

## Decision Summary LA20048

This document summarizes my reasons for issuing Authorization LA20048 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20048. 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 authorization. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca).

### 1. Background

On December 10, 2020, Happy Acres Farms Ltd. (Happy Acres) submitted a Part 1 application to the NRCB to relocate a pen at an existing beef CFO.

The proposed construction involves:

- Constructing a new pen attached to existing pens (62 m x 41.5 m)
- Constructing a new catch basin (35 m x 17 m x 2.5 m)
- Decommissioning an existing pen (31 m x 27 m)

The Part 2 application was submitted on March 3, 2021. On March 4, 2021, I deemed the application complete.

#### a. Location

The existing CFO is located at NE 34-9-21 W4M in Lethbridge County, roughly 5 kilometres northeast of the City of Lethbridge. The terrain is flat with the nearest waterbody being an irrigation canal which is located 1.3 km west of the site.

#### b. Existing permits

A grandfathering determination was made by the NRCB in 2005. In this determination the feedlot holds an approval with a livestock capacity of 700 beef feeders. This application does not involve an increase in livestock numbers.

### 2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is located or is to be located
- 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 municipality entitled to divert water from that body within 10

miles downstream

- any other municipality whose boundary is within a notification distance. In this case, the notification distance is 0.5 mile(s) from the CFO

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

### **3. Notice to other persons or organizations**

Under NRCB policy, 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), Alberta Environment and Parks (AEP), Alberta Transportation (AT), and the St. Mary's River Irrigation District (SMRID).

I received a response from AEP, AT and SMRID.

Jeff Gutsell, a hydrogeologist, replied on behalf of AEP. Mr. Gutsell stated that AEP does not have any concerns with the application since Happy Acres does not require additional water.

Leah Olsen, a development and planning technologist, provided a response on behalf of Alberta Transportation. In her response, she indicated that the proposed development is well removed from the provincial highway network with access by the local road system and therefore does not require a roadside development permit.

Linda Park, a land administrator, provided a response on behalf of the SMRID. In her response, she indicated that the SMRID has no objections to the application as long as overflow from the operation is not directed into the road ditch. As part of this application, the applicant has proposed a catch basin into which surface runoff from the CFO facilities will be directed. Ms. Park also indicated that Happy Acres is required to purchase water allocation and enter into a water conveyance agreement with the SMRID. This letter was forwarded onto the applicant for their information and action.

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

I have determined that the proposed construction is consistent with the land use provisions of Lethbridge 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 construction:

- 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 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 8, the application meets all relevant AOPA requirements.

## **6. Responses from municipality**

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." Lethbridge County is an affected party (and directly affected) because the proposed facility is located within its boundaries.

Ms. Hilary Janzen, supervisor of planning and development, provided a written response on behalf of Lethbridge County. Ms. Janzen stated that the application is consistent with Lethbridge County's land use provisions of the 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.

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

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing 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).)

All the CFO's existing and proposed facilities pose a low potential risk to groundwater and surface water.

## **8. Terms and conditions**

Authorization LA20048 permits the construction a new pen attached to existing pens, a new catch basin, and the decommissioning of an existing pen.

Authorization LA20048 contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization LA20048 includes conditions that generally address construction deadline, construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix B.

## **9. Conclusion**

Authorization LA20048 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20048.

Authorization LA20048 must be read in conjunction with Happy Acres's deemed approval, which remains in effect.

April 16, 2021

(Original signed)  
Joe Sonnenberg  
Approval Officer

### **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA20048

## APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for an authorization or amendment of an authorization 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.

