

## Decision Summary LA21038

This document summarizes my reasons for issuing Approval LA21038 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21038. 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 July 19, 2021, the Hutterian Brethren of Springpoint (Springpoint Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on July 26, 2021. On August 4, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing the number of permitted layer chickens from 8,250 to 15,000
- Adding 15,000 chicken pullets
- Constructing a new chicken layer barn – 61.0 m x 21.3 m
- Constructing a new manure storage (attached to layer barn) – 18.3 m x 14.6 m

The application also notified the NRCB of a proposed renovation of the existing layer chicken barn to use it as a pullet chicken barn. The proposed barn renovation will not involve an alteration to the structure's manure collection and storage liner. Because of this, the proposed barn renovation does not require a permit under the act.

#### a. Location

The existing CFO is located at W½ 36-8-29 W4M and NW 25-8-29 W4M in the Municipal District (MD) of Pincher Creek, one mile west of Highway 785 near the border between the MD of Pincher Creek and the MD of Willow Creek. The immediate site of the chicken layer barn is level with a significant slope towards the colony's residences and Nine Mile Creek, which is located approximately 630 metres to the west. The general topography of this area includes substantial elevation differences, creek banks with steep slopes, flat creek valleys, and varying slopes on the surrounding grass and croplands.

## **b. Existing permits**

The CFO is permitted under NRCB Approval LA18062. That permit allowed the construction and operation of a multi species CFO with the below stated livestock capacity:

- 600 sows (farrow to finish)
- 100 milking cow dairy (plus associated dries and replacements)
- 8,250 chicken layers
- 6,000 chicken broilers
- 2,600 beef finishers
- 2,000 beef feeders
- 1,000 ewes with lambs
- 800 ducks
- 300 turkeys
- 250 geese

The CFO's existing permitted facilities are listed in Approval LA18062 and the appendix to that permit.

## **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 two miles. (The NRCB refers to this distance as the "affected party radius.")

A copy of the application was sent to the MD of Pincher Creek, which is the municipality where the CFO is located, and to the MD of Willow Creek which has a boundary within the affected party radius. A copy of the application was not sent to other municipalities as the CFO is not located within 100 m of the bank of a river, stream or canal.

The NRCB gave notice of the application by public advertisement in the Pincher Creek Echo on August 4, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, twenty six letters were sent to people identified by the MD of Pincher Creek and MD of Willow Creek as owning or residing on land within the two mile 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), Alberta Environment and Parks (AEP), and Alberta Transportation.

Mr. Wade Goin, a public health inspector/executive officer with AHS, didn't raise concerns with this application and stated that all setbacks between manure collection/storage areas and water wells are met. He indicated that water wells near manure areas (manure collection areas and manure storage facilities) could be susceptible to contamination and offered to discuss this further with the applicant. This response was forwarded to the applicant for their information and action.

Mr. Jeff Gutsell, a hydrogeologist with AEP, stated that Springpoint Colony has not submitted an application for additional water to cover the increased water needs for the expansion. He continued to state that the existing license does not seem to be large enough to cover the existing water needs and that it is unclear whether the existing wells are licensed. He requested proof from the colony that sufficient water is available prior to constructing the new barn. A copy of AEP's response was forwarded to Springpoint Colony for their information and action. Because water allocation and licensing is outside the NRCB's jurisdiction, this issue is not discussed any further as part of this decision.

Ms. Leah Olson, a development and planning technologist with Alberta Transportation, indicated in her response that a permit was not required from Alberta Transportation. She went on to indicate that the proposed CFO expansion should not have an appreciable impact on the provincial highway network.

### **4. Alberta Land Stewardship Act (ALSA) regional plan**

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any 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 those plans. 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 Pincher 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 of manure storage facilities and manure collection areas

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

## 7. Responses from municipalities and other directly affected party

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 Pincher Creek is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Roland Milligan, the director of development and community services with the MD of Pincher Creek, provided a written response on behalf of the MD of Pincher Creek. Mr. Milligan stated that the application is consistent with the land use provisions of the MD of Pincher Creek’s municipal development plan (MDP). The application’s consistency with the MD of Pincher Creek’s MDP is addressed in Appendix A, attached.

The MD of Willow Creek is also a directly affected party because this application’s two mile notification radius extends from where the CFO is located in the MD of Pincher Creek into the MD of Willow Creek.

Ms. Cindy Chisholm, the manager of planning and development with the MD of Willow Creek, provided a written response on behalf of the MD of Willow Creek. Ms. Chisholm stated that the MD of Willow Creek’s municipal planning commission had no comments on the proposed application.

