

## Decision Summary BA20018

This document summarizes my reasons for issuing Approval BA20018 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA20018. 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 November 6, 2020, Sunnybend Farming Co. Ltd. / Hutterian Brethren Church of Sunnybend (Sunnybend) submitted a Part 1 application to the NRCB to expand an existing multi species CFO. The Part 2 application was submitted on November 12, 2020. On December 1, 2020, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 5,040 chicken layers to 22,000 chicken layers
- Increasing livestock numbers from 2,900 chicken pullets to 11,000 chicken pullets
- Constructing a layer barn – 90 m x 17.2 m
- Constructing a manure storage room attached to the new layer barn – 18.3 m x 9.1 m
- Converting the existing layer barn to house pullets

The application also notified the NRCB of the proposed construction of an ancillary/egg collection area (28 m x 15.2 m) attached to the layer barn. This facility is an “ancillary structure,” under section 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. Therefore, under section 4.1 of that regulation, this structure does not need a permit under the act.

#### a. Location

The existing CFO is located at NE 23-62-2 W5M in Westlock County, roughly 13.5 kilometres northeast of the hamlet of Neerlandia, Alberta. The terrain is near flat with no common bodies of water located within two kilometres of the CFO.

#### b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. That deemed permit includes municipal development permit 88-033 issued June 1, 1988 and municipal development permit 97-043, issued August 6, 1997.

Since AOPA came into effect, the NRCB has issued the CFO Approval BA02013 and Authorization BA05006. Collectively, these NRCB permits and Sunnybend’s existing permits allowed Sunnybend to construct and operate a 650 sow farrow to finish, 5,040 chicken layers, 2,900 chicken pullets, 2,000 chicken broilers, and 800 duck CFO. The CFO’s existing permitted facilities are listed in the appendix to the Approval BA20018.

## 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 “affected party radius.”)

A copy of the application was sent to Westlock County, which is the municipality where the CFO is located.

The NRCB gave notice of the application in the Westlock News newspaper on December 1, 2020. The full application was made available for viewing during regular business hours, and was posted on the NRCB website for public viewing. As a courtesy, 22 letters were sent to people identified by Westlock County as owning or residing on land within the affected party radius.

## 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 Health Services (AHS), and Alberta Environment and Parks (AEP).

I received responses from AEP and AHS.

AEP sent a generic response to the application that addresses water regulations in general and that the applicant should contact AEP if they require additional approvals under the *Water Act*.

Ms. Lu Wang, a public health inspector, provided a response on behalf of AHS. In her response she enquired if the application meets the setback requirements of AOPA, if there are any water wells within 100 m of the facility, and if the applicant has plans for odour and pest control. As explained in section 5, below, the application meets the AOPA technical requirements and there are no wells within 100 m of the proposed layer barn and manure storage room. With regards to odour and pest control, AOPA setbacks are designed to mitigate some of these issues for neighbouring residences.

#### **4. Municipal Development Plan (MDP) consistency**

I have determined that the proposed expansion is consistent with the land use provisions of Westlock County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

#### **5. 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
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 9, the application meets all relevant AOPA requirements.

#### **6. 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." Westlock County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Kathleen Deshoux, development officer with Westlock County, provided a written response on behalf of the county. Ms. Deshoux stated that the application is consistent with Westlock County's land use provisions of the municipal development plan. The application's consistency with Westlock County's municipal development plan is addressed in Appendix A, attached.

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

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

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing and proposed manure storage facilities and manure collection areas. I used the NRCB's environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool provides for a numeric scoring of risks, which can fall within 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).)

In this case, the potential risks to surface water and groundwater posed by Sunnybend's existing and proposed CFO facilities were low.

## **8. 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. Kathleen Deshoux also listed the setbacks required by Westlock County's land use bylaw (LUB) and noted that the application meets these setbacks.

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 policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. The application is also consistent with the MDP and LUB where the proposed expansion is presumed to have an acceptable effect on the economy and community. In my view, these presumptions are not rebutted.

I also presumed that the proposed expansion 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 8.7.3.). In my view, this presumption is not rebutted because Westlock County's response states that the application is consistent with their MDP.