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, 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.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Happy Acres’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 is titled Confined Feeding Operations; subsection 6.6.3 lists several policies for CFOs, as relevant here:

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

This CFO is located within this zoning category as shown on Map 11B. However, this application is for the relocation of a pen and construction of a catch basin at an existing CFO with no increase in animal numbers. The intermunicipal development plan (IDP) between Lethbridge County and the City of Lethbridge acknowledges existing CFOs in this Urban Fringe. Policy 3.4.3.6 of the City and County of Lethbridge IDP states that “new CFOs shall be prohibited” and “[e]xisting CFOs (excluding beef) may increase animal units only if the facility is to be modernized or upgraded, and if the upgrades reduce odors and improve efficiency”. Since this application is for the relocation of a pen and the construction of a catch basin at an existing CFO and not an increase animal numbers, this policy has been met. The county also supports this conclusion and has no concerns with this application.

b) Impacts

This policy refers to the county lobbying for funding to counteract the impact of CFOs on county infrastructure. Municipal funding for transportation infrastructure 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 minimum distance separation (MDS) for residential development in the vicinity of CFOs. Development permits for

residential development are under the jurisdiction of the respective municipality, not the NRCB. 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 further.

*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 and seven of the decision summary 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 for registration and authorization applications. Sections 19 and 21 of AOPA determine the required notification process. In this case, the application was for an authorization which did not trigger public notification.

The fourth consideration appears to refer to AOPA's 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.) As Happy Acres is not increasing livestock numbers and there will be no decrease in the distance to neighbouring residences, the application meets AOPA MDS requirements.

*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 22(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. Lethbridge County stated that the existing CFO is within the IDP which is explained previously within this appendix.

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

Happy Acres CFO is located the designated CFO exclusion areas. As mentioned in section “a” of this appendix, this application is to relocate a pen and to construct a catch basin at an existing CFO with no increase in animal numbers. As such, this application is consistent with the applicable Lethbridge County planning documents and the county raised no concerns with this application.

*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, this is not a new or expanding CFO and 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 Lethbridge Urban Fringe. CFOs are not listed as either permitted or discretionary uses in this zoning district. Ordinarily, if a LUB does not list a land use as either permitted or discretionary, that omission implies that the land use is prohibited in the relevant zoning district. However, part 1, section 13(4) of the LUB states that CFOs as “defined and categorized in accordance with AOPA”, does not require a development permit, but must comply with all other provisions of the land use bylaw.

The subsequent sections (Lethbridge Urban Fringe) 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. I am of the opinion that these setbacks 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, all facilities, existing and proposed meet these setbacks.

The above subsection of the MDP also seems to clearly incorporate the Animal Control Bylaw (ACB) (Bylaw17-008). Section 3 of the ACB states that parcels larger than 10 ha have no restriction on the number of animal units, provided that the number present are above NRCB (AOPA) animal unit thresholds. As noted in Technical Document LA20048 this CFO holds a deemed approval with a capacity of 700 beef feeders. Therefore, this CFO is exempt from the county’s ACB.

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.

Lethbridge County's MDP cross- references intermunicipal development plan (IDP) between the county and the City of Lethbridge. The CFO site is located within the IDP as mentioned above. I considered land use provisions in the IDP and determined, the CFO is consistent with these polices. The County's response supports this conclusion.

## **APPENDIX B: Explanation of conditions in Authorization LA20048**

Authorization LA20048 includes several conditions, discussed below:

### **a. Construction Deadline**

Happy Acres proposes to complete construction of the proposed new pen attached to existing pens and a new catch basin by December 15, 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 15, 2023 is included as a condition in Authorization LA20048.

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

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. Authorization LA20048 includes a condition stating that Happy Acres shall not place livestock or manure in the manure storage or collection portions of the new pen attached to existing pens and a new catch basin until NRCB personnel have inspected the facilities and confirmed in writing that it meets the authorization requirements.

### **c. Facility Decommissioning**

Happy Acres proposes to decommission an existing pen (31 m x 27 m). A condition has been included in Authorization LA20048 requiring the facility to be decommissioned within a year of the new pen having been constructed and having been approved for use by the NRCB. The pen must be decommissioned in accordance with Technical Guideline Agdex 096-90, "Closure of Manure Storage Facilities and Manure Collection Areas".