

## Decision Summary RA22015

This document summarizes my reasons for issuing Approval RA22015 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA22015. 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 30, 2022, Goodbrand Land & Cattle Co. Ltd. (Goodbrand) submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on April 19, 2022. On April 27, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing beef finisher numbers from 454 to 1,575
- Constructing two runoff control catch basins:
  - North – 50 m x 40 m x 2.2 m deep
  - South – 60 m x 40 m x 2.2 m deep
- Permitting already constructed facilities:
  - Pen 205 – 67 m x 62 m
  - Pen 208 – 75 m x 72 m
  - Pen 301 – 78 m x 66 m
  - Pen 303 – 85 m x 66 m
  - Pen 305 – 79 m x 71 m

These pens (# 205, 208, 301, 303 and 305) were constructed after January 1, 2002, and before Goodbrand purchased the feedlot in May 2021. As the pens are already constructed, these facilities are considered to be unauthorized construction, and therefore, the NRCB's compliance division was made aware and issued a compliance directive (CD 21-09) on January 18, 2022, directing Goodbrand to stop using them after May 15, 2022, and to obtain an AOPA permit to be able to use them.

Through a determination of the operation's deemed permit status and capacity in Appendix F, below, the CFO is considered to have a deemed approval and a deemed capacity of 1,500 beef backgrounders or 454 beef finishers; and therefore, the CFO expansion is from 454 to 1,575 beef finishers, and not from 1,500 beef finishers as applied by the applicant.

#### a. Location

The existing CFO is located at NE 13-35-9 W4M in Special Area No. 4, roughly 1.6 km west of the Village of Veteran. The terrain is level with a general slope to the south.

## **b. Existing permits**

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. This deemed approval allows for the construction and operation of a 1,500 beef backgrounders or 454 beef finishers CFO. The determination of the CFO's deemed permit status and capacity under section 18.1 of AOPA is explained in Appendix F attached. The deemed facilities are listed in the appendix to the Approval RA22015.

## **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 Special Area No. 4, which is the municipality where the CFO is located, and to the Village of Veteran which has a boundary within the affected party radius. 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 Consort Enterprise on April 27, 2022. The full application was made available for viewing during regular business hours, and was posted on the NRCB website for public viewing. As a courtesy, 145 letters were sent to people identified by Special Area No. 4 and the Village of Veteran 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 Coop Ltd. and Inter Pipeline Ltd.

I only received a response from AHS.

Mr. Gregory Ward, public health inspector / executive officer, responded on behalf of AHS. Mr. Ward stated that water well information on the application is not complete or consistent with AEP's water well database; and therefore, he cannot complete a proper review of the site.

On a site visit I conducted on June 9, 2022, I identified three water wells on site, and one water well near a residence on the north side of the quarter section where the CFO is located (See Technical Document RA22015 page 5 of 34 for more details).

#### **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 for the area where the proposed CFO expansion is to be located.

#### **5. Special Area Land Use Order (LUO) consistency**

I have determined that the proposed expansion is consistent with the land use provisions of Special Area No. 4's land use order (LUO). (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 12, the application meets all relevant AOPA requirements. The exemptions and variances that are required to address the AOPA requirements around the 100 m setback to water wells are discussed further below in this decision summary.

When preparing this decision summary, I received technical assistance from Scott Cunningham, Environmental Specialist with the NRCB Science and Technology Division. Mr. Cunningham's assistance was valuable through the environmental risk screening tool and the water well exemption screening tool.

#### **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." Special Area No. 4 is an affected party (and directly affected) because the proposed expansion is located within its boundaries, and special areas are equivalent to municipalities for AOPA's purposes.

Ms. Taryl Abt, a development officer, provided a written response on behalf of Special Area No. 4. Ms. Abt stated as the CFO was an existing development, the Special Areas Municipal Planning Commission made a motion “to support a relaxation of recommended minimum distance separation setbacks on the condition that there are no warranted objections received by the Village of Veteran or affected landowners.” They also recommended to the NRCB that manure disposal does not take place on or immediately prior to long weekends from June to September in order to alleviate the impacts of odours. The application’s consistency with the Special Area No. 4’s land use order, and their recommendations are addressed in Appendix A, attached.

