

## Decision Summary LA21061

This document summarizes my reasons for issuing Approval LA21061 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21061. 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 17, 2021, Hutterian Brethren of Brant (Brant) submitted a Part 1 application to the NRCB to increase dairy numbers from 80 to 145 milking cows (plus associated dries and replacements), construct a new dairy barn (127 m x 24 m x 4.25 m) with manure pit (4.9 m x 4.9 m x 2.4 m), and convert the existing dairy barn into a calf and close up barn.

The Part 2 application was submitted on April 6, 2022. On April 20, 2022, I deemed the application complete.

The application also notified the NRCB of the proposed construction of a milk tank room (19.5 m x 20.7 m) and a sawdust room (17.7 m x 7.3 m). These facilities are considered “ancillary structures,” 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, these structures do not need to be permitted under the act.

#### a. Location

The existing CFO is located at N½ 20-17-26 W4M and S½ 29-17-26 W4M in Vulcan County, roughly 6.5 km south of Brant, Alberta. The terrain is slightly undulating. The closest common body of water is an alkaline slough, called the ‘Brant Pond’ which is approximately 150 m to the east of any manure collection area at this operation. The Little Bow River is 2.5 km to the west of the operation.

#### b. Existing permits

The CFO is currently permitted under NRCB Approval LA14027. This approval allows the construction and operation of a 400 sows farrow to finish, 3,724 hog feeders, 80 dairy cows (plus associated dries and replacements), 13,000 chicken layers, 13,000 chicken pullets, 5,200 turkey broilers, 700 ducks and 200 geese CFO. The CFO’s existing permitted facilities are listed in the appendix of Approval LA21061

## **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 1.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to Vulcan County, which is the municipality where the CFO is located. The application was not sent to other municipalities as none are located within the notification radius of the site. Further 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 a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Vulcan Advocate on April 20, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, 26 letters were sent to people identified by Vulcan County 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), Alberta Agriculture, Forestry and Rural Economic Development (AFRED), and Alberta Transportation (AT).

I received responses from AEP and AT.

Mr. Gutsell stated according to the Alberta Water Well Information Database, there appears to be one water well that is licensed, and the remaining water wells are not licensed. Brant Colony is reminded that they are not authorized to divert water from any of the wells or any other water sources without a licence. Water licensing is not under the jurisdiction of the NRCB and I will therefore not discuss this issue further. Mr. Gutsell also requested Brant Colony to submit proof that their water needs are met. The response was forwarded to Brant Colony their information and action.

Ms. Olsen with AT stated in her response that a permit from her department is not required and that there are no concerns with this application.

#### **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 Vulcan County'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 of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements.

#### **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." Vulcan County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Anne Erickson, a development officer with Vulcan County, provided a written response on behalf of Vulcan County. Ms. Erickson stated that the application is consistent with Vulcan County's land use provisions in their municipal development plan. The application's consistency with the Vulcan County's municipal development plan is addressed in Appendix A, attached.

No responses were received from any other person, organization, or member of the public.

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

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require surface/groundwater monitoring for the facility. In this case a determination was made and monitoring is not required.

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing manure storage facilities and manure collection areas. I used the NRCB's environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool provides for a numeric scoring of risks, which can fall within a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at [www.nrcb.ca](http://www.nrcb.ca).)

In this case, the risks posed by Brant's existing CFO facilities were assessed in 2014 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

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

## **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.

Ms. Erickson also listed the setbacks required by Vulcan County's land use bylaw (LUB) and noted that the county cannot confirm these setbacks are met. The NW and NE of 20-17-26 W4M have been amalgamated as per land titles. The proposed facilities are to be constructed in the center of the site and there are other facilities located closer to the municipal roads. As such, I presume that these setbacks have been met.

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments. AEP has not made me aware of statements of concern submitted under section 73 of the Environmental Protection and Enhancement Act / section 109 of the Water Act in respect of the subject of this application. I received a response that address water well licencing from AEP regarding the application, furthermore the application meets AOPAs technical requirements.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>, accessed June 21, 2022).

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 in the environment are acceptable because the application 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, and I note that Vulcan County's response states the application is consistent with their MDP.

## **10. Terms and conditions**

Approval LA21061 specifies the cumulative permitted livestock capacity as 145 milking cows (plus associated dries and replacements), 13,000 chicken layers, 13,000 chicken pullets, 400 swine farrow to finish, 3,724 swine feeders, 5,200 turkey broilers, 700 ducks, 200 geese and permits the construction of the dairy barn with manure pit and conversion of existing dairy barn into a calf and close up barn.

Approval LA21061 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 LA21061 includes conditions that generally address construction deadlines, monitoring, 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 the Approval LA14027 with Approval LA21061 (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 B discusses which conditions from the historical permits are or are not carried forward into the new approval.

## **11. Conclusion**

Approval LA21061 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21061.

Brant's NRCB-issued Approval LA14027 is therefore superseded, and its contents consolidated into this Approval LA21061, unless Approval LA21061 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA14027 will remain in effect.

July 6, 2022

(Original signed)  
Julie Wright  
Approval Officer

### **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA21061

## **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.)

Brant’s CFO is located in Vulcan County and is therefore subject to that county’s MDP. Vulcan County adopted the latest revision to this plan on April 4, 2012, under Bylaw #2012-003.

