

Decision Summary LA21025

This document summarizes my reasons for issuing Approval LA21025 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21025. 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.

Under AOPA this type of application requires an approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On May 3, 2021, Driland Farms (Donald, Christine, Benjamin, and Roosmaryn Van Driesten) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

In 2016, Driland Farms decided to change the hog confined feeding operation into a sheep confined feeding operation (ewes with lambs) using the existing hog barns. In the following year, Driland Farms constructed outside pens (see Technical Document LA21025, page 3, 'existing pens') for use as a seasonal feeding and bedding site which was inspected by the NRCB. In subsequent conversations with the operator, he was advised that a permit is required for the change in livestock category as well as for the outside pens. This application is to acquire permission to use the already constructed pens (81 m x 70 m and 47 m x 75 m) as part of the confined feeding operation as well as to construct additional pens and a catch basin as outlined below.

The Part 2 application was submitted on May 25, 2021. On June 2, 2021, I deemed the application complete.

The proposed expansion involves:

- Changing the permitted livestock at the CFO by adding 3,600 sheep ewes with lambs and 3,600 feeder lambs and removing 170 swine farrow to finish
- Constructing 12 feedlot pens (corrals) – 82 m x 26 m each
- Constructing a lambing barn – 67 m x 31 m
- Constructing a catch basin – 82 m x 30 m x 2.5 m deep

a. Location

The existing CFO is located at SE 31-8-25 W4M in the Municipal District (MD) of Willow Creek, roughly three km southeast of the Town of Fort McLeod. The terrain is flat with a slight slope to the southwest. The closest common body of water is a small creek approximately 2.8 km to the south.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed registration under section 18.1 of AOPA. That deemed permit includes MD of Willow Creek development permits 50-94 and 104-98, issued May 17, 1994, and August 19, 1998, respectively. Together, these deemed registrations allow for the construction and operation of a 170 sow farrow to finish CFO. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix D attached. The deemed facilities are listed in the appendix to the Approval LA21025.

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:

- 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 MD of Willow Creek, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in the Macleod Gazette on June 2, 2021. The full application was also posted on the NRCB website for public viewing. As a courtesy, twenty three letters were sent to people identified by the MD of Willow Creek and the Town of Fort Macleod 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 the Town of Fort Macleod, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), and Alberta Transportation.

The NRCB received a response from Leah Olson, development/planning technologist with Alberta Transportation, Robert Rippin, executive officer/public health inspector with AHS, and Jeff Gutsell, hydrogeologist with AEP.

Ms. Olsen stated in her response that a permit is not required and that they don't have any concerns with this application.

Mr. Rippin stated that AHS is not aware of any groundwater quality issues in this area but stated that dust and airborne diseases are a general concern with all CFOs and requested that a condition, requiring dust control, should be added. This concern is addressed in Appendix B, attached.

Mr. Gutsell stated in his response that AEP has not received an application for the expected additional water needs for the expansion. He also stated that, according to his database, there is no existing water licence for this land location and that he is unclear about the water supply for this CFO. Because water licensing is solely under the jurisdiction of AEP, I will not further address AEP's concern. A copy of AEP's response was forwarded to the applicant for his information and action.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with the applicable ALSA regional plan.

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 that plan. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

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

6. 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 for manure storage facilities and manure collection areas

7. Responses from municipalities 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." The MD of Willow Creek is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Cindy Chisholm, manager of planning & development with the MD of Willow Creek, provided a written response on behalf of the MD of Willow Creek. Ms. Chisholm stated that the application is consistent with the MD of Willow Creek's land use provisions of the municipal development plan. The application's consistency with the MD of Willow Creek's municipal development plan is addressed in Appendix A, attached.

The Town of Fort Macleod is also a directly affected party because the CFO is within 1.5 miles of the town boundaries. In her response, Ms. Keli Sandford, planning and development officer of the Town of Fort McLeod, stated that they have no comments or concerns regarding the proposal.

8. 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 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.)