The Village of Veteran did not respond to the NRCB.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received a response from one individual.

Ms. Susan Simkin (SW 18-35-8 W4M) submitted a response and owns or resides on land within the 1.5 mile notification radius for affected persons. Because of her location within this radius, and because she submitted a response by the deadline, she qualifies for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

Ms. Simkin raised concerns regarding:

- Increase in odours, noise, flies, visual impact (light pollution) and disruptions
- Increase in footprint from the previous owners
- Opposed to grandfathering claim (it was six months, not year round; and it was backgrounders, not finishers)
- Groundwater contamination and usage

These concerns are addressed in Appendix B.

## **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 and/or groundwater monitoring for the facility. In this case a determination was made and water well monitoring is required (See Section 9 and Appendix E).

Additionally, as part of my review of this application, I assessed the risk to the environment posed by the CFO’s existing (including the unauthorized pens) and proposed 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).)

The assessment found that all the existing (including the unauthorized pens) and proposed facilities pose a low potential risk to groundwater and surface water.

## **9. Variances (for already constructed pens)**

The applicant applied for a variance of the requirement for a water well to be at least 100 m away from a manure collection area. I determined that the five existing pens (205, 208, 301, 303 and 305), which were constructed without a permit, are located within the required AOPA setback from existing water wells. As explained in Appendix D, I am prepared to issue a variance to the 100 metre water well setback due to the proper construction of the water wells. However, a water well monitoring condition will also be required in the permit to address the results of a water well exemption screening that I completed (see Appendix E, below).

## **10. Exemption (for proposed catch basin)**

I determined that the proposed north runoff control catch basin is located within the required AOPA setback from a water well. As explained in Appendix C, an exemption to the 100 metre water well setback is warranted due to the construction of the water well and the location of the water well upslope from the catch basin.

## **11. Other factors**

Because the approval application is consistent with the LUO 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.

As Ms. Abt did not list the setbacks required by Special Areas, I reviewed them and note that the proposed CFO facilities meet the setbacks.

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 or under section 109 of the Water Act in respect of the subject of this 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 14, 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 on the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted and the directly affected party's concerns have been addressed.

Consistent with NRCB policy (Approvals Policy 8.7.3), as the application is consistent with the land use order (LUO), the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted and the directly affected party's concerns have been addressed.

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 LUO (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

## **12. Terms and conditions**

Approval RA22015 specifies the cumulative permitted livestock capacity as 1,575 beef finishers and permits the construction of the two runoff control catch basins, and permits the use of the already constructed five pens (that are not grandfathered).

Approval RA22015 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 RA22015 includes conditions that generally address a construction deadline, water well monitoring and a construction inspection. For an explanation of the reasons for these conditions, see Appendix E.

## **13. Conclusion**

Approval RA22015 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA22015.

Goodbrand's deemed approval is therefore superseded, and its content consolidated into Approval RA22015, unless Approval RA22015 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Goodbrand's deemed approval will remain in effect.

August 11, 2022

(Original signed)  
Francisco Echegaray, P.Ag.  
Approval Officer

## **Appendices:**

- A. Consistency with the land use order
- B. Concerns raised by directly affected party
- C. Exemption from a water well setbacks
- D. Variances
- E. Explanation of conditions in Approval RA22015
- F. Determination of deemed permit status

## **APPENDIX A: Consistency with the land use order**

Under section 20 of AOPA, an approval officer may only approve an application for 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). An MDP is a statutory plan provided for under section 632 of Part 17 of the *Municipal Government Act* (MGA).

