



## Decision Summary LA21062

This document summarizes my reasons for issuing Approval LA21062 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21062. 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 December 21, 2021, River Road Hutterian Brethren (River Road) submitted a Part 1 application to the NRCB to expand an increase chicken pullet numbers from 12,500 to 15,000 and construct a pullet barn (14.0 m x 63.4 m) at an existing multi species CFO.

The Part 2 application was also submitted on December 21, 2021. On January 14, 2022, I deemed the application complete.

#### a. Location

The existing CFO is located at NE 32-1-14 W4M in the County of Warner #5 (County of Warner), approximately 20 km southeast of the Town of Milk River. The terrain is relatively flat with a gentle slope towards the Milk River valley which is located approximately 2 km north of the CFO.

#### b. Existing permit

The CFO is currently permitted under NRCB Approval LA19040A. This approval allows the construction and operation of a 30,000 chicken layer, 12,500 chicken pullet, 2,000 chicken broilers, 200 beef finishers, 1,000 ducks, 475 swine (farrow to finish), 125 dairy cows (plus associated dries and replacements and 300 turkeys CFO. The CFO's existing permitted facilities are listed in the appendix of Approval LA19040A.

River Road did decommission the majority of its swine facilities following issuance of NRCB permit LA19040. Swine numbers have been reduced to 200 swine feeders to reflect the remaining physical capacity at the CFO.

### 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 one mile. (The NRCB refers to this distance as the “affected party radius.”)

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

The NRCB gave notice of the application by public advertisement in a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Prairie Post on January 14, 2022. The full application was made available on the NRCB website for public viewing. As a courtesy, letters were sent to two people identified by the County of Warner as owning or residing on land within the affected party radius.

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

Under section 19 of AOPA, the NRCB may also notify persons and organizations the approval officer considers appropriate. This includes sending applications to referral agencies which have a potential regulatory interest under their respective legislation.

Referral letters and a copy of the complete application were emailed to Alberta Health Services (AHS), Alberta Environment and Parks (AEP), and Alberta Transportation. I received written responses from all of the above agencies.

AEP requested that River Road confirm that it has sufficient water for the application, this response has been forwarded to River Road for their information and action.

AHS raised concerns relating the water well. These concerns were previously addressed in Decision Summary LA19040 when the exemption was granted for the well. As discussed below, this exemption is still valid and all concerns relating to the well have been addressed. None the less, the AHS response has been provided to River Road for their information.

### **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 County of Warner’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 springs, and common bodies of water
- Has a valid exemption for the one water well which is located within 100 m of the proposed pullet barn
- Has sufficient means to control surface runoff of manure
- Meets AOPA’s nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 11, the application meets all relevant AOPA requirements. The exemptions that are required to address the AOPA requirements around the water well within 100 m of the proposed barn are discussed in previously issued decision summary LA19040.

## 7. Responses from municipality and other directly affected parties

Directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions relevant to the application, and are entitled to request an NRCB Board review of the approval officer’s decision. Not all affected parties are “directly affected” under AOPA.

Municipalities that are affected parties are identified by the act as “directly affected.” The County of Warner is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

No responses were received from other parties.

## 8. Environmental risk of CFO facilities

As part of my review of River Road’s last application, I assessed the risk to surface water and groundwater posed by the CFO’s existing and proposed manure storage facilities. I used the NRCB’s environmental risk screening tool for this purpose (see NRCB Operational Policy 2016-7: *Approvals*, part 8.13). The tool 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).)

All of the CFO’s existing and proposed facilities pose a low potential risk to groundwater and surface water: (The CFO’s existing facilities are listed in the appendix to LA21062.) If anything, potential risk at the CFO has been reduced since the last application as the liquid manure swine barns are being replaced with dry manure poultry barn with AOPA approved liners.

## 9. Exemption

I determined that the proposed pullet barn is located within the required AOPA setback from a water well. As explained in decision summary LA19040, an exemption to the 100 metre water well was granted for the liquid manure swine barn that occupied the same footprint prior to being decommissioned in accordance with NRCB requirements. As the well is still protected, the proposed barn is for solid manure, and the barn meets all other AOPA requirements, I have determined this exemption is still valid for the proposed pullet barn.

## **10. 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.

The application does meet the setbacks as required by the County of Warner's land use bylaw (LUB)

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects on the environment are acceptable because the application, taking into consideration an exemption for a water well, meets all of AOPA's technical requirements. In my view, this presumption is not rebutted.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the 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.

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.

## **11. Terms and conditions**

Approval LA21062 specifies the permitted livestock capacity as 125 dairy cows (plus associated dries and replacements), 30,000 chicken layers, 15,000 chicken pullets, 2,000 chicken broilers, 1,000 ducks, 300 turkeys, 200 swine feeders, and 200 beef finishers, and permits the construction of the pullet barn.

