

## Decision Summary LA22021

This document summarizes my reasons for issuing Approval LA22021 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22021. 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 March 16, 2022, Meridian Hutterian Brethren (Meridian Colony) submitted a Part 1 application to the NRCB to increase the number of livestock from 16,400 to 28,500 chicken layers (plus associated pullets) and construct an addition to the existing layer barn at an existing multi-species CFO.

The Part 2 application was submitted on May 11, 2022. On May 24, 2022, I deemed the application complete.

#### a. Location

The existing CFO is located at SW 36-24-2 W4M and NE 35-24-2 W4M in the Municipal District (MD) of Acadia, roughly 6.4 km southeast of the Hamlet of Acadia Valley. The topography of the site is flat to gently undulating. There are no common bodies of water within 700 m of the CFO.

#### b. Existing permits

The existing CFO is permitted by Approval LA17037 which the NRCB issued on March 16, 2018. This approval allows the operation of a CFO with 40,000 broiler chickens, 16,500 layer chickens (plus associated pullets), and 500 beef finishers. The CFO's existing permitted facilities are listed in the Appendix of Approval LA22021.

### 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 MD of Acadia, which is the municipality where the CFO is located.

There are no rivers, streams, or canals located within 100m of the CFO. The municipal district boundary and intermunicipal plan area are also not within the notification distance.

The NRCB gave notice of the application by public advertisement in the Oyen Echo on May 24, 2022. The full application was also posted on the NRCB website for public viewing. As a courtesy, 10 letters were sent to people identified by the MD of Acadia 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 also sent a copy of the application to Dry Country Gas Co-op Ltd. which holds a right of way on the CFO site

No responses were received from any of the referral agencies nor the Dry Country Gas Co-op Ltd.

### **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.

There is no ALSA regional plan covering the area where the CFO is located.

### **5. Municipal Development Plan (MDP) consistency**

I have determined that the proposed layer barn addition and expansion in livestock numbers is consistent with the land use provisions of the MD of Acadia’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 layer barn addition:

- 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 10, the application meets all relevant AOPA requirements.

## **7. Responses from the 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 MD of Acadia is an affected party (and directly affected) because the CFO is located within its boundaries.

Mr. Jason Wallsmith, the chief administrative officer with the MD of Acadia, provided a written response on behalf of the MD of Acadia. Mr. Wallsmith stated that the application is consistent with the land use provisions of the MD of Acadia's municipal development plan. The application's consistency with the MD of Acadia's municipal development plan is addressed in Appendix A, attached.

The MD of Acadia's noted that they could not determine whether the municipal setbacks to the proposed layer barn addition have been met, however went on to state that "it is unlikely that this expansion would not meet the setbacks". In my review of the site plan and during my site visit I noted that the proposed layer barn addition meets the required municipal setbacks.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received no responses regarding the application from any other parties.

## **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 monitoring for the facility. In this case the layer barn addition (and existing layer barn) meets AOPA requirements. The proposed facility was also determined not to require monitoring.

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 Meridian Colony's existing CFO facilities were assessed in 2018 using the ERST. According to that assessment, the CFOs 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. 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. Wallsmith also listed the setbacks required by the MD of Acadia's land use bylaw (LUB); I determined that the proposed layer barn addition meets these setbacks.

I have considered the effects the proposed layer barn addition may have on natural resources administered by provincial department. AEP has not made me aware of statements of concern under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect to the subject 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 July 6, 2022)

Finally, I considered the effects of the proposed layer barn addition 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 meets all 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 MD of Acadia's municipal development plan 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 layer barn addition 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.

## 10. Terms and conditions

Approval LA22021 specifies the cumulative permitted livestock capacity as 28,500 chicken layers (plus associated pullets), 40,000 broiler chickens, and 500 beef finishers and permits the addition to the chicken layer barn.