The Special Areas Board is constituted under the Special Areas Act and is not subject to Part 17 of the MGA. However, the Special Areas Board has adopted a Land Use Order (LUO) to regulate and control the use and development of lands and buildings within Special Areas 2, 3 and 4, and to facilitate orderly and economic development in those areas. Under these circumstances, the LUO is equivalent to a MDP for the purposes of AOPA’s MDP consistency requirement. See NRCB Operational Policy 2016-7: Approvals, part 8.2.3, also DeJong, NRCB Decision RFR 2006-11, pp. 2-3 (concluding that, in applying the act’s MDP consistency requirement, an approval officer can consider a municipality’s land use bylaw, when the municipality is not legislatively required to adopt an MDP and has not done so).

While I will treat the Special Areas Board’s LUO as an MDP, I will still focus on the LUO’s “land use provisions.” The NRCB interprets the term “land use provisions” as covering policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes policies that impose procedural requirements. In addition, 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.”) Therefore, any tests or conditions in the LUO will not be considered.

Goodbrand’s CFO is located in Special Area No. 4 and is therefore subject to the Special Areas Board LUO. (The LUO was enacted on March 3, 2015, under Ministerial Order No. MSL: 007/15).

Under the LUO, the subject land is currently zoned as Agricultural District. Section 19 of the order states that the “purpose and intent” of this District is to “provide for extensive agriculture, while accommodating similar and compatible uses.” CFOs do not fall within the LUO’s definition of “extensive agriculture.” Nor does the LUO’s list of permitted or discretionary uses for the Agricultural District, in section 19, include CFOs. However, Appendix 2 of the LUO states that CFOs “may be located only within the Agricultural District,” which logically implies that CFOs may be located within that District. Appendix 2 of the LUO also includes four sections that provide further guidance regarding locating CFOs within the Agricultural District.

Section 1. States that “confined feeding operations shall be excluded” from numerous named locations, from provincially recognized “Historical or Cultural sites,” and from an 800 metre zone adjacent to the banks of the Red Deer and South Saskatchewan Rivers.

The LUO is unclear as to whether these exclusion areas were intended to apply to expansions of existing CFOs as well as to proposed new CFOs. At any rate, the applicant’s existing CFO, as well as the proposed expansion, is not located within any of these exclusion areas.

Section 2. Areas requiring mitigation – Indicates areas within Special Areas where mitigation is required if CFOs are located there.

The LUO is unclear as to whether these areas requiring mitigation were intended to apply to expansions of existing CFOs as well as to proposed new CFOs. At any rate, the applicant's existing CFO, as well as the proposed expansion, complies with the environmental protection requirements set out in AOPA which do address these recommendations and mitigation.

Section 3. Recommended Facility Setback.

- (1) From occupied dwellings, confined feeding operation facilities shall be setback according to the Category 4 Minimum Distance Separation (MDS), with a 1,600.00 metres minimum from occupied dwellings not owned or under the control of the CFO operator, without written consent of the owner/occupant.
- (2) Notwithstanding the above, circumstances may dictate an increased MDS based upon localized environmental aspects of topography, wind, and open spaces between the proposed facility and an occupied dwelling not under the control of the CFO. The Municipal Planning Commission shall be provided with the opportunity to provide a substantiated recommendation on any increased MDS.
- (3) From towns, villages, hamlets (with multiple dwellings), and community recreational facilities, confined feeding operation facilities shall be set back according to the Category 4 Minimum Distance Separation, with a minimum 3,200.00 metres from the North and West and a minimum 2,400.00 metres from the South and East. The purpose of varied setback distances is to recognize the differing impacts of odour and noise that may be generated by a CFO and carried along the prevailing winds.
- (4) Facility setback distances may be reduced through the use of technological developments such as odour limiting biofilters at the facility.

Section 3 refers to the term "minimum distance separation (MDS)". The LUO does not define this term; I therefore presume that it refers to the MDS requirements in AOPA. The LUO is unclear as to whether these municipal setbacks were intended to apply to expansions of existing CFOs as well as to proposed new CFOs.

