

Decision Summary LA21060

This document summarizes my reasons for issuing Approval LA21060 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21060. 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 December 17, 2021, Chinook Feeders 2020 Ltd (Chinook Feeders) submitted a Part 1 application to the NRCB to expand an existing beef CFO with the construction of additional facilities to increase the permitted livestock numbers.

The Part 2 application was submitted on April 27, 2022. On May 11, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from a combination of 22,500 beef finishers and 2,500 beef feeders, to a total of 56,000 beef finishers
- Constructing a large catch basin – (330 m x 140 m x 9.5 m deep)
- Constructing a series of 6 catch basins – (total of 130 m x 40 m x 2 m deep)
- Constructing new feedlot pens 480 m x 836 m (combined total dimensions of approximately 1,430 m x 925 m)
- Converting a portion of the existing feedlot pens to a solid manure storage area
- Decommissioning the 3 existing catch basins

The applicant requested a variance under section 17 of AOPA of the prohibition against manure storage facilities and manure collection areas less than 30 metres away from common bodies of water. That variance request is discussed in Appendix E and section 6, below.

a. Location

The existing CFO is located at N½ and SW 11-17-27 W4M in Foothills County, roughly 16 km northeast of Nanton, Alberta. The topography of the area is undulating. There is a general slope on the site towards the northeast. The Little Bow River is located approximately 3 km to the east of this site. A small seasonal water course exists approximately 20 m from the proposed large catch basin and converted solid manure storage pad.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval LA05006. That permit allowed the construction and operation of a combined 22,500 beef finisher and 2,500 beef feeder CFO. The

CFO's existing permitted facilities are listed in the appendix to the Approval LA21060.

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 four miles. (The NRCB refers to this distance as the "affected party radius.")

A copy of the application was sent to Foothills County, which is the municipality where the CFO is located. A copy was also sent to Vulcan County and the Municipal District (MD) of Willow Creek which have boundaries within the affected party radius. I also note that the CFO site is located within the plan boundary of two intermunicipal development plans, between Foothills County and Vulcan County, and between Foothills County and the MD of Willow Creek.

A small, seasonal water course exists approximately 20 m from proposed catch basin, and the existing pens. The specifics surrounding this water course are discussed in Appendix D; however, I note that the seasonal water course is not in the same classification as a river or irrigation canal, and the 100 m distance for notification relative to the bank of a river, stream, or canal does not apply.

The NRCB gave notice of the application by public advertisement in weekly newspapers in circulation in the community affected by the application. In this case, public advertisement was posted in the Nanton News, Vulcan Advocate and Western Wheel on May 11, 2022. The full application was also posted on the NRCB website for public viewing. As a courtesy, 100 letters were sent to people identified by Foothills County, Vulcan County and 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 (AT).

I also sent a copy of the application to the Sunshine Gas Coop because they have a right of way on the CFO site.

Mr. Gerry Benoit, a development and planning technologist, responded on behalf of AT. Mr. Benoit indicated that the proposed development does not fall within the permit area of a provincial highway. Therefore, a highway roadside development application and subsequent permit is not required.

No other responses were received.

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 Foothills County's municipal development plan, and of the Foothills County-Vulcan County and Foothills County-MD Willow Creek intermunicipal development plans. (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 and springs,
- 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 protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 12 and Appendix F, the application meets all relevant AOPA requirements. The variance and exemption around the setbacks to common bodies of water are discussed Appendix D and E, attached.

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."

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received responses from seven parties.

All of the seven parties who submitted responses own or reside on land within the four mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response by the deadline, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

These seven directly affected parties raised concerns regarding road use/dust, littering, odour, pests, water quality, and property values. These concerns are addressed in Appendix C.

Foothills County

Foothills County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Heather Hemingway, a director of planning with Foothills County, provided a written response on behalf of Foothills County. Ms. Hemingway stated that the application is not consistent with the Foothills County's land use provisions of the municipal development plan because there is one dwelling located within a half mile of the CFO and one dwelling located within a half mile of the MDS (policy 9 of the MDP), and that the applicant does not own all lands within MDS (policy 10.2 of the MDP). She added that the CFO generally complies with the remaining policies. The county's concerns and the application's consistency with Foothills County's municipal development plan are addressed in Appendix A, attached.

Ms. Hemingway noted that the subject lands are within Plan Areas for both the Foothills County and Vulcan County Intermunicipal Development Plan (IDP), and the Foothills County and MD of Willow Creek IDP. She commented that the application appears to substantially comply with the Foothills County/Vulcan County IDP, whereas the Foothills County/MD of Willow Creek IDP does not speak specifically to CFOs. The application's consistency with both IDPs is addressed in Appendix A, attached.

