

Decision Summary LA22027

This document summarizes my reasons for issuing Approval LA22027 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22027. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at 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.

1. Background

On April 20, 2022, the Hutterian Brethren of Thompson (Thompson Colony) submitted a Part 1 application to the NRCB to construct a sheep barn with attached shelter and outside grazing area for 2,000 sheep at an existing multi species CFO.

The Part 2 application was submitted on May 5, 2022. On May 18, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing sheep numbers from 0 to 2000
- Constructing a sheep barn (82.5 m x 27.1 m) with attached shelter (82.5 m x 7.7 m) and outside grazing area (82.5 m x 16.2 m)

a. Location

The existing CFO is located at N½ 34, SE 34, NW 26, NE 27-5-27 W4M in the Municipal District (MD) of Willow Creek, roughly 31 km southwest of the Town of Fort Macleod, Alberta. The CFO is approximately one km from the Waterton River. The proposed building site slopes gently to the south-southwest.

b. Existing permits

The CFO is currently permitted under NRCB Approval LA17056. This approval allows the construction and operation of a multi-species CFO with 7,500 beef feeders, 6,600 swine feeders, 80 milking cows (plus replacements and dries), 5,000 chicken broilers, 4,000 chicken pullets, 4,000 chicken layers, 1,400 ducks, 300 geese, and 10,700 turkeys or 32,000 chicken broilers. The CFO's existing permitted facilities are listed in the appendix to Approval LA22027.

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

A copy of the application was sent to the MD of Willow Creek, which is the municipality where the CFO is located, and to Cardston County and the MD of Pincher Creek which both have a boundary within the affected party radius.

The proposed facility is not within 100 m of a 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 Macleod Gazette on May 18, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, 18 letters were sent to people identified by the MD of Willow Creek 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.

The NRCB received a written response from Jeff Gutsell, hydrogeologist with AEP; Chris Poirier, planning technologist with AT; and Robert Rippin, public health inspector with AHS

Mr. Gutsell stated in his response that the three water wells listed in the application appear to be unlicensed and asked how Thompson Colony currently meets its water needs, let alone the increased water needs due to the expansion. He also observed that Thompson Colony is not within any of the irrigation districts that could supply the needed water. He requested Thompson Colony to submit documentation on how they meet their water needs prior to construction of the new barn. Water licensing is regulated by AEP. Because of that, I will not discuss this issue any further. AEP’s response was forwarded to Thompson Colony for their information and action.

Mr. Poirier stated in this response that the proposed sheep barn falls within the area of a provincial highway as outlined in the Highway Development and Protection Act / Regulations and will require a permit. Poirier’s response was forwarded to Thompson Colony for their information and action.

Mr. Rippin stated that the down gradient water wells should be monitored to ensure that they don’t become contaminated. As noted here in the decision summary, and further documented in Technical Document LA22031, the proposed expansion meets all AOPA technical requirements. This also includes the other NRCB approved facilities at that specific site. Several

of these requirements are designed to prevent or minimize manure leakage from CFO facilities and thus to prevent CFO manure from reaching and contaminating groundwater. Because the proposed expansion meets these requirements, it will not pose a material risk to groundwater and a monitoring regime is not required.

Mr. Rippin also recommended that Thompson Colony provides the approving authority with evidence of sufficient water for the operation. AHS' response was forwarded to Thompson Colony for their information and action

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 MD of Willow Creek'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

7. Responses from municipalities 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 Willow Creek is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Cindy Chisholm, 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 application is consistent with the MD of Willow Creek's land use provisions of the municipal

development plan. She also stated that the area is part of the intermunicipal development plan (IDP) with Cardston County and the IDP with the MD of Pincher Creek. The application's consistency with the MD of Willow Creek's municipal development plan and the IDPs between the MD of Willow Creek and Cardston County and the MD of Pincher Creek respectively is addressed in Appendix A, attached.

Cardston County is also a directly affected party because it is located within the notification radius. The NRCB did not receive a response from Cardston County.

The MD of Pincher Creek is also a directly affected party because it is located within the notification radius. The NRCB did not receive a response from the MD of Pincher Creek

The NRCB did not receive any responses from any other person, organization, or member of the public

8. Environmental risk of CFO facilities

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.) 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 Thompson Colony's existing CFO facilities were assessed in 2017 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.

Because the new sheep barn meets all of AOPA requirements, the risks it might pose to surface water and groundwater are presumed to be low.

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. Chisholm also listed the setbacks required by the MD of Willow Creek's land use bylaw (LUB) and noted that the application does not show if these setbacks can be met. During my site visit I observed that the proposed location, which was staked out at the site, was well removed from the section line which is also the property line.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments. The issues raised by AEP in respect to water licencing were forwarded to the applicant for their information and action. Because this concern is outside the NRCB's jurisdiction I will not further consider this issue.