The proposed CFO expansion seems not to meet this LUO policy because of the requirement to meet Category 4 MDS for residences with a minimum of 1,600 metres from other residences not owned by the CFO operator, and a minimum of 2,400 metres southeast and 3,200 northwest of a village. However, under NRCB policy, approval officers should not consider provisions that are based on or modify the MDS requirements in AOPA. (See Operational Policy 2016-7: *Approvals*, part 8.2.5). Goodbrand's application meets the AOPA MDS requirements to all residences.

This policy's use of the word "[r]ecommended", in contrast with the word "restricted" in section 1, strongly suggests that this policy was meant to call for a preference, rather than provide a hard and fast or non-discretionary rule.

Additionally, part of this policy enlarges and therefore modifies setbacks under AOPA by adding the 1,600 metres, 2,400 metres and the 3,200 metres setbacks in subsections (1) and (3). I note that the CFO expansion is outside the plan boundaries of the Village of Veteran / Special Areas

Board Intermunicipal Development Plan (Bylaw #538-20). The LUO does not appear to identify a rationale for this Special Areas wide setback.

Several dwellings are located within 1,600 metres from the CFO, and all of the residences in the Village of Veteran are within 3,200 metres (and 2,400 metres) from the CFO. However, in my view, section 3 of Appendix 2 of the Special Areas LUO effectively attempts to modify the MDS setback under AOPA. Under NRCB policy, approval officers should not consider MDP provisions that are based on or modify the MDS requirements under AOPA. (See Operational Policy 2016-7: *Approvals*, part 8.2.5). Therefore, for these reasons, this part of this policy is not relevant to my land use provision consistency determination.

Section 4. Recommended Setback for Manure Disposal - Discusses required setbacks for manure spreading from neighbouring residences, using category 4 Minimum Distance Separation. A minimum manure disposal setback of 1 mile for occupied residences is included. A minimum manure disposal setback of 1.5 to 2 miles (depending on direction) for hamlets with multiple residences and community recreation facilities is also included.

Section 20(1.1) of AOPA states: "In considering ... whether an application is consistent with the municipal development plan land use provisions, an approval officer shall not consider ... any provisions respecting tests or conditions related to the construction of or the site for a confined feeding operation...nor... the application of manure, composting materials or compost." I have reviewed parts of section 3 and all of section 4 of Appendix 2 of the Special Areas LUO and I have determined them to be provisions respecting tests or conditions related to the construction of a CFO or the application of manure; and therefore, these sections will not be considered. Irrespective, the operator is required to meet the environmental protection requirements set out in AOPA which do address these recommendations.

In their response letter, the Development Officer, on behalf of Special Area #4 indicated that the Special Areas Municipal Planning Commission has reviewed the application and as the CFO was an existing development, they supported a relaxation of recommended minimum distance separation setbacks on the condition that there are no warranted objections received by the Village of Veteran or affected landowners.

They also recommended to the NRCB that manure disposal does not take place on or immediately prior to long weekends from June to September in order to alleviate the impacts of odours.

Special Area 4 indicated that they are submitting these recommendations, on the premise that the NRCB is ensuring the applicant will adhere to all other regulations and legislation, as set out by other government bodies.

AOPA and its regulations do not specify or contain requirements relating to the issue of manure application prior to long weekends, or specific time of the year, for manure application; however, the operator is encouraged to follow these practices as they are good neighbour practices.

As for the "premise" that the NRCB is ensuring compliance with other regulators' requirements, the NRCB regulates CFOs only under AOPA and its regulations. The NRCB does not have the mandate or authority to directly enforce other regulations and legislation that are implemented by other government bodies. However, the applicant is reminded that they are responsible to

ensure that they adhere to all applicable legislation and requirements, including obtaining the applicable water licences.

For these reasons, I conclude that the application is consistent with the relevant land use provisions of the Special Areas Board LUO.

## APPENDIX B: Concerns raised by directly affected party (DAP)

The directly affected party (Ms. Simkin, DAP) raised a number of concerns which are listed and summarized below, together with my analysis and conclusions:

1. **Increase in odours, noise and flies** – the respondent expressed concerns about a potential increase in odours, noise (as early as 6:00 am), flies, and the visual impact, including light pollution.