## **9. Terms and conditions**

Approval BA20018 specifies the cumulative permitted livestock capacity as 650 sows farrow to finish, 22,000 chicken layers, 11,000 chicken pullets, 2,000 chicken broilers, and 800 ducks, and permits the construction of a layer barn and a manure storage room.

Approval BA20018 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.

In addition to the terms described above, Approval BA20018 includes conditions that generally address construction deadlines, monitoring, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval BA20018: municipal development permits #2183-88033 and #4164-97043, Approval BA02013, and Authorization BA05006 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). 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. Appendix B discusses which conditions from the historical permits are or are not carried forward into the new approval.

## **10. Conclusion**

Approval BA20018 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA20018.

Sunnybend's deemed approval, including municipal development permit #2183-88033 and 4164-97043, and NRCB-issued Approval BA02013 and Authorization BA05006 are therefore superseded, and their content consolidated into this Approval BA20018, unless Approval BA20018 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the previous permits will remain in effect.

February 11, 2021

(Original signed)

Julie Wright  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval BA20018

## 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 8.2.5.)

Sunnybend Colony’s CFO is located in Westlock County and is therefore subject to that county’s MDP. Westlock County adopted the latest revision to this plan in April 2016, under Bylaw #05-2016. The portions of the MDP applicable to this application are discussed below.

Policy 4.1.1.3 clarifies that the “primary use” of the “Agriculture Use Area” of which the existing CFO is located within, is for both “extensive agriculture and confined feeding operations”. This is considered a general guiding principle and gives generic directions about the acceptability of various land uses in specific areas, therefore this is not relevant to my decision. Irrespectively, the proposed application fits with this general guiding principle.

Policy 4.1.2.2 states that the county will provide “input” to the NRCB on applications for new or expanded CFOs, based on the “technical and locational merits” of each application. This policy 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, the application meets the “technical and locational” requirements of AOPA.

Policy 4.1.2.2 further states that CFOs and manure storage facilities “must fully satisfy all the requirements and regulations adopted under that Act [AOPA], specifically the minimum distance separation requirements and land base requirements.” As noted above, the application meets AOPA’s requirements including MDS and land base requirements.

Policy 4.1.2.3 states “Minimum distance separations for CFOs shall conform to standards set out in the Agricultural Operations Practices Act.” Together, the use of the term “minimum distance separation” in policies 4.1.2.2 and 4.1.2.3 appear to be a reference to the minimum distance separation (MDS) requirement in section 3 of the Standards and Administration Regulation under AOPA. These MDP policies are likely not relevant to my MDP consistency determination, because these policies are based on AOPA’s MDS requirements. (See also Operational Policy, *Approvals*, part 8.2.5). That said, the CFO meets the MDS requirements and meets all other AOPA technical requirements. Therefore, this application is consistent with these MDP policies.

Policy 4.1.2.4 requires a 2.4 km CFO setback from “corporate boundaries of any urban municipality within Westlock County” or a 0.8 km CFO setback from “Community Areas

designated on Map 7.2.” Sunnybend’s CFO is not located within the 2.4 km setback to any corporate boundaries of any urban municipality within Westlock County or within 0.8 km setback from community areas designated on Map 7.2. As such, this application is consistent with policy 4.1.2.4 of the MDP.

Policy 4.1.2.5 states that CFOs are “discouraged from locating in environmentally sensitive areas where slope instability and or groundwater contamination may be a concern.” This policy is likely not a land use provision because it requires site-specific, discretionary determinations (see NRCB Operational Policy 2016-7, *Approvals*, part 8.2.5). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(1) of AOPA. At any rate, the application meets the “technical and locational” requirements set out in AOPA.

Policy 4.1.2.6 states that in addition to AOPA, Area Structure Plans (ASP) in Westlock County and MDP policies in respect to CFOs should be followed. The development officer who responded to this application on behalf of the county, confirmed that there are no ASPs that would apply to this CFO at this time.

For these reasons, I conclude that the application is consistent with the land use provisions of Westlock County’s MDP.