For the sake of efficiency, I first assessed the CFO's existing earthen liquid manure storage (EMS) using the ERST. The EMS appears to be the CFO's highest risk facility, because it is the deepest facility with an unknown liner. The assessment found that the EMS poses a low potential risk to groundwater and surface water. Because the EMS is the CFO's highest risk facility, I presume that the CFO's other existing facilities also pose a low potential risk to both groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted. A further assessment of the risks posed by these other facilities, using the ERST, is not necessary.

I also assessed the risk of the already constructed feedlot pens as well as the proposed feedlot pens and the catch basin and determined that all of these facilities pose a low risk to groundwater and surface water.

9. 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).

Ms. Chisholm also listed the setbacks required by the MD of Willow Creek's land use bylaw (LUB) and noted that the application meets these setbacks.

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. In my view, this presumption is not rebutted (see section 6 above).

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP, the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted because the proposed facilities are consistent with the land use zoning and meet all setbacks set out in the land use bylaw.

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, and is supported by the comments received from the MD of Willow Creek.

10. Terms and conditions

Approval LA21025 specifies the cumulative permitted livestock capacity as 3,600 sheep ewes with lambs and 3,600 feeder lambs and permits the construction of 12 feedlot pens (corrals), a lambing barn and a catch basin and allows the construction of already constructed feedlot pens.

Approval LA21025 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 LA21025 includes conditions that generally address construction deadlines, document submission, and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA21025: development permits 50-94 and 104-98 (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 C discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval LA21025 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21025.

Driland Farms' deemed approval, including municipal development permits # 50-94 and 104-98 are therefore superseded, and their content consolidated into this approval, unless Approval LA21025 is held invalid following a review and decision by the NRCB's board members or by a court, in which case municipal development permits # 50-94 and 104-98 will remain in effect.

July 22, 2021

(original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Response from AHS
- C. Explanation of conditions in Approval LA21025
- D. Determination of deemed permit status

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.

Conversely, “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.)

Driland Farms’ CFO is located in the MD of Willow Creek and is therefore subject to that district’s MDP. The MD of Willow Creek adopted the latest revision to this plan on August 2019, under Bylaw #1841.

Section 2 – Agriculture of the MDP points out that agriculture is a predominant land use in the MD while it is important to balance other interests. It continues to state that one of the main objectives of the MDP is to mitigate the siting of CFOs to minimize conflicts with adjacent land uses. Policy 2.3 then continues to state that the MD shall establish guideline with regards to the NRCB for the regulation an approval of CFOs within the MD. These guidelines are found in section 9.

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 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.

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

Driland Farms’ proposed CFO expansion is not within any natural areas designated as of regional, provincial or national significance in the referenced report (Map 1 of the report). However, areas of local significance are not presented in this report.

The report also assessed the planning area for major physical constraints such as flood plains, unstable slope potential, and areas of artesian flow. The map shows that the CFO is not located in or close to any of those areas. I therefore determined that the application is consistent with this provision.

(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 sent out courtesy letters to people identified by the MD of Willow Creek as owning or residing on land within the affected party radius of 1.5 miles, and provided public notice in the McLeod Gazette. The application therefore met the notification requirements of AOPA. (See also Operational Policy 2016-8: *Approvals*, part 6).

(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 and Schedule 1 of the Standards and Administration Regulation under AOPA. There is no country residential development located within the MDS for Driland Farms’ CFO and the application meets AOPA’s 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

As discussed in Technical Document LA21025, Driland Farms’ CFO meets the AOPA setbacks to common bodies of water and is therefore consistent with this aspect of the provision.

(f) Restricting development in any wetland or riparian area

The proposed CFO facility is not located in a wetland or riparian area. 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 MD of Willow Creek’s MDP.

In my view, the Land Use Bylaw is clearly incorporated in the MDP in several sections throughout the MDP including section 15.5 which states:

The Development Authority shall require the NRCB to take into consideration the policies adopted in this plan and the Land Use Bylaw, when issuing an approval.

Therefore, I also considered the application’s consistency with this document. Under the MD of Willow Creek’s Land Use Bylaw (#1826 consolidated to Bylaw No. 1849), 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. Therefore, I interpret the omission of CFOs from the lists of permitted and discretionary land uses as simply the municipality’s recognition that, since AOPA came into effect in 2002, the NRCB is responsible for permitting CFOs above AOPA thresholds.