### **Approval officer's conclusion:**

AOPA's minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. Goodbrand's proposed CFO expansion is located outside of the required MDS from other existing residences.

The residence owned by the DAP is located more than 950 m away from the location of the CFO, which is more than two times as far as the required 449 m MDS to residences on Category 1 land zoning (agricultural land).

Notwithstanding the CFO's distance to its nearest neighbours, it is reasonable to expect that there will be some odour emissions and other potential nuisance impacts from the CFO.

Operators are expected to control flies at their operation. If necessary, the NRCB can require the operator to adopt a fly control program.

Often, any issues that arise relating to the operation of a CFO, and other disagreements, can be resolved through good communication between neighbours and the CFO operator. However, if a member of the public has concerns regarding a CFO, including whether or not the operation is complying with AOPA, they may contact the NRCB through its toll free reporting line (1-866-383-6722 or 310-0000). An NRCB inspector will follow up on the concern.

2. **Increase in footprint from previous owner** – Ms. Simkin included in her letter that she sees a new configuration of pens, infrastructure including new bins and bright yard lights.

### **Approval officer's conclusion:**

In a letter submitted by Mr. Goodbrand on May 31, 2021, to the NRCB, he indicated that he had bought the existing feedlot and was planning to make some improvements to the yard, but not expand it. He also indicated that if he needed to expand the feedlot, he would apply to the NRCB for a permit.

Mr. Goodbrand followed up the letter with a phone call on June 7, 2021, indicating that he is maintaining the newly purchased feedlot by cleaning the old manure from the pens, filling out lower areas of the pens with clay brought from the nearby fields, and by fixing and upgrading the existing feed bunks. He indicated that he is not touching the existing clay or concrete floors, but he was pouring concrete on existing clay floor on the feed bunk without excavating or touching the existing floor.

On December 10, 2021, Mr. Goodbrand submitted a self-reporting letter to the NRCB indicating some of the existing pens in the feedlot may have been built after January 1, 2002, but before him purchasing the feedlot in May 2021. He concluded the letter stating that ... “As we have worked to refurbish the existing feedlot we have paid special attention not to disturb the original clay bases of the pens. We made a lot of effort to ensure that our pen sizing was within the footprint of the feedlot we purchased and what we believed to be the historic footprint”.

On December 20, 2021, I conducted a site visit with an NRCB inspector, to inspect the existing pens that were built after January 1, 2002, but before Mr. Goodbrand purchased the feedlot in May 2021. During the inspection we also verified the feedlot’s footprint. We noticed improvements such as new fencing, new concrete feeding bunks, and grain bins.

The present application is in response to Compliance Directive 21-09 to permit/ authorize the pens built since 2002.

3. **Groundwater supply** - the respondent raised a concern regarding the potential impact on groundwater quantity since she uses it to water her animals.

**Approval officer’s conclusions**

Alberta Environment and Parks (AEP) is responsible for licencing the use of groundwater and surface water in the province. The water licencing process includes an opportunity for neighbours to provide input. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form. (This declaration is on page 4 of 34 of Technical Document RA22015.)

A copy of this decision will also be forwarded to AEP for its information.

4. **Groundwater quality** – the respondent also raised a concern regarding the potential of groundwater contamination, as her wells that are used for her house and farm are only 75 feet deep.

**Approval officer’s conclusions**

As noted in the decision summary above, and documented in Technical Document RA22015, the CFO facilities meet all AOPA technical requirements. Several of these requirements are designed to prevent or minimize manure leakage from CFO facilities and thus to prevent manure from reaching and contaminating groundwater.

As noted in section 8 of the decision summary, I assessed the CFO’s proposed and existing facilities, using the NRCB’s environmental risk screening tool (ERST), in order to determine the level of risk they pose to groundwater. The CFO’s proposed and existing facilities pose a low potential risk to groundwater.

5. **Grandfathering determination** – the respondent is opposed to the grandfathering claim, as the Goodbrand operation is not following the same time period during the year, and same type of livestock as the previous owners (year round instead of just six months and finishers instead of backgrounders).