Approval LA21062 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 LA21062 includes conditions that generally address construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated Approval LA19040A with Approval LA21062 (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. All conditions have been carried forward from the previously issued permit.

## **12. Conclusion**

Approval LA21062 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21062.

River Road's Approval LA19040A is therefore superseded, and its content consolidated into this Approval LA21062, unless Approval LA21062 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA21062 will remain in effect.

March 28, 2022

(Original signed)  
Joe Sonnenberg  
Approval Officer

### **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA21062

## APPENDIX A: Consistency with the municipal development plan

Under section 20 of the *Agricultural Operation Practices Act* (AOPA), an approval officer may grant an application for an approval only if the approval officer finds that the application is consistent with the land use provisions of the applicable municipal development plan (MDP).

River Road's confined feeding operation (CFO) is located in the County of Warner and is therefore subject to that county's MDP. The county adopted the latest revision to this plan in November, 1999, under Bylaw #804-99, which pre-dates Part 2 of AOPA that came into force in 2002.

As relevant here, section 4.1.5 of the MDP states that, "[i]n general, [land] uses will be encouraged to locate in areas discussed below...." Sub-section 4.1.5(c) then states that "intensive agriculture":

- [Is] generally accepted everywhere in the county within the principles of minimum distance separation and the land use bylaw, particularly in the irrigated areas of the county,
- [Should] have regard for the minimum distance separation calculation,
- [Should] ensure compliance with land use bylaw and any other regulation.

Section 4.1.5(c) relies on the county's land use bylaw (LUB), which is Bylaw #866-08 and which post-dates Part 2 of AOPA. Due to the age of the MDP, it is necessary to consider the LUB in order to interpret the municipalities planning documents. Under that bylaw, the subject land is currently zoned as Extensive Agriculture. CFOs are not listed as either a permitted, discretionary or prohibited land use under this zoning category.

Under sections 14 and 42 of the LUB, a land use is prohibited if it is not listed as either permitted or discretionary and is not "reasonably similar" to a listed permitted or discretionary land use. In fact, the LUB does not list CFOs as permitted or discretionary land uses in any other district, and the LUB expressly prohibits CFOs in four zoning districts. (See Schedule 2, prohibited uses for the following districts: Grouped Country Residential; Urban Fringe; Urban Fringe – Agriculture; and Hamlet Transitional/Agricultural.)

The LUB does not expressly allow CFOs (above the AOPA permit threshold) anywhere in the county, though several LUB provisions address the suitability of developments near existing CFOs and of dwellings on and subdivisions of, CFO lands. (See LUB, ss. 28(l), 47(c), and Sched. 4, s. 2.) This is likely because after Part 2 of AOPA came into effect in 2002, the county recognized it no longer had permitting authority. Two other LUB provisions refer to the NRCB's authority over CFOs above the AOPA permit threshold. (LUB Sched. 13, ss. 2(b) and 3(a). River Road's proposed expansion is not precluded by any of these CFO-specific provisions, and it meets the LUB setbacks that are applicable to any type of development.)

Viewed together, these LUB omissions and references to CFOs suggest that the county did not intend to preclude CFOs in the Extensive Agriculture district. Rather, the county omitted listing CFOs as either permitted/discretionary or prohibited, simply due to the county's recognition that, after AOPA came into effect, the county no longer had permitting authority over CFOs. This interpretation is supported by the first bullet in section 4.1.5(c) of the MDP which states that "intensive agriculture" is generally "accepted everywhere in the county..." This statement would

be meaningless if the county had meant to preclude CFOs in the Extensive Agriculture district, because that district comprises the vast majority of the lands in the county.

Two of the bullets in section 4.1.5(c) of the MDP refer to the “minimum distance separation” (MDS). The MDP does not define this term, so it is reasonable to define it by reference to the MDS requirements under AOPA. As noted in part 5 above, the colony’s proposed expansion meets these MDS requirements.

The third bullet in section 4.1.5(c) refers to compliance with “any other regulation.” This is likely not a “land use provision,” for purposes of the MDP consistency requirement under AOPA. At any rate, no party, including the county, has identified “any other regulation” that has not been met.

For these reasons, I conclude that the application is consistent with the land use provisions of the County of Warner’s MDP, and with the county’s LUB. This conclusion is supported by the county’s response to the application notice.

## **APPENDIX B: Explanation of conditions in Approval LA21062**

Approval LA21062 includes several conditions, discussed below, and carries forward all previous construction conditions (which have already been met) from LA19040A.

Approval LA21062 includes several conditions, discussed below:

### **Conditions in Approval LA21062**

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

River Road proposes to complete construction of the proposed new pullet barn by November 30, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2024 is included as a condition in Approval LA21062.

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

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 LA21062 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the pullet 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.”
- River Road to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the pullet barn.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA21062 includes a condition stating that River Road shall not place livestock or manure in the manure storage portions of the new pullet barn until NRCB personnel have inspected the barn and confirmed in writing that it meets the approval requirements.