Part 4 of Vulcan County’s MDP deals specifically with CFOs. That part starts by stating (p. 14) that CFO development within the county [c]ontinues to influence the local economy and landscape. The preservation of the agricultural lifestyle is promoted and maintained through these operations. The potential issues caused by CFOs may be mitigated through long-range planning so those nearby settlements can still enjoy the rural lifestyle of the County.

Sections 4.1 to 4.3 of the MDP provide specific policies for CFOs.

Section 4.1 precludes new or expanding CFOs in the exclusion zones shown on a map in Appendix B of the MDP. Brant’s CFO is not within any of the exclusion zones shown in this MDP appendix.

Sub-sections 4.2(a), (c) and (d) of the MDP provide several setbacks to roads. Based on the site plan, the proposed CFO expansion meets these setbacks.

Sub-section 4.2(b) states that applications for CFOs “adjacent” to a highway “should be referred to Alberta Transportation for a roadside development permit.” This is likely not a land use provision, and, therefore, is not relevant to my MDP consistency determination, because of its procedural focus. At any rate, as noted in part 3 of the decision summary above, the NRCB notified Alberta Transportation of the application and they confirmed that a roadside development permit is not required.

Sub-sections 4.3(a) and (b) of the MDP list two factors that the NRCB “should consider” in its review of applications. These factors are:

- (a) the cumulative effects of a new approval on any area near other existing confined feeding operations [and]
- (b) impacts on environmentally sensitive areas shown in the report, “Vulcan County: Environmentally Sensitive Areas in the Oldman River Region”

Sub-section (a) is likely not a “land use provision,” because 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.

Sub-section (b) is also likely not a “land use provision,” as it calls for project-specific, discretionary judgements about the acceptable levels of impacts on environmentally sensitive areas. Nevertheless, the application is consistent with this sub-section because the CFO site is not within any environmentally sensitive area shown in the report referenced in the MDP.

Sub-section 4.3(c) calls for “giving notice to adjacent landowners” of AOPA permit applications. This policy is likely not a “land use provision” because of its procedural focus and is therefore not part of my consistency determination. Having said that, as required by AOPA, the NRCB notified Vulcan County, several referral agencies and placed public notification in the Vulcan Advocate on April 20, 2022. In addition, courtesy letters informing parties of the application, were sent to landowners or occupants within a 1.5 radius, as identified by Vulcan County.

Lastly, sub-section 4.3(d) of the county’s MDP calls for the NRCB to consider “proof of the availability of water, specifically, confirmation of access and appropriate provision of the sufficient quantity and suitable quality of the required water supply.” This sub-section is likely not a “land use provision,” or, the sub-section is a “term or condition” under section 22(1.1) of AOPA. Therefore, this sub-section is likely not relevant to my MDP consistency determination (beyond the MDP consistency context, under NRCB policy, approval officers will consider water supply issues only to the extent of requiring applicants to sign one of the water licensing declarations on page 7 of Technical Document LA21061. See Operational Policy 2016-7: Approvals, part 8.10).

For these reasons, I conclude that the application is consistent with the land use provisions of Vulcan County’s MDP. The county’s response confirms my conclusion.

## **APPENDIX B: Explanation of conditions in Approval LA21061**

Approval LA21061 includes several conditions, discussed below, and carries forward a number of conditions from Approval LA14027 (see section 2 of this appendix). Construction conditions from Approval LA14027 that have been met are identified in the appendix to Approval LA21061.

### **1. New conditions in Approval LA21061**

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

Brant proposes to complete construction of the proposed new dairy barn and conversion of the existing dairy barn by December 31, 2025. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2025 is included as a condition in Approval LA21061.

#### **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 LA21061 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the new dairy barn and dairy barn conversion to meet the specification for category B (liquid manure shallow pits) and category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Brant to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the dairy barn.

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 LA21061 includes a condition stating that Brant shall not place livestock or manure in the manure storage or collection portions of the new dairy barn until NRCB personnel have inspected the dairy barn and confirmed in writing that it meets the approval requirements.

### **2. Operating conditions carried forward from Approval LA14027**

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #8 from NRCB Approval LA14027 should be carried forward and modified.

*8. The permit holder shall conduct drinking water quality tests for chlorides and nitrates annually, beginning in 2015, on water well ID 1610561 that is located in the pasture 80 m southeast of the EMS. The annual test results shall be provided to the NRCB by July 31 of each year, unless otherwise directed in writing by the NRCB.*

This condition will be reworded to reflect current NRCB policies and procedures, and a separate monitoring statement will be attached to the approval.

### **3. Conditions not carried forward from Approval LA14027**

Approval LA21061 includes the terms and conditions in Approval LA14027, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition #9 from NRCB Approval LA14027 should be deleted and therefore is not carried forward to Approval LA21061. My reason for deleting this condition:

*9. Fly and odor control programs shall be initiated and maintained at the facility.*

This condition is contained in the opening paragraph of this permit (Approval LA21061) that states that the permit holder shall adhere to AOPA and its regulations. The requirement for fly control is stated in section 21 of the Standards and Administration Regulation. This condition is therefore redundant and will not be carried forward.