As for the lot size restriction, section 2(4) 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 municipality, and are not intended to apply to CFOs above AOPA's permit thresholds.

Section 3 of the Rural General part of the bylaw lists several setbacks. The proposed feedlot pens and catch basins meet the 75 ft. road setback required under that section. For these reasons, I conclude that the application is consistent with the land use bylaw.

APPENDIX B: Response from AHS

In his response, an AHS public health inspector stated that the AHS is generally concerned about air borne diseases and particular matter arising from CFOs and recommended the implementation of a dust control program.

Although I understand that dust can be of general concern, the predominant wind direction in this area is west/southwest to east/northeast. Therefore, Driland Farms' CFO is downwind from its closest neighbours who reside to the west. There are no neighbours within one kilometre to the east of the CFO. In addition, Driland Farms meets the MDS requirements to all neighbouring residences which is a tool to mitigate nuisance issues.

APPENDIX C: Explanation of conditions in Approval LA21025

Approval LA21025 includes several conditions, discussed below, and carries forward a number of conditions from municipal development permits # 50-94 and 104-98 (see section 2 of this appendix). Construction conditions from historical municipal development permits # 50-94 and 104-98 have been included in the appendix to Approval LA21025.

1. New conditions in Approval LA21025

a. Construction Deadline

Driland Farms did not propose a timeframe to complete construction of the proposed new feedlot pens, lambing barn and catch basin. I therefore determined that it seems reasonable to complete construction of these facilities within 3 construction seasons. A construction deadline of December 31, 2024, is included as a condition in Approval LA21025.

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 LA21025 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the lambing 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.”
- b. Driland Farms to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the lambing barn.
- c. Driland Farms to provide evidence or written confirmation from a qualified third party that the catch basin was constructed at the approved location and with the dimensions outlined in this permit.

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 LA21025 includes a condition stating that Driland Farms shall not place livestock or manure in the manure storage or collection portions of the new lambing barn, feedlot and not allow manure contaminated runoff to enter the catch basin until NRCB personnel have inspected the facilities and confirmed in writing that it meets the approval requirements.

2. Conditions not carried forward municipal development permits 50-94 & 104-98

Approval LA21025 includes the terms and conditions in municipal development permits 50-94 and 104-98, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions # i and ii from development permit 50-94 and conditions # 1, 5, and 6 from development permit 104-98 should be deleted and therefore are not carried forward to Approval LA21025. My reasons for deleting these conditions are as below:

Municipal development permit 50-94

- i) Adherence to the recommendations of Chinook Health Unit, Alberta Agriculture, Food and Rural development, and Alberta environmental Protection.

Chinook Health Unit

The recommendations from chinook Health are not available. I was therefore not able to consider them.

Alberta Agriculture, Food and Rural Development

The responsible representative provided the following comments:

- a) That the CFO can meet the MDS

This recommendation will not be carried forward to avoid confusion about permitted livestock categories and numbers. This recommendation/condition will be replaced by the animals permitted in this approval (3,600 sheep ewes with lambs, and 3,600 feeder lambs). Driland Farms' CFO meets the respective MDS requirements under AOPA.

- b) Access to an adequate land base for manure spreading

Driland Farms meets the land base requirements as detailed in Technical Document LA21025. This condition will therefore not be carried forward (see also comment to Condition 5 below).

- c) Prompt and acceptable disposal of deads

This recommendation will not be carried forward because this activity is regulated directly by Alberta Agriculture and Forestry (AF). Given AF's regulatory role, concurrent oversight of dead animal disposal by the NRCB would be inefficient and might lead to inconsistency with AF's requirements.

- d) Storage capacity of the liquid manure storage

The lagoon is no longer used to store liquid manure from the hog barn and will be used to store runoff from the sheep pens. The CFO has adequate storage capacity for potential runoff (see Technical Document LA21025).

- e) Protection of all water ways from manure contaminated runoff

There are no open water bodies within 500 m of the CFO. The irrigation canal is now underground (pipeline). This condition is therefore no longer applicable.

- f) Practice a fly control program, particular is the area of the outside hog run

This recommendation/condition is no longer applicable due to the conversion of this CFO to a sheep raising facility. In addition, a similar condition from municipal permit 104-98 has been carried forward as an operating condition into the new approval. I will therefore not carry this condition forward into the new approval.