Both Ms. Chisolm and Mr. Milligan noted in their responses that there is an intermunicipal development plan between both of the MDs that applies to the site of the CFO. Although most of Springpoint Colony is located within the boundaries of the IDP, as noted by both municipalities, the immediate site of the chicken layer barn seems to be just outside of this boundary. Therefore, the IDP would not apply to this development. Having said that, I note that the application would be consistent with the MD of Pincher Creek and MD of Willow Creek intermunicipal development plan.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received responses from one individual.

Mr. Stan Simpson of NW 19-8-28 W4 submitted a response. This land location is within the two mile notification radius for affected persons. Because of Mr. Simpson’s location within the two mile radius, and because he submitted a response, he qualifies for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2).

Mr. Simpson raised concerns related to odour from chicken manure and if there is plan to dispose of the manure. These concerns are addressed in Appendix B.

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

When reviewing a new approval application for an existing CFO, NRCB approval officers assess the CFO’s existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB’s environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST 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](http://www.nrcb.ca).) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 8.13.

In this case, the risks posed by Springpoint Colony’s existing CFO facilities were assessed in 2018 and 2013 using the ERST. According to those assessments, the facilities pose a low potential risk to surface water and groundwater.

The circumstances have not changed since those assessment were done. As a result, a new assessment of the risks posed by the CFO’s existing facilities is not required.

The proposed barn and its associated manure storage also pose a low potential risk to surface water and groundwater posed by the proposed barn and its associated manure storage.

## **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). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Mr. Milligan stated in his response that the proposed barn and its associated manures storage appear to meet the setbacks in the MD of Pincher Creek’s land use bylaw.

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 and the directly affected party's concerns are addressed as discussed in Appendix B.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the Municipal Development Plan (MDP) then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted and the directly affected party's concerns have been addressed as discussed in Appendix B.

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 MDP (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

## **10. Terms and conditions**

Approval LA21038 specifies the cumulative permitted livestock capacity as 2,600 beef finishers, 2,000 beef feeders, 15,000 chicken layers, 15,000 chicken pullets, 6,000 chicken broilers, 800 ducks, 250 geese, 600 sows farrow to finish, 100 dairy cows (plus associated dries and replacements), 300 turkeys and 1,000 ewes (with lambs) and permits the construction of the chicken barn and the attached manure storage facility.

Approval LA21038 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 LA21038 includes conditions that generally address a construction deadline, document submission, water well monitoring 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 Approval LA18062 into Approval LA21038 (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 LA21038 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21038.

The NRCB-issued Approval LA18062 is therefore superseded, and its content consolidated into this Approval LA21038, unless Approval LA21038 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the previous permit will remain in effect.

September 10, 2021

(Original signed)  
Carina Weisbach  
Approval Officer

**Appendices:**

- A. Consistency with the municipal development plan
- B. Concerns raised by directly affected parties
- C. Explanation of conditions in Approval LA21038

## **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.)

Springpoint Colony’s CFO is located in the MD of Pincher Creek and is therefore subject to that county’s MDP. The MD of Pincher Creek adopted the latest revision to this plan in April 2009, under Bylaw 1153-08. Parts C and P of the MDP are relevant to this application and are discussed below.

Part C.4 states “Unless otherwise stated herein, the policies of this plan apply to the entire municipality but if lands are subject to an area structure plan or an intermunicipal development plan, then the policies of the applicable area structure plan or the intermunicipal development plan superseded the policies of this plan in the case of a conflict.”

As noted in the municipal responses to this application, the MD of Pincher Creek and MD of Willow Creek intermunicipal development plan (IDP, bylaws 1310-19 and 1842, November 2019) applies to this CFO. As discussed in section 7 above, the immediate site of the chicken layer barn is not within the IDP boundary. Nevertheless, I reviewed the IDP (see NRCB Operational Policy 2016-7: Approvals, part 8.2.3).

Part 3.2.4 of the IDP states that “Existing CFOs will be allowed to continue to operate under acceptable operating practices and within the requirements of the Agricultural Operation Practices Act and Regulations.” As noted elsewhere in this document, this CFO meets the requirements of AOPA and its regulations. Thereby, this application and the CFO as a whole do not conflict with the IDP.

Parts 3.2.5 and 3.2.6 both refer to intermunicipal notification processes of NRCB applications and land use planning issues and therefore are not land use provision that need to be considered in this decision.

Part P.1 of the MDP states “Confined feeding operations shall not be approved in the areas shown on Map 3, Confined Feeding Operations Prohibited Areas, including inside: (a) the Oldman River Reservoir Area Structure Plan area, (b) Urban Fringe district, (c) Burmis Lundbreck Corridor Area Structure Plan area.” This CFO is not located within any of the above stated exclusions.

Part P.2 outlines development setbacks to property lines and provincial highways. The proposed barn and its attached manure storage meet the stated setback requirements.

