not possible. Because of this, this part of the condition will be carried forward and all manure shall be incorporated within 48 hours.

Condition 9: spreading of manure is not to occur on frozen ground, near canals or ditches and on weekends

This condition consists of several parts: a) no spreading on frozen ground, b) no spreading of manure near canals and ditches, and c) no spreading of manure on weekends.

The first part of this condition is included in the opening paragraph of Approval LA20033 that requires the permit holder to adhere to AOPA and its regulations which include that manure shall not be spread on frozen and snow covered ground. This condition is therefore redundant and will not be carried over.

The second part of this condition speaks on setbacks to water bodies. AOPA has clear setbacks for manure spreading near water bodies (section 24 (9) Standards and Administration Regulation). Same as for the first part of this condition also this part is included in the opening paragraph of Approval LA20033 that requires the permit holder to adhere to AOPA and its regulations. This part of the condition will therefore not be carried forward.

The third part does not allow spreading of manure on weekends. Because this condition is more stringent than AOPA, I will carry this part of the condition over into Approval LA20033 according to NRCB policy (NRCB Operational Policy 2016-1: *Amending Municipal Permit conditions*).

Condition 10: a fly control program is to be initiated and maintained

This condition is included in the opening paragraph of Approval LA20033 that requires the permit holder to adhere to AOPA and its regulations which includes a fly control program under section 20(1) Standards and Administration Regulation, AOPA. This condition will therefore not be carried forward.