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.

10. Terms and conditions

Approval LA22027 specifies the cumulative permitted livestock capacity as 7,500 beef feeders, 6,600 swine feeders, 80 milking cows (plus replacements and dries), 5,000 chicken broilers, 4,000 chicken pullets, 4,000 chicken layers, 1,400 ducks, 300 geese, 10,700 turkeys or 32,000 chicken broilers, and 2,000 sheep and permits the construction of the sheep barn with attached shelter and outside grazing area.

Approval LA22027 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 LA22027 includes conditions that generally address construction deadline and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA22027: Approval LA17056 (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 into the new approval.

11. Conclusion

Approval LA22027 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22027.

Thompson Colony's NRCB-issued Approval LA17056 is therefore superseded, and its content consolidated into this Approval LA22027, unless Approval LA22027 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA17056 will remain in effect.

July 14, 2022

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA22027

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.)

Thompson Colony’s CFO is located in the MD of Willow Creek and is therefore subject to that county’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 MP relevant to this application area discussed below.

Part 2 states that agriculture is a predominant land use in the MD through 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 CFO 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 provision”, 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 these 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 authorization 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. At any rate, this is not a new CFO.

*(b) Environmentally significant areas contained in the Municipal District of Willow Creek:
Environmentally Significant Area in the Oldman River Region report [the report]*

Thompson Colony's 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 represented 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 not located in any of these areas. 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 authorizations

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 and Cardston County on land within the two mile notification radius and gave public notice in the MacLeod Gazette. 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 2 and Schedule 1 of the Standards and Administration Regulation under AOPA. There is no county residential development located within the category 2 MDS for Thompson Colony's CFO and the application meets AOPA's MDS requirements.

(e) restricting development in any wetland or riparian area

The proposed sheep barn is not located in a wetland or riparian area and meets AOPA's setbacks to common bodies of water. This provision is therefore met by the application.

For these reasons I conclude that the application is consistent with the land use provision of the MD of Willow Creeks 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 Creeks' 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 uses 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 list 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's thresholds.

As for the lot size restriction in section 2(4) of the Rural General part of the bylaw, which state 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.

Section 3 of the Rural General part of the bylaw lists several setbacks. The sheep barn meets the 22.9 m road and 6.1 m setback requirements to adjacent property lines.

For these reasons, I conclude that the proposed sheep barn is consistent with the land use bylaw.

Thompson Colony is also located within the area governed by the IDPs between the MD of Willow Creek and Cardston County and the IDP between the MD of Willow Creek and Pincher Creek.

The IDP between the MD of Willow Creek and Cardston County, with the latest version adopted in November 2015 under Bylaw No. 1731 & Bylaw No. 675.2015, states in section 4.3 Confined Feeding Operations, policy 4.3.1 that existing CFOs will be allowed to continue to operate within the requirements of the AOPA.

Thompson Colony latest NRCB issued approval, Approval LA17056, consolidated all existing, CFO related permits and no unauthorized construction has been identified. Therefore, Thompson Colony is in compliance with AOPA and its regulations.

Section 4.3.2 states that the counties shall notify each other about applications received from the NRCB. Because I do not consider this a land use provision, I will not consider this policy in my consistency determination. At any rate, Cardston County received the application for comments.

The relevant sections in the IDP between the MD of Willow Creek and Pincher Creek, adopted in September 2019 under Bylaw No. 1310-19 and Bylaw No. 1842, state in section 3.2.3 that existing CFOs will be allowed to continue to operate within the requirements of the AOPA. As explained in the previous section, Thompson colony's CFO is permitted under AOPA. Section 3.2.5 states that the counties shall notify each other about applications received from the NRCB. I do not consider this a land use provision, and subsequently will not consider this policy in my consistency determination.

Section 3.2.6 speaks on consultation in case either of the municipalities suggests amendments to existing CFO exclusion zones. Because this is not a land use provision, I will not consider this policy in my MDP/IDP consistency determination.

For these reasons, I determined that this application is consistent with both IDPs.

APPENDIX C: Explanation of conditions in Approval LA22027

Approval LA22027 includes several new conditions, discussed below, and carries forward all conditions from Approval LA17056. Construction conditions from historical permits can be found in the appendix to Approval LA22027.

1. New conditions in Approval LA22027

a. Construction Deadline

Thompson Colony proposes to complete construction of the proposed new sheep barn by December 31, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2024 is included as a condition in Approval LA22027.

b. Post-construction inspection and review

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 LA22027 includes a condition stating that Thompson Colony shall not place livestock or manure in the manure storage or collection portions of the new sheep barn with attached shelter and outside grazing pens until NRCB personnel have inspected the sheep barn and confirmed in writing that it meets the approval requirements.