- g) All surface drainage from the existing outside hog runs, be contained on the owner's property.

This recommendation/condition is no longer applicable due to the conversion of this CFO to a sheep raising facility. I will therefore not carry this condition forward into the new approval.

Alberta environmental protection:

The responsible representative for this file stated in his response that the operator must a) ensure that all open water bodies must be protected from runoff, b) that adequate land must be available for manure spreading, and c) that the lagoon should be maintained so to not allow any seepage.

- a) There are no open water bodies within 500 m of the CFO. This condition is therefore no longer applicable.
- b) Driland Farms meets the land base requirements as detailed in Technical Document LA21025. This condition will therefore not be carried forward
- c) The lagoon is no longer used to store liquid manure from the hog barn and will be used to store runoff from the sheep pens. This facility is a grandfathered facility and it is unclear if it would meet AOPA liner requirements. However, the risk screening conducted for this facility showed that there is a low potential risk to groundwater for this facility (see Technical Document LA21015). This condition is therefore no longer applicable and will not be carried forward.
- ii) A certificate of Compliance shall be obtained from Alberta Environmental Protection and Alberta Agriculture, Food and Rural Development after expansion has been completed and shall be kept in good standing and a copy shall be filed with this office

Certificates of compliance are no longer issued. This condition is therefore impossible to enforce. Driland Farms has met all Technical requirements of AOPA for the construction and operation of this CFO. In addition, Driland Farms is obligated to adhere to all terms and conditions in this permit. For this reason, this condition will not be carried forward.

Municipal development permit 104-98

Condition 1 states: "*Recommendations of Alberta Agriculture, Food and Rural Development and Chinook Regional Health Authority shall be adhered to (copies enclosed).*"

The recommendations are:

Alberta Agriculture, Food and Rural Development:

- Comment 1 refers to the minimum distance separation between the CFO and neighbouring residences and the Town of Fort McLeod. This recommendation will not be carried forward to avoid confusion about permitted livestock categories and numbers. This recommendation/condition will be replaced by the animals permitted in this approval (3,600 sheep ewes with lambs, and 3,600 feeder lambs). Driland Farms' CFO meets the respective MDS requirements under AOPA.
- Comment 2 refers to required manure spreading lands. As stated below under 'Condition 5', the required land base for this CFO has increased to 509 acres dryland. This recommendation is therefore no longer applicable.

- Comment 3 refers to dead animal disposal and states: “*A specific site be selected and maintained as interim animal storage. The site must be accessible, out of view by the general public and not accessible to other animals. Dead animal removal by rendering truck is recommended.*” This recommendation will not be carried forward because this activity is regulated directly by Alberta Agriculture and Forestry (AF). Given AF’s regulatory role, concurrent oversight of dead animal disposal by the NRCB would be inefficient and might lead to inconsistency with AF’s requirements.

The recommendations provided by Chinook Regional Health Authority are not available. I was therefore not able to consider these recommendations.

Conditions 4 states: “*The list of suitable lands available for waste disposal submitted as part of the application shall be updated and filed annually with the Municipal District Office.*”

Although this condition is more stringent than the requirements under AOPA in that it has to be submitted rather than it has to be available for review by and NRCB inspector, I will not carry this condition over into this approval. The reason is twofold. First, there is no further action indicated in this condition such as approval from the municipality prior to spreading. Secondly, as stated in the opening paragraph of this permit, the permit holder shall comply with the requirements of the *Agricultural Operation Practices Act (AOPA)* and the regulations passed pursuant to that act. One of which is to keep records of where manure is being spread (section 28, Part 2 General Administration Matters). This condition is therefore redundant and will not be carried forward into this approval.