Ms. Hemingway also made reference to Foothills County's Growth Management Strategy, and Dark Sky Bylaw.

She also discussed the setback sections in Foothills County's land use bylaw (LUB). This is further reviewed in Appendix B, attached.

Vulcan County

Vulcan County is also an affected party (and directly affected) because the county boundary is within the affected party radius.

Ms. Anne Erickson, manager of development services for Vulcan County, provided a written response on behalf of Vulcan County. Ms. Erickson stated that the subject lands are within the Foothills County/Vulcan County IDP area. She also stated that the land within Vulcan County that falls within the radius is zoned Rural General.

The application's consistency with this IDP is addressed in Appendix A, attached.

Ms. Erickson also requested that if the application is approved, a condition is placed that requires the applicant to enter into a road use agreement with Vulcan County. This request is discussed in Appendix B, attached.

MD of Willow Creek

The Municipal District of Willow Creek is also an affected party (and directly affected) because the MD's boundary is within the affected party radius.

Ms. Cindy Chisholm, manager of planning and development for the MD of Willow Creek, provided a written response on behalf of the MD of Willow Creek. Ms. Chisholm stated that the subject lands are within the MD of Willow Creek/Foothills County IDP area. She stated that the lands within the MD of Willow Creek that fall within the radius are predominantly zoned Rural General.

The application's consistency with this IDP is addressed in Appendix A, attached.

Ms. Chisholm also stated that the MD's Municipal Planning Commission has concerns regarding road access to and from the feedlot. The MD requests that, if the application is approved, the permit would include a condition for a Traffic Impact Assessment (TIA) and a Road Use Agreement. This request is discussed in Appendix B, attached.

8. Environmental risk of CFO facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing manure storage facilities and manure collection areas. I asked one of the NRCB's Environmental Specialists, Scott Cunningham, to assist me in completing the risk assessment.

We used the NRCB's environmental risk screening tool (ERST) to assist in our assessment of risk to surface water and groundwater posed by the existing feedlot pens (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.)

Given that the applicant has proposed to re-slope and upgrade the existing feedlot pens with the feedlot expansion, Mr. Cunningham assessed the new and existing pens and the proposed manure laydown area (solid manure storage facility) as one facility. The single large proposed catch basin was assessed individually, while the six proposed small catch basins were assessed together. The three existing catch basins are proposed to be decommissioned and were therefore not assessed.

The applicant has proposed to convert a portion of the existing permitted feedlot pens to a solid manure storage pad. While this area was originally assessed as existing feedlot pens, I have chosen to discuss the potential risk of the converted solid manure storage area as a separate facility.

The converted solid manure storage pad was found to pose a low potential risk to groundwater, but a moderate potential risk to surface water (score of 46.8, with moderate risk containing scores between 44 and 58). The proximity of the converted solid manure storage pad to the seasonal water course (20 m) was the reason for the moderate risk assessment. Generally, the risk of MSF/MCA being in close proximity to water bodies is that if runoff or an overflow event occurred, there would be less opportunity to prevent manure constituents from entering into the water body. Given that the storage pad will be sloped to the new catch basins, I determined that no further action is required. This is also discussed in Appendix E.

The ERST indicated that the feedlot pens and group of six catch basins all pose a low potential risk to groundwater and surface water.

The proposed large catch basin was found to pose a low potential risk to groundwater, but a moderate potential risk to surface water. For reference, the numerical risk score for surface water for the large catch basin was 45.6, whereas if the score was below 44 it would have been considered low risk under the tool (moderate risk is defined for ERST scores between 44 and 58). Mr. Cunningham determined that the proximity of the proposed large catch basin to a small water course (20 m) was the reason for the moderate risk score.

Mr. Cunningham and I discussed if further action would be required to address this potential risk. Just as with the solid manure storage pad, the risk of the catch basin being in close proximity to a water body is the risk of an overflow event. This risk is minimized as the proposed large catch basin has significantly more than the minimum requirements under AOPA for runoff capacity. Given the site layout and excess amount of runoff storage capacity in the catch basin, I determined that no further action is required.

9. Variance

The applicant applied for a variance of the requirement in the Standards and Administration Regulation for a common body of water to be at least 30 m away from a manure storage facility or manure collection area. I determined that the existing feedlot pen area, which was constructed with a permit and is proposed to be converted to a solid manure storage area, is located within the required AOPA setback from a common body of water. As explained in Appendix E, I am prepared to issue a variance to the 30 metre common body of water setback due to re-sloping of the area to a new large catch basin, as it provides greater protection and safety than what already exists.