**Approval officer's conclusions**

As indicated in Appendix F below (Determination of deemed permit status and capacity), I identified the feedlot pens that existed on or before January 1, 2002 and determined that the CFO is considered to have a deemed approval and a deemed capacity of 1,500 beef backgrounders or 454 beef finishers.

## APPENDIX C: Exemption from water well setback

### 1. Water Well Considerations

The proposed north runoff control catch basin is to be located less than 100 m from a water well. During a site visit, I confirmed that one water well is located approximately 35 m from the catch basin's proposed location. This is in conflict with section 7(1)(b) of the *Standards and Administration Regulation* (SAR) under AOPA.

Section 7(2), however, 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), and, if required, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the proposed north runoff control catch basin (MCA) are presumed to be low if the applicant's proposed 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 MCA
- d. Whether the well is up- or down-gradient from the 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.

The water well:

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 35 m northwest of the proposed north side catch basin is likely AEP water well ID #1435493. This well is reported to have been installed in 2021 and has a perforated or screened zone from 21.3 m to 82.3 m below ground level across stratigraphy. The well was installed with an above ground casing. I note that in my conversations with the applicant, the water well is only used presently to water the livestock. The well's log identifies a protective layer from ground surface to 11 m below ground level. The well has a bentonite seal from ground surface to 18.3 m below ground level. The well appeared to be in good condition at the time of my site inspection and its casing was protected by a welded steel cage. The well is up-gradient of the CFO and MCA.

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 page 9 of 34 of Technical Document RA22015.

Based on the above, I am prepared to grant an exemption to the 100 m water well setback requirement for the north catch basin.

## APPENDIX D: Variances

Existing pens #205, 208, 301, 303 and 305, which were constructed without a permit, are located less than 100 m from water wells. I have confirmed that two water wells are located approximately 70 m from the pens, during a site visit. This is in conflict with section 7(1)(b) of the Standards and Administration Regulation (SAR).

Because the pens have already been constructed (though unauthorized), an exemption under section 7(2) of SAR is not possible. For an exemption, the applicant must demonstrate protection before construction. Accordingly, only a variance is possible, upon request of the applicant.

Approval officers must not grant variances or exemptions lightly or in the absence of substantive evidence they will produce equivalent levels of protection (see Decision 03-04, *AAA Cattle Ltd.* p 24). I will consider whether a variance is warranted to the water wells separately below.

On July 26, 2022, the CFO operator requested a variance to the water well setback requirement on the grounds that the pens' naturally occurring protective layer provides protection.

In this case, the facilities have already been constructed (without a permit) but may cause a risk to the environment. I therefore need to either deny the application or alternatively consider if a variance is warranted under AOPA's section 17(1). It is my opinion that considering a variance is appropriate in this case.

As noted above, approval officers must not grant variances lightly or in the absence of substantive evidence. In this case, I have used the same tools that I would normally use to determine if an exemption is warranted. I consider the water well exemption framework as useful for assessing the degree of protection for the water well in relation to a manure collection area (MCA). In this case I presume that the risks of direct aquifer contamination from the MCA are low if the MCA meets (or otherwise meets) AOPA's technical requirements to control runoff and leakage. However, when determining whether a MCA that otherwise meets AOPA's technical requirements provides the same or greater protection and safety as provided for by the regulations, I also assess whether water wells themselves could act as conduits for aquifer contamination.

One indicator that a variance provides the same or greater protection and safety is if the aquifer into which the well is drilled is not likely to be contaminated by the MCA.

The potential risks of direct aquifer contamination from the MCA are presumed to be low if the existing MCA meets AOPA's technical requirements to control runoff and leakage.