Part P.3 relates to the “approval authority or council” considerations of setbacks for development near CFOs. This section is not applicable to this application. Even if it was to direct the NRCB’s decision making in considering CFO development, section 20(1.1) of AOPA states that an approval officer shall not consider any provisions respecting the site for a CFO. Having said that, the CFO meets the MDS to all neighboring residences.

For the above reasons, I conclude that this application is consistent with the land use provisions of the M.D. of Pincher Creek’s MDP. Mr. Milligan’s response to this application, discussed in part seven of this decision summary, supports this conclusion.

## **APPENDIX B: Concerns raised by directly affected party**

### **Concerns from directly affected parties**

Mr. Simpson, a directly affected party, raised concerns related to odour from chicken manure and if there is a plan to dispose of the manure.

#### **Odour**

The minimum distance separation (MDS) requirement under AOPA is a means of mitigating odour and other related nuisance impacts from CFOs. The NRCB generally considers nuisance effects of a CFO to be acceptable if the MDS requirement is met. Mr. Simpson owns land at NW 19-8-28 W4 that is located approximately 1,200 m from the CFO. However, there is no residence on this quarter section. This land is located within the two mile affected party radius, but beyond the category one MDS setback distance of 884 m for residences located on agriculturally zoned land. Despite the MDS requirement being met, it is possible that persons may occasionally experience odours and other related nuisances from the CFO.

Under part 8.8.1 of the NRCB's Approvals Policy (Operational Policy 2016-7) approval officers will presume that if a proposal for a new or expanded manure storage facility or manure collection area meets AOPA's MDS requirements, the odours from a CFO experienced at nearby residences will be acceptable.

The odour concern noted above is relevant to my consideration of "effects on the community." However, as explained in part nine of this decision summary, I presumed that the effects of the proposed CFO on the community are acceptable because the application meets the land use provisions of the municipal development plan. Also, the municipality does not specifically preclude CFOs or CFO expansions in this case. This CFO meets the applicable specified setbacks noted in the other applicable planning documents (municipal development plan, intermunicipal development plan, and land use bylaw).

Section 24 of the Standards and Administration Regulation (SAR) has requirements to address nuisances from manure spreading. In general, manure, including compost, must be incorporated within 48 hours of application. Despite this, manure does not need to be incorporated if it is impracticable to do so, if it is spread on forage or directly seeded crops, and if it is spread (without incorporation) no closer than 150 metres from a residence or other structure occupied by people (see also below).

#### **Manure disposal**

Section 24 of the SAR provides four options for nutrient and manure management. This application opted for the fourth option, where a permit applicant seeks to satisfy an approval officer that they have access to sufficient land base to apply their manure for the first year following the granting of the application.

For this application 768 hectares of land in the black soil zone is required for manure spreading. The applicant has provided information in their application indicating that they have access to seven sections of land (approximately 1,800 ha) of land (in the black soil group) for manure spreading. Even if only half of the land base of the provided seven sections of land is available for manure application, the requirement is still met. In addition, as laid out in Part 2 General Administration Matters, Springpoint Colony has to keep manure spreading records and must not exceed nutrient loading limits (section 22-28 of the SAR)

Section 24 of the SAR also has requirements to address nuisances from manure spreading. In general, manure, including compost, must be incorporated within 48 hours of application. Manure does not need to be incorporated if it is impracticable to do so, or if it is spread on forage or directly seeded crops. It cannot be land applied (without incorporation) within 150 metres from a residence or other structure occupied by people. Despite this, this CFO has an ongoing operating condition in Approval LA18062, that will be carried forward into the new permit, where any liquid manure must be injected and that solid manure shall not be spread on direct seeded land.

If a person has concerns regarding manure collection or storage facilities, spreading or other CFO-related issues, those concerns can be reported to the NRCB's 24 hour response line (1-866-383-6722). The call will be followed up on by an NRCB inspector. Persons can also call any NRCB office during regular business hours if they have questions about permit conditions or ongoing AOPA operational requirements.

## **APPENDIX C: Explanation of conditions in Approval LA21038**

Approval LA21038 includes several conditions, discussed below, and carries forward all of the outstanding conditions from Approval LA18062. Construction conditions from historical permits that have been met are identified in the appendix to Approval LA21038.

### **a. Construction Deadline**

Springpoint Colony proposes to complete construction of the proposed new chicken layer barn and its associated manure storage by December 31, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2024 is included as a condition in Approval LA21038.

### **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 LA21038 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the new barn and its associated manure storage 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. Springpoint Colony to provide written confirmation from a qualified third party that the concrete used for the manure collection and storage area meets the required specifications.

The NRCB routinely inspects newly constructed facilities to assess whether they 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 LA21038 includes a condition stating that Springpoint Colony shall not place livestock or manure in the manure storage or collection portions of the new barn and its associated manure storage until NRCB personnel have inspected them and confirmed in writing that they meet the approval requirements.