



## Decision Summary LA22025

This document summarizes my reasons for issuing Approval LA22025 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22025. 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 April 6, 2022, Plainview Hutterian Brethren (Plainview Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on May 6, 2022. On May 17, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 450 to 550 swine farrow to finish
- Constructing a gestation and gilt developer barn (attached to current breeder barn) - 62.8 m x 30.2 m
- Constructing a finisher barn addition - 31.9 m x 44.6 m
- Renovating within the existing nursery and farrow barn

#### a. Location

The existing CFO is located at N½ 23-4-13 W4M and SW 26-4-13 W4M in the County of Forty Mile, roughly 23 km southwest of Foremost, Alberta. The surrounding landscape is relatively flat.

#### b. Existing permits

The CFO is currently permitted under Approval LA18026A. This NRCB permit allows Plainview Colony to construct and operate a mixed livestock CFO. The CFO's existing facilities are listed in the appendix of LA22025.

## 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 the County of Forty Mile, 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 the May 17, 2022 Forty Mile Commentator. The full application was posted on the NRCB website for public viewing. As a courtesy, seven letters were sent to people identified by the County of Forty Mile 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 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. Plainview 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 Plainview Colony to submit proof that their water needs are met. The response was forwarded to Plainview 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 the County of Forty Mile'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 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 water wells are discussed in the following parts of this decision summary.

## **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 Forty Mile is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

No responses were received from the County of Forty Mile, 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.

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 Plainview Colony's existing CFO facilities were assessed in 2018 and 2020 using the ERST. According to those assessments, the then existing and proposed 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. Exemptions**

I determined that the proposed gestation and gilt developer barn is located within the required AOPA setback from a water well. As explained in Appendix B, an exemption to the 100 metre water well setback is warranted due to the wells located upslope of the CFO facility, concrete/grout seal, and the depth to the UGR (170 m). Please refer to Appendix B of this decision.

## **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.

I have considered the effects the proposed CFO/MSF 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 from AEP that addresses water well licencing. 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 29, 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.

## **11. Terms and conditions**

Approval LA22025 specifies the cumulative permitted livestock capacity as 175 milking cows (plus associated dries and replacements), 80 beef feeders, 550 swine farrow to finish, 21,000 chicken layers, 21,000 chicken pullets, 1,000 chicken broilers, and 600 ducks and permits the construction of the gestation and gilt developer barn, finishing barn addition, and the renovation within the existing nursery and farrow barn.

Approval LA22025 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 LA22025 includes conditions that generally address construction deadlines, monitoring, 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 Approval LA18026A with Approval LA22025 (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.

## **12. Conclusion**

Approval LA22025 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22025.

Plainview Colony's NRCB-issued Approval LA18026A is therefore superseded, and its contents consolidated into this Approval LA22025, unless Approval LA22025 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA18026A will remain in effect.

July 7, 2022

(original signed)  
Julie Wright  
Approval Officer

**Appendices:**

- A. Consistency with the municipal development plan
- B. Exemption from water well setback
- C. Explanation of conditions in Approval LA22025

## **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.)

Plainview Colony’s confined feeding operation (CFO) is located in the County of Forty Mile and is therefore subject to that county’s MDP. The county adopted the latest revision to this plan in September 2009, under Bylaw #9/2009.

Part 3.2 of the MDP, titled “Intensive Agriculture”, is relevant to CFOs. As relevant here, section 3.2(b) of the MDP states that, pursuant to AOPA, the county “may designate areas where confined feeding operations are to be encouraged or discouraged”. Section 3.2(c) then states that CFOs “will be excluded from the areas shown on Figure 3.1 unless otherwise approved by the County”. This section likely refers to *Map 3.1, titled: Confined Feeding Operation Exclusions Area Map*. Plainview’s CFO is not within any of the exclusion zones marked on this map.

One other relevant section is 3.2(d) which states: “The County expects developers to implement those technologies that are most effective at reducing adverse effects on the environment, especially with respect to odour and groundwater contamination.” By referring to acceptable technologies rather than acceptable land uses, this section is likely not a “land use provision” and therefore is likely not relevant to my MDP consistency determination. At any rate, regulations under AOPA require a minimum distance separation to nearby residences, which is effective at reducing conflicts due to nuisance and odour. The regulations also include several requirements to protect groundwater. The application meets or exceeds all AOPA requirements and I therefore conclude that it is consistent with section 3.2(d) of the MDP.