In this case, I felt the following factors were relevant to determine the protection of the aquifer in relation to the water wells:

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

Water well (ID # 153357):

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 70 m from the existing five (unauthorized) pens is likely AEP water well ID #153357. This well is reported to have been installed in 1990 and has a perforated or screened zone from 14.9 m to 17.1 m below ground level across stratigraphy. The well was installed with an above ground casing. I note that in my conversations with the applicant, the water well is only used presently to water the livestock. The well's log identifies a protective layer from ground surface to 5.8 m below ground level. The well has a bentonite seal from ground surface to 6.4 m below ground level. The well appeared to be in good condition at the time of my site inspection and its casing was protected by a welded steel cage, and there is a metal fence constructed around the well to protect it from cattle.

The second water well (ID # 1435493):

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 70 m from two of the existing five (unauthorized) pens is likely AEP water well ID #1435493. This well is reported to have been installed in 2021 and has a perforated or screened zone from 21.3 m to 82.3 m below ground level across stratigraphy. The well was installed with an above ground casing. I note that in my conversations with the applicant, the water well is only used presently to water the livestock. The well's log identifies a protective layer from ground surface to 11 m below ground level. The well has a bentonite seal from ground surface to 18.3 m below ground level. The well appeared to be in good condition at the time of my site inspection and its casing was protected by a welded steel cage. The well is up-gradient of the CFO and MCA.

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>2</sup>. This tool is useful in gauging the level of protection of groundwater because we use the tool to determine if a water well is going to be impacted when an exemption is considered.

In the case of Water well ID #153357, the results of the water well exemption screening tool suggest that an exemption is not likely as seen in page 9 of 34 of the Technical Document RA22015.

One mechanism that may provide the same or greater protection and safety is if the approval officer implements a groundwater monitoring program of the water wells in question. A condition has been added to Approval RA22015 requiring water well monitoring to water well ID# 153357, as this well is located within a pen. Therefore, in my opinion, a variance of the 100 m setback rule for the pens is appropriate to this water well (See appendix E).

Regarding the second water well (ID # 1435493), the water well exemption screening tool indicates that there is a low potential for groundwater to be impacted by the existing five pens. It is my opinion that in this case, the second water well provides an equivalent level of protection if an exemption was considered.

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<sup>2</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).

Based on the above, I am prepared to grant a variance to the 100 m water well setback requirement for the five pens (#205, 208, 301, 303, and 305) to the water wells.

## **APPENDIX E: Explanation of conditions in Approval RA22015**

Approval RA22015 includes several conditions, discussed below:

### **a. Groundwater protection requirements and groundwater monitoring**

Goodbrand proposes to construct the new runoff control catch basins with a 1.5 metre thick naturally occurring protective layer. Section 9 of AOPA's Standards and Administration Regulation specifies a maximum hydraulic conductivity for this type of protective layer in order to minimize leakage into groundwater resources.

Goodbrand measured the hydraulic conductivity of the protective layer by installing a monitoring well (or water table well) at the time of borehole drilling. This approach provides an adequate representation of the protective layer proposed to be used to protect the groundwater resource.

The regulations provide that the actual hydraulic conductivity of a 5 metre thick naturally occurring protective layer must not be more than  $1 \times 10^{-6}$  cm/sec.

In this case, the in situ measurement was  $3.84 \times 10^{-8}$  cm/sec. This value is below (better than) the maximum value in the regulations. Therefore, the proposed naturally occurring protective layer meets the hydraulic conductivity requirement in the regulations.

Additionally, based on the variance granted in Appendix D, Goodbrand shall sample and test raw groundwater from water well #153357.

### **b. Construction Deadline**

Goodbrand proposes to complete construction of the proposed new runoff control catch basins by November 1, 2022. This time-frame is unrealistic as it is in the same year as the permit will be issued. It is my opinion that a deadline that allows for at least a full construction season is more reasonable for the proposed scope of work. The deadline of November 30, 2023 is included as a condition in Approval RA22015.

### **c. Post-construction inspection**

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 RA22015 includes a condition stating that Goodbrand shall not place manure impacted runoff in the manure storage or collection portions of the new catch basins until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.

## APPENDIX F: Determination of deemed permit status and capacity

Goodbrand claims that its operation is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. I am treating that as a request for a determination of deemed permit status and capacity. Under section 11(1) of the Administrative Procedures Regulation under AOPA, because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO.