Approval LA22021 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 LA22021 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 previously issued Approval LA17037 with Approval LA22021 (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 LA22021 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22021.

Meridian Colony's NRCB-issued Approval LA17037 is therefore superseded, and its content consolidated into this Approval LA22021, unless Approval LA22021 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA17037 will remain in effect.

July 11, 2022

(Original signed)  
Andy Cumming  
Approval Officer

## Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA22021

## **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. “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Meridian Colony’s CFO is located in the MD of Acadia and is therefore subject to that municipality’s MDP. The MD of Acadia adopted the latest revision to this plan in 2011, under Bylaw No. 2012-726.

The Municipal District of Acadia’s MDP states the following agricultural objectives in section 4.2.1

- (a) To preserve the better quality soils for extensive agricultural land uses.
- (b) To retain agricultural development as the primary economic activity in the M.D.

Part (a) of these objectives requires a determination of soil quality for extensive agricultural uses. As “better quality soils” is not specifically defined in the MDP, and because it refers to “extensive agricultural land uses” this policy is likely not relevant to my MDP consistency determination. Additionally it looks to preserve better quality soils which I do not consider to be a land use provision I am to consider under AOPA.

Part (b) of the objective seeks to retain agriculture as the primary economic activity in the municipal district. I do not consider this to be a land use provision, however, Meridian’s proposed layer barn addition would support this objective.

Section 4.6.2 (a) of the MDP states that “new developments in close proximity to recreational site and resources should be evaluated with the intent to conserve recreation and tourism opportunities” and then continues on saying this may include “areas having recreational capabilities, environmentally significant areas”, and “historically significant sites”. No such areas or sites are identified in the MDP as being any where near the proposed layer barn addition or CFO.

Section 4.7.2 (b) also states “proposed development that requires the approval of comments of the M.D. should be reviewed with consideration of the environmental significance of the site”.

Specific environmentally sensitive sites are not identified in the MDP, therefore this policy is likely not a “land-use provision,” as it calls for project-specific, discretionary judgements. For this reason, I do not consider this MDP provision to be relevant to my MDP consistency determination. Additionally the M.D. did not identify anything related to the environmental significance of the site of the CFO.

For these reasons, I conclude that the application is consistent with the land use provisions of the Municipal District of Acadia’s MDP. The response received from the Municipal District of Acadia confirms this conclusion.

The CFO is also subject to the Municipal District of Acadia's Land Use Bylaw #2012-727. The LUB defines a CFO as:

“an activity on land that is fenced or enclosed or within buildings where livestock is confined for the purpose of growing, sustaining, finishing, or breeding by means other than grazing and requires registration or approval under the conditions set forth in the Agricultural Operations Practices Act (AOPA) through the Natural Resources Conservation Board (NRCB).”

Under the LUB, the subject land is zoned as Agricultural. Confined feeding operations are listed as a discretionary use in this land district. Therefore, consistent with NRCB policy, I find the application to be consistent with the LUB (See NRCB Operational Policy 2016-7: Approvals, part 8.4.).

## **APPENDIX B: Explanation of conditions in Approval LA22021**

Approval LA22021 includes several conditions, discussed below.

Construction conditions from previous Approval LA17037 that have been met are identified in the appendix to Approval LA22021.

### **Construction Deadline**

Meridian Colony proposes to complete construction of the proposed new chicken layer barn addition by the Fall of 2023. It is my opinion that allowing one additional full construction season is more appropriate given the supply chain challenges that are currently being experienced. The deadline of December 1, 2024 is therefore included as a condition in Approval LA22021.

### **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 LA22021 includes a conditions requiring:

- a. The concrete used to construct the liner of the manure collection and storage portion of the layer barn addition 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. Meridian Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the layer 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 LA22021 includes a condition stating that Meridian Colony shall not place livestock or manure in the manure storage or collection portions of the layer barn addition until NRCB personnel have inspected the barn addition and confirmed in writing that it meets the approval requirements.