Condition 5 states: “*Access to a minimum of 368 acres of cultivated dryland or 184 acres of cultivated irrigated land shall be maintained for waste disposal, by written agreements(s) with nearby landowners of additional acreage is need, and a copy of each written agreement, signed by all persons on the land title and their partners(s)/spouses(s), shall be filed with the Municipal District office prior to construction, and the agreements shall be updated and copies filed with the Municipal District Office annually.*”

This condition consists of several parts. The first part lists the required land base for manure spreading. This land base is not sufficient to support the proposed conversion into a sheep feedlot permitted in this approval. The required land base for a 3,600 sheep ewes with lambs, and 3,600 feeder lambs feedlot is 509 acres dryland. Hence, this part of the condition 5 is no longer applicable. The second part of this condition requires Driland Farms to annually update these manure spreading agreements and keep copies of these on file for viewing by the Municipal District upon request. This requirement is more stringent than the AOPA requirement (as per NRCB policy: Amending Municipal Permit Conditions, policy 2016-1) which states that the applicant must satisfy an approval officer that for the first year following the granting of the application, the applicant has access to sufficient land to meet the land base requirements (section 24 (2) Standards and Administration Regulation). In this application, Driland Farms has proven that enough manure spreading lands are available for the manure produced at this CFO. I am of the opinion that it would be complicated to request updated manure spreading agreements for some but not other lands where manure is applied. I believe, that the reasoning for this requirements is to ensure that the available land base is not overloaded with nutrients. Sections 24, 25, 28, and Schedule 3 of the Standards and Administration Regulation lay out the parameters any person who applies manure to land has to adhere to. These include, but are not limited to, nutrient limits, soil testing, and record keeping. I am therefore of the opinion that condition 5 can be replace with the opening paragraph of this approval which states:” The

permit holder shall comply with the requirements of the Agricultural Operation Practices Act (AOPA) and the regulations passed pursuant to that act. “

Condition 6 states: “*Application of liquid manure shall be by the direct injection method only.*”

This condition is no longer applicable due to the conversion of this CFO to a solid manure based sheep operation. This condition is therefore redundant and will be deleted.

Condition 10 states: “*A satisfactory assessment shall be obtained from Alberta Agriculture, Food and Rural Development after one year of operation and a copy filed with the Municipal District Office, and it shall be maintained in good standing.*”

This condition is impractical to enforce due to the passage of time. Alberta Agriculture, Food and Rural Development is no longer responsible for CFOs. In addition, requirements have changed over time. Driland Farms’ application does meet all requirements set out in AOPA and its regulations. As stated in the opening paragraph of this approval, the permit holder shall comply with the requirements of the *Agricultural Operation Practices Act (AOPA)* and the regulations passed pursuant to that act. This condition will therefore be deleted.

Condition 11 states: “*The Municipal District of Willow Creek No. 26 may be conducting periodic site inspections and if any deviations of the above conditions are found, it may result in a cancellation or suspension of the Development Permit.*”

This condition is impractical to enforce due to the passage of time. The Municipal District of Willow Creek No. 26 is no longer responsible for permitting CFOs and regulating activities at a CFO. Driland Farms’ application meets all requirements set out in AOPA and its regulations and the permit holder is required to comply with the requirements of the *Agricultural Operation Practices Act (AOPA)* and the regulations passed pursuant to that act. This condition will therefore be deleted.

APPENDIX D: Determination of deemed permit status

Driland Farms claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. I am treating that as a request for a determination of deemed permit status. Under section 11(1) of the Administrative Procedures Regulation under AOPA, because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO.

The investigation was to determine the capacity of the CFO that was constructed pursuant to a municipal development permit before January 1, 2002.

The CFO has development permit # 50-94, issued May 19, 1994 by the MD of Willow Creek. This permit allowed the expansion of an existing swine CFO and the construction of a new dry sow barn and the expansion animal numbers to a maximum of 160 sows farrow to wean. Subsequently, the MD of Willow Creek issued another permit on August 21, 1998, allowing the expansion to a 170 sow farrow to finish operation and the construction of a new weaner and grower-finisher barn.

These development permits are a deemed (i.e. grandfathered) approval under section 18.1(1)(b) of AOPA. The CFO’s deemed facilities are listed in the appendix of Approval LA21025.

Under section 11 of the Administrative Procedures Regulation, notice of a deemed permit determination is not required if the CFO was constructed pursuant to a development permit issued before January 1, 2002.

Under section 18.1(2)(c), the CFO’s deemed capacity is the capacity stated in the CFO’s development permit. Therefore, the CFO has a deemed capacity of 170 sows farrow to finish.