In my view, the text of Westlock County’s MDP also provides a clear intent to adopt provisions from the LUB, in multiple subsections within sections 1, 3, 4, 5, and 6. For example, section 1.3 specifies that for “land use planning and development”, the MDP serves as the main document and changes will be implemented within the LUB to be consistent with the MDP. Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also consider Westlock County’s Land Use Bylaw (LUB) #04-2016. Under that bylaw, the subject land is currently zoned as Agriculture District. CFOs (as defined by AOPA) are listed as discretionary use under this zoning.

Under NRCB policy, CFO expansions are considered to be consistent with an LUB if CFOs are listed as either a permitted or discretionary land use for the relevant land use district (See NRCB Operational Policy 2016-7: *Approvals*, part 8.3) However, Section 7.7.1 of the LUB expressly exempts CFOs from municipal control under the LUB, because CFOs are regulated by the NRCB under AOPA.

For these reasons, I conclude that the application is consistent with Westlock County’s LUB. The county’s non-objection to the proposed CFO supports this conclusion.

## **APPENDIX B: Explanation of conditions in Approval BA20018**

Approval BA20018 includes several conditions, discussed below, and carries forward a number of conditions from municipal development permits #2183-88033 and #4164-97043, Approval BA02013, and Authorization BA05006 (see sections 2 and 3 of this appendix). Construction conditions from historical Approval BA02013 and Authorization BA05006 that have been met are identified in the appendix to Approval BA20018.

### **1. New conditions in Approval BA20018**

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

Sunnybend proposes to complete construction of the proposed new layer barn and manure storage room by November 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2023 is included as a condition in Approval BA20018.

#### **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, Approval BA20018 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the layer barn and manure storage room 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.”
- b. Sunnybend to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the layer barn and manure storage room.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval BA20018 includes a condition stating that Sunnybend shall not place livestock or manure in the manure storage or collection portions of the new layer barn and manure storage room until NRCB personnel have inspected the facilities and confirmed in writing that it meets the approval requirements.

### **2. Conditions carried forward from Authorization BA05006**

The following condition will be carried forward, re-written and renumbered in the new permit.

#### *6. Water Well Testing Reporting*

- a. Drinking water quality tests for chlorides and nitrates must be conducted annually on the water well(s) within 100 metres of the confined feeding operation with the results submitted annually to the NRCB by November 1, beginning in 2006.*

Pursuant to section 23 of AOPA, I have determined that this condition should be modified to reflect present NRCB policies and procedures.

This condition has been updated in Approval BA20018 to the following:

*7. The permit holder shall sample and test raw groundwater, according to water well monitoring requirements prescribed by the NRCB in writing. The NRCB may, based on the monitoring results and at its discretion, revise those requirements from time to time, in writing.*

Water Well Monitoring Statement BA20018 has also been issued to further define the monitoring requirements.

### **3. Conditions not carried forward from previously issued permits**

#### **a. Authorization BA05006**

Approval BA20018 includes the terms and conditions in Authorization BA05006, except those noted below.

##### *3. Construction Completion*

*a. Construction of the pullet barn must be completed by November 30, 2010.*

##### *4. Concrete Manure Storage - Floors and Gutters*

*a. The concrete used to construct the solid manure storage and collection system in the pullet barn must have a minimum 28-day strength of 25 MPa and a maximum water to cement ratio of 0.45. A copy of the concrete supplier's invoice must be provided to confirm the concrete specifications.*

##### *5. Inspections*

*a. The manure storage portion of the pullet barn must be inspected by NRCB personnel prior to animals or manure being placed in the new barn.*

NRCB Authorization BA05006 carried forward conditions from Approval BA02013 to construct a pullet barn. Sunnybend indicated to the NRCB on April 19, 2011 that they no longer wished to construct the pullet barn under Authorization BA05006.

Therefore, the pullet barn will be removed from the list of permitted facilities for the CFO. The associated livestock will be housed in existing facilities. Pursuant to section 23 of AOPA, this term and the three applicable construction conditions for the pullet barn will be deleted and therefore not be carried forward to Approval BA20018.