For these reasons, I conclude that the application is consistent with the land use provisions of the county’s MDP.

The CFO is also subject to the County of Forty Mile Land Use Bylaw #10/2009 (LUB) which is referenced in the MDP. Under that bylaw, the subject land is currently zoned as Agricultural District. CFOs are not listed as either a permitted or discretionary use under this zoning. However, the general purpose of this district is “to permit activities associated with the primary production of agricultural goods and services,” which implicitly includes CFOs. In addition, Schedule B of the LUB, titled “Protection of existing confined feeding operations,” makes it clear that the county contemplates the occurrence of CFOs within the Agricultural District. Based on these provisions, I conclude that the county considered CFOs to be an acceptable land use

within the Agricultural District, notwithstanding that CFOs are not expressly listed as either permitted or discretionary land uses.

## APPENDIX B: Exemption from water well setback

The proposed gestation and gilt developer barn is to be located less than 100 m from three water wells. During a site visit, I have confirmed that three water wells are located approximately 72 m, 77 m, and 87 m from the proposed gestation and gilt developer barn. This is in conflict with the section 7(1)(b) of the *Standards and Administration Regulation (SAR)*.

Section 7(2) allows for exemptions if, before construction, the applicant can demonstrate that the aquifer into which the water well is drilled is not likely to be contaminated by the manure storage facility (MSF)/manure collection area (MCA), or if required by an approval officer a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MSF/MCA are presumed to be low if the applicant's proposed MSF/MCA meets AOPA's technical requirements to control runoff and leakage. Approval officers also assess whether the water well itself could act as a conduit for aquifer contamination.

In this case, I felt the following factors were relevant to determine the risk of aquifer contamination via the water well:

- a. How the well was constructed
- b. Whether the well is being properly maintained
- c. The distance between the well and the proposed MSF/MCA
- d. Whether the well is up- or down-gradient from the MSF/MCA and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

These presumptions and considerations are based on NRCB Operational Policy 2016-7: Approvals, part 8.7.1.

### Water Well ID's 186185 and 186180 and unknown well (Test Well)

Well ID's 186185, 186180 and an "unknown test well" are located adjacent to the existing swine facilities. It is not known which well belong to each well ID specifically. All three wells are located approximately 72 m, 77 m, and 87 m west of the proposed gestation and gilt developer barn. These wells have been considered from a risk perspective in terms of the existing hog facilities in past NRCB decisions (see Decision Summary LA11001). Plainview has indicated all wells are very deep, this is typical of wells which access the Milk River Sandstone aquifer. Well ID 186185 and 186180 are completed to depths of 286.5 metres and 201.2 metres respectively, with the screened interval of well ID186180 beginning at 170.7 metres depth. Both drilling logs also show a minimum on 12.2 metres of clay till located near the surface. All wells are located upslope of their surroundings and were judged to be in good condition at the time of site visit.

The NRCB has developed a "water well exemption screening tool," based on the factors listed above, to help approval officers assess the groundwater risks associated with a nearby water well.<sup>1</sup>

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<sup>1</sup> 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 results of the water well exemption screening tool suggest that an exemption is likely as seen in Technical Document LA22025, and no groundwater monitoring program is required.

## **APPENDIX C: Explanation of conditions in Approval LA22025**

Approval LA22025 includes several conditions, discussed below, and carries forward one condition from Approval LA18026A. Construction conditions from historical Approval LA18026A that have been met are identified in the appendix to Approval LA22025.

### **1. New conditions in Approval LA22025**

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

Plainview Colony proposes to complete construction of the proposed new gestation and gilt developer barn, finishing barn addition, and the renovations within the existing nursery and farrow barn by November 1, 2025. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 1, 2025 is included as a condition in Approval LA22025.

#### **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 LA22025 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the gestation and gilt developer barn and the finishing barn addition to meet the specification for category B (liquid manure shallow pits) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas."
- b. Plainview Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the gestation and gilt developer barn, and the finishing barn addition.

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 LA22025 includes a condition stating that Plainview Colony shall not place livestock or manure in the manure storage or collection portions of the new gestation and gilt developer barn, and the finishing barn addition until NRCB personnel have inspected the facilities and confirmed in writing that it meets the approval requirements.