The investigation was to determine the capacity of the CFO that was in place on January 1, 2002.

The operation is not covered by a municipal development permit (or permit issued under the *Public Health Act*) issued before AOPA came into effect on January 1, 2002. However, under section 18.1(1)(a) of AOPA, the operation may still hold a deemed permit if:

- a. a CFO “existed” on January 1, 2002; and,
- b. the CFO facilities were at a size that was at or greater than the permit threshold sizes under AOPA. (See NRCB Operational Policy 2016-6: *Public Notice on Grandfathering Decisions*, part 1.)

To determine whether the operation met these two criteria, the NRCB must consider, among other things:

- a. What facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics
- b. How each of those facilities was being used on January 1, 2002

I identified a series of feedlot pens as existing on or before January 1, 2002, based on site visits, discussions with the applicant and the previous owner, aerial photos, and information supplied with the application. The information I reviewed also included a self-reporting letter from the applicant submitted to the NRCB on December 10, 2021, indicating that they understood from the previous owner, that they had a capacity of 2,000 feeder cattle to finish since 2002. The self-reporting letter also indicates that some of the existing pens in the feedlot may have been built after January 1, 2002 but before Goodbrand purchased the feedlot in May 2021.

A directly affected party, Ms. Simkin, disputed the grandfathering determination by indicating that Goodbrand is not following the same time period during the year, or feeding the same type of livestock as the previous owner (Goodbrand feeds year round instead of just six months and feeds finishers instead of backgrounders).

I had several phone conversations with the previous owner, Mr. Gerald Anhorn. He indicated that he mostly ran a beef backgrounders operation with around 1,000 to 1,200 head, with some beef finishers during the summer months in some years (300 to 500 head). During the BSE years (2001 – 2002), Mr. Anhorn indicated that the operation grew to more than 1,400 head and close to 1,500 head of backgrounders. During the BSE years he also fed around 500 head of beef finishers.

Additionally, Mr. Anhorn indicated that he normally ran the operation in the winter, spring and summer, and some years he would run it year round (especially in the BSE years of 2001 and 2002).

Based on the aerial photography available, I determined that pens number 201, 203 204 and 206 as seen on page 5 of 34 of Technical Document RA22015, which have an approximate area of 20,072 m<sup>2</sup>, existed on January 1, 2002 and are therefore considered to be grandfathered facilities.

Under section 18.1(2)(a) of AOPA, if a CFO existed on January 1, 2002, the CFO's deemed capacity is its physical capacity to confine livestock on January 1, 2002.

Goodbrand claims that the CFO's physical capacity on January 1, 2002 was 1,500 beef finishers. Mr. Goodbrand stated that he did not have access to documentation to support this claim, as he purchased the feedlot in May 2021. Ms. Simkin did not provide any written information relating to the number of livestock at the operation in 2002.

To confirm if this claim of 1,500 beef finishers is reasonable, I used Technical Guideline Agdex-096-81, "*Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002.*" Based on the pen area above, the feedlot had an approximate capacity of:

- 1,080 beef finishers, using a stocking density of 18.58 m<sup>2</sup> (or 200 ft<sup>2</sup>) per beef finisher. Based on available feedlot feed bunk space, the feedlot's capacity was 1,403 beef finishers, or
- 1,439 beef backgrounders, using a stocking density of 13.94 m<sup>2</sup> (or 150 ft<sup>2</sup>) per beef backgrounder.

Given that management practices differ between operators, higher animal densities than those used for the capacity calculation were not uncommon. I believe the animal numbers provided by the previous owner during my phone conversations to be reasonable and within the range of what can be accommodated in the grandfathered facilities.

Based on information provided by the previous owner, around 2002 he run a beef backgrounders operation with about 1,500 head. This number equates to approximately 454 head of beef finishers.

Based on these findings, I have determined that the CFO has a deemed approval with a deemed capacity of 1,500 beef backgrounders or 454 beef finishers.