#### **b. Approval BA02013**

##### *1. General Conditions*

- a. The operation is to adhere to and follow the requirements of the Agricultural Operation Practices Act and the regulations passed pursuant to that Act, from time to time, including but not limited to Alberta Regulation 257/2001 Agricultural Operations, Part 2 Matters Regulation and Alberta Regulation 267/2001 Standards and Administration Regulation.*
- b. The operation is to adhere to the descriptions and conditions contained in the filed application, including but not limited to, operating plan, manure management plan, engineering reports and other attached documents, unless otherwise noted in the following conditions.*
- c. For each instance where the applicant has committed to standards higher than required by AOPA, these commitments have been included as conditions.*

Conditions 1a-c are being revised to reflect the NRCB's current permit drafting terminology. These conditions are included as terms in all NRCB permits and therefore are not necessary to be included as separate conditions.

### *3. Manure Application*

- a. The operator must maintain manure application records as identified in the regulations.*
- b. Liquid manure must be incorporated within 48 hours unless applied on perennial crops in a responsible manner ensuring that manure does not leave owners property (i.e. spreading on appropriate lands ensuring proper buffer zone, etc.)*

Sections 24 and 25 of AOPA's Standards and Administration Regulation outlines the requirements for manure spreading to protect soil, groundwater, and surface water from excessive application of manure. These include soil testing requirements, soil salinity limits, nitrate-nitrogen limits, and setbacks from water bodies, water wells, and residences. Operators are required to keep manure spreading and soil sampling records for five years and must provide them to the NRCB upon request. This conditions is therefore redundant and will not be carried forward.

### *4. Fly Control*

- a. The operator must employ manure management practices that are accepted by general industry practices and the guidelines of AOPA to limit potential for increase fly populations.*

This condition is vague in nature, it is not defined as to what is expected, and would be very difficult to enforce. However, applicants are required to follow AOPA requirements in terms of manure management set out in sections 24 and 25 of AOPA's Standards and Administration Regulation. Sunnybend has also had zero compliance issues in the past in regards to flies and the NRCB has not received any other complaints in regards to this operation since 2002. As such, this condition will not be carried forward.

### **c. Municipal development permit #4164-97043**

*Development must conform to all Municipal Land Use By-Law Regulations*

Since the issuance of municipal development permit #4164-97043, the NRCB has assumed jurisdiction over the regulation of CFOs in Alberta through the AOPA. This condition is therefore no longer relevant due to the passage of time and will not be carried forward.

*Applicant must meet Alberta Agriculture Code of Practice regulations*

This condition likely refers to the Code of Practice (1995 For The Safe And Economic Handling of Animal Manures Code of Practice issued by Alberta Agriculture, Food and Rural Development); the requirements under AOPA are essentially the revisions to the Code of Practice. This condition is considered redundant, therefore, I am deleting and replacing it with the statement the permit holder shall comply with the requirements of the Agricultural Operational Practices Act (AOPA) and the regulations passed pursuant to that act.

**d. Municipal development permit #2183-88033**

*Development must conform to all Municipal Land Use By-Law Regulations*

Since the issuance of municipal development permit #2183-88033, the NRCB has assumed jurisdiction over the regulation of CFO's in Alberta through the AOPA. This condition is therefore no longer relevant due to the passage of time and will not be carried forward.

*Shall Meet The Alberta Agriculture Code of Practice*

This condition likely refers to the Code of Practice (1995 For The Safe And Economic Handling of Animal Manures Code of Practice issued by Alberta Agriculture, Food and Rural Development); the requirements under AOPA are essentially the revisions to the Code of Practice. This condition is considered redundant, therefore, I am deleting and replacing it with the statement the permit holder shall comply with the requirements of the Agricultural Operational Practices Act (AOPA) and the regulations passed pursuant to that act.

*Shall Meet All Provincial Health Regulations*

The CFO would have to follow all applicable legislation administered by AHS. However, I have considered the comments that AHS has provided in regards to this new application in part 3 above. Since these recommendations are in relation to AHS regulations, I'm not including additional conditions which are out of AOPA's purview. As such, this condition will therefore be deleted and not carried forward.

*Shall Meet All Municipal District of Westlock Land Use Bylaw Regulations*

Since the issuance of municipal development permit #2183-88033, the NRCB has assumed jurisdiction over the regulation of CFO's in Alberta through the AOPA. This condition is therefore no longer relevant due to the passage of time and will not be carried forward.