

## Decision Summary LA21042

This document summarizes my reasons for issuing Registration LA21042 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21042. 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 a registration. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca).

### 1. Background

On August 5, 2021, Laing Farming Ltd., a company controlled by the Hutterian Brethren Church of Granum (Granum Colony), submitted a Part 1 application to the NRCB to construct a new poultry confined feeding operation (CFO).

The Part 2 application was submitted on August 16, 2021. On September 1, 2021 the application was deemed complete.

The proposed CFO includes:

- Permitting 15,000 laying chickens and 5,000 pullet chickens
- Constructing a poultry barn (78.5 m x 16.2 m)
- Constructing a manure storage attached to the barn (18.3 m x 14.9 m)

The application also notified the NRCB of the proposed construction of an office and egg grading and storage area (15.2 m x 35.1 m and 6.6 m x 12.2 m) attached to the poultry 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 to be permitted under the act.

#### a. Location

The proposed CFO is located in the Municipal District (MD) of Willow Creek at NW 28-12-25 W4M, roughly 15 km east of the Town of Claresholm. The terrain is relatively flat and gently slopes to the northeast.

### 2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by a registration 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 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 ½ mile (805 m) from the CFO
- all persons who own or reside on land within the greater of ½ mile (805 m) or the minimum distance separation for the land on which the CFO is located

For the size of this CFO the specified distance is ½ miles. (The NRCB refers to this distance as the “notification distance.”)

A copy of the application was sent to MD of Willow Creek, which is the municipality where the CFO is to be located. It was not sent to other municipalities as the proposed CFO is not located within ½ mile of one, nor is it located within 100m of the bank of the river, stream or canal.

The NRCB gave notice of the application by public advertisement in the Macleod Gazette and the Claresholm Local Press on September 1, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, three letters were sent to people identified by the MD of Willow Creek as owning or residing on land within the notification distance.

### **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) and Alberta Transportation.

A response was not received from AHS.

Mr. Jeff Gutsell, a hydrogeologist with AEP, recognized that this application requested any water act application(s) and applications under AOPA be processed separately. He also confirmed that Granum Colony had submitted an application to license groundwater from water wells in a nearby parcel of land.

Ms. Leah Olson, a development and planning technologist with Alberta Transportation, indicated that a permit was not required from Alberta Transportation.

A copy of the responses to this application were forwarded to the applicant for their information.

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

Section 22(9) 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 CFO 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 municipality's planning requirements.)

## **6. AOPA requirements**

With respect to the technical requirements set out in the regulations, the proposed CFO:

- 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 9, the application meets all relevant AOPA requirements.

## **7. Response 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." The MD of Willow Creek is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

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 Municipal Planning Commission of the MD of Willow Creek had no comments on this application. She went on to state that the application is consistent with the MD's municipal development plan. The application's consistency with the MD of Willow Creek's municipal development plan, are addressed in Appendix A, attached.

Ms. Chisholm went on to state that there are no planning type documents incorporated by the MDP that apply to this application. She also stated that the proposed facilities meet the MD (land use bylaw) setback requirements.

No other responses to this application were received.

## **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 proposed manure storage facility 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).)

The proposed barn and its attached manure storage pose a low potential risk to groundwater and surface water.

## **9. Terms and conditions**

Registration LA21042 specifies a permitted livestock capacity as 15,000 laying chickens and 5,000 pullet chickens. It also permits the construction of the poultry barn and its attached manure storage.

Registration LA21042 contains terms that the NRCB generally includes in all AOPA registrations, 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, Registration LA21042 includes conditions that generally address a construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

## **10. Conclusion**

Registration LA21042 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21042.

October 8, 2021

(Original signed)  
Jeff Froese  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration LA21042

## APPENDIX A: Consistency with the municipal development plan

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

Granum Colony’s proposed CFO is located in the MD of Willow Creek and is therefore subject to that municipality’s MDP. The MD of Willow Creek adopted the latest revision to this plan on August 2019, under Bylaw #1841. The parts and policies of the MDP relevant to this application are discussed below.

Part 2 states that agriculture is a predominant land use in the MD though it also notes that it is important to balance other interests. One of the objectives in Section 2 states that one of the main objectives of the MDP is to mitigate the siting of a CFOs to minimize conflicts with adjacent land uses. Policy 2.3 states that the MD shall establish guidelines with regards to the NRCB for the regulation and approval of CFOs within the MD. These guidelines are found in section 9.

This part and policy likely aren’t a relevant “land use provisions”, rather, I consider this to be a source of insight for the interpretation of the remaining portions of the MDP.

Policy 9.2 of the MDP directs the NRCB to consider six matters. These are quoted below (*in italics*); each one is followed by my discussion of how the provision related to this application. The requested matters to consider 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.

In a 2011 decision, the Board stated that consideration of cumulative effects is “not within the Board’s regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment.” (Zealand Farms, RFR 2011-02 at 5.)

For these reasons, 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 [the report]*

Granum Colony's proposed CFO is not within any of the 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 the 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 located in an area of artesian flow. Section 5.3.6 of the report states that "areas of artesian flow pose severe constraints for construction and excavation, especially where these occur in low-lying areas."

The proposed CFO is not located in a low lying area, further water well logs (139160, 9681556 and 9681557, see Technical Document LA21042, pages 8-13) from the Alberta Environment and Parks water well database do not identify artesian conditions at the proposed CFO.

Because the subject area is not identified as of environmental significance at a higher level, because the proposed CFO is not located in a low lying area, and because the water wells drilled at the CFO do not identify any artesian conditions, I am of the opinion that the application is consistent with this provision; I have not been privy to information which refutes this.

*(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 0.5 miles, and gave public notice in the Macleod Gazette and the Claresholm Local Press. The application therefore met the notification requirements of AOPA. (See also Operational Policy 2016-7: *Approvals*, part 7.5).

*(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 category 2 MDS for Granum Colony's proposed 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 LA21042, Granum Colony's new CFO meets the AOPA setbacks to common bodies of water and is not located within a known flood plain as identified in the Alberta Environment and Parks flood hazard website. Based on this information, the application is 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, it meets the AOPA setbacks to common bodies of water also. 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, especially in Policy 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. 383/2020), 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 in section 2(4) of the Rural General part of the bylaw, which 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. Regardless, this application is for a new CFO and does not include a proposal to subdivide an existing land parcel.

Section 3 of the Rural General part of the bylaw lists several setbacks. The proposed barn and manures storage meet the 22.9 m road and 6.1 m other adjacent property line setback requirements.

For these reasons, I conclude that the proposed barn and manure storage are consistent with the land use bylaw.

## **APPENDIX B: Explanation of conditions in Registration LA21042**

Registration LA21042 includes several conditions, discussed below:

### **a. Construction Deadline**

Granum Colony proposes to start construction of the proposed new barn and its attached manure storage within one year of a permit being issued. A timeframe to complete construction of the barn or its attached manure storage was not stated in the application. For an application of this nature, a three construction seasons is typically considered to be adequate. Accordingly, the deadline of November 29, 2024 is included as a condition in Registration LA21042.

### **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, Registration LA21042 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the barn and its attached 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. Granum Colony to provide evidence 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 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. Registration LA21042 includes a condition stating that Granum Colony shall not place livestock or manure in the manure storage or collection portions of the new barn or its attached manure storage until NRCB personnel have inspected the new facilities and confirmed in writing that they meet the registration requirements.