10. Exemption

I also determined that the proposed large catch basin is located within the required AOPA setback from a common body of water. As explained in Appendix D, an exemption to the 30 metre setback is warranted as the excess capacity of the catch basin provides secondary protection for the common body of water.

11. Other factors

Because the approval application is consistent with MDP and IDP 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. Hemmingway also included Foothills County's land use bylaw (LUB) and noted several points relating to CFOs. I have addressed these points in Appendix B, attached.

I have considered the effects the proposed MCAs and MSFs 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 (<https://www.eab.gov.ab.ca/status.htm>, accessed August 23, 2022).

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted and the directly affected parties' concerns have been addressed.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP land use provisions then the proposed development is presumed to have an acceptable effect on the economy and community. In this case, the application is consistent not only with Foothills County's MDP, but also with the two IDPs. In my view, this presumption is not rebutted and the directly affected parties' 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 MDP and IDPs (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

12. Terms and conditions

Approval LA21060 specifies the cumulative permitted livestock capacity as 56,000 beef finishers and permits the construction of the feedlot pens, the series of six catch basins, and a separate large catch basin. It also requires decommissioning of the existing three catch basins.

Approval LA21060 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 LA21060 includes conditions that generally address construction deadlines, document submission, construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix F.

For clarity, and pursuant to NRCB policy, I consolidated NRCB Approval LA05006 with Approval LA21060 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipalities, 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 F discusses which conditions from the historical permits are not carried forward into the new approval.

13. Conclusion

Approval LA21060 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21060.

Chinook Feeders's NRCB-issued Approval LA05006 is therefore superseded, and its content consolidated into Approval LA21060, unless Approval LA21060 is held invalid following a review and decision by the NRCB's board members or by a court, in which case LA05006 will remain in effect.

August 31, 2022

(Original signed)

Lynn Stone
Approval Officer

Appendices:

- A. Consistency with municipal planning documents
- B. Additional comments from municipalities
- C. Concerns raised by directly affected parties
- D. Exemption from natural water setbacks
- E. Variance
- F. Explanation of conditions in Approval LA21060

APPENDIX A: Consistency with the municipal planning documents

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).

A recent NRCB Board decision (Double H Feeders Ltd., 2022-02), directed approval officers to determine an application’s consistency with not only the MDP, but also an IDP, if applicable.

This does not mean consistency with the entire MDP or IDP. 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 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 provisions are commonly referred to as “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.)

Foothills County municipal development plan

Chinook Feeders’ CFO is located in Foothills County and is therefore subject to that county’s MDP. Foothills County adopted the latest revision to this plan on October 11, 2017, under Bylaw #52/2016. In their response to this application, Foothills County also provided reference to their Dark Sky Bylaw, and their Growth Management Strategy. Neither of these documents are relevant to determining consistency of this application to the land use provisions of the MDP; however, I draw the applicant’s attention to these two municipal documents.

Policies 8 to 11, and 13 relate to CFOs (Policy 12 relates to proposed developments near existing CFOs). None of the CFO references in these five policies are specifically to “new” CFOs or to “expansions” of existing CFOs. However, it seems reasonable to interpret these policies as having been intended to apply to both new CFOs and to expansions (that is, increases in animal numbers or manure production) of existing CFOs.

Each of the policies is quoted (in italics) and discussed further below.

As another preliminary matter, policies 8-10 all refer to the term “minimum distance separation (MDS)”. The MDP does not define this term; I therefore presume that it refers to the MDS definition and requirements under AOPA and its regulations.

8. Ensure that each confined feeding operation (CFO) meets the minimum distance separation (MDS).

Under NRCB policy, approval officers should not consider MDP provisions that are based on or modify the MDS requirements in AOPA. (See Operational Policy 2016-7: *Approvals*, part 8.2.5). That said, Chinook Feeders’ application meets the AOPA MDS requirements, so it is consistent with this policy (see Technical Document LA21060 for more details).

9. Encourage each CFO to own the land included within the MDS.

Chinook Feeders' CFO does not meet this policy because there are other land owners within the MDS of the existing and the proposed larger CFO. In my view, land ownership preferences are not land use provisions.

In addition, this policy seeks to modify the MDS provisions under AOPA which do not require a CFO owner to own all the land within the CFO's MDS.

For both of these reasons, I will not consider this policy.

10. Ensure that the CFO and the MDS does not fall within a minimum of:

- 10.1. 3.2 km (2 miles) of any urban municipality or hamlet and does not encroach into any intermunicipal development plan boundaries*
- 10.2. 0.8 km (1/2 mile) of a neighbouring dwelling*

Part of this policy enlarges and therefore modifies legislated setbacks by adding the 3.2 and 0.8 km distances in 10.1 and 10.2. Because this provision modifies requirements under AOPA, I am precluded from considering as part of my MDP consistency analysis.

The existing site does not fall within the first part of the setback in 10.1; however, the CFO site is located in an area which is covered by two intermunicipal development plans (IDPs) (Foothills County/MD of Willow Creek, and Foothills County/Vulcan County). This MDP requirement appears to be in conflict with the IDPs, as both IDPs allow for CFOs to be located within their plan areas. As the IDPs are superior in the statutory plan hierarchy, it is my determination that this MDP requirement is superseded by the IDP provisions. The application's consistency with the two IDPs is assessed later in this appendix.

11. CFOs should be located in an area where there will be minimal conflict with existing land uses and must take into consideration future expansion areas when looking at surrounding land uses.

The "minimal conflict" and "consideration" tests in this policy section both require site-specific and CFO-specific judgements about the individual operation. For this reason, I would not consider this policy to be a "land use provision" that I may consider. It is therefore not relevant to my MDP consistency determination.

13. Encourage CFOs on parcels of 160 acres or more.

The policy is also likely not relevant under section 20(1.1) of AOPA, which precludes approval officers from considering MDP provisions "related to ... the site for a confined feeding operation...". This is likely not a land use provision, as the acceptability of the CFO in a particular location on an arbitrary, municipality-wide restriction. At any rate, the CFO is on a parcel that is greater than 160 acres, so policy 13 is satisfied.

Chinook Feeders' application is consistent with all of the other relevant land use provisions of Foothills County's MDP. The municipality's response states the application is consistent with the MDP, aside from the setback to dwellings (10.1), and owning all the land within the MDS (9), which I determined I cannot consider under AOPA.

For these reasons, I conclude that the application is consistent with the land use provisions of Foothills County's MDP.

Intermunicipal Development Plans

Two IDPs are applicable to this application; Foothills County & Vulcan County Intermunicipal Development Plan, and the MD of Willow Creek and MD of Foothills Intermunicipal Development Plan.

Foothills County & Vulcan County IDP

The Foothills County & Vulcan County IDP was adopted in February 2021 under Foothills County Bylaw No. 04/2021, and Vulcan County Bylaw No. 2021-003.

Policies 3.2.8 to 3.2.11 apply to CFOs.

3.2.8 states that existing CFOs located within the Plan Area will be allowed to continue to operate and expand under acceptable operating practices and within the requirements of the Agricultural Operations Practices Act and Regulations.

Chinook Feeders' CFO is existing; therefore this application to expand is consistent with the IDP.

3.2.9 states that in Vulcan County, new CFOs are not permitted to be established within the CFO Exclusion Area as illustrated in the Vulcan County Municipal Development Plan, Bylaw 2012-003, Appendix B.

The site is not located in Vulcan County, and is not in an exclusion area. Furthermore, the site is existing.

3.2.10 states that if either Foothills County or Vulcan County are in receipt of a notice of application for new or expanded CFO within the Plan Area, they shall forward a copy of the application to the other municipality.

This provision is procedural and directs how the municipalities share communications. I provided a copy of Chinook Feeders' application to both Foothills and Vulcan Counties.

3.2.11 states that should amendments be proposed to the Vulcan County CFO exclusion areas, Vulcan County will circulate the proposal to Foothills County prior to the amendment in accordance with the timelines established in this plan.

This provision is procedural in nature and sets out how the two municipalities will discuss changes to the CFO exclusion zones. Therefore, it is not relevant to this application.

For these reasons, I conclude that the application is consistent with the land use provisions of the Foothills County & Vulcan County IDP.

MD of Willow Creek and MD of Foothills IDP

The MD of Willow Creek & MD of Foothills (now known as Foothills County) IDP was adopted in November 2015 under the MD of Willow Creek Bylaw No. 1728, and MD of Foothills Bylaw No 82/2015.

The IDP does not speak specifically to CFOs. This is confirmed by responses from both municipalities. No other land use provisions apply to the CFO site.

For this reason, I conclude that the application is not inconsistent with the land use provisions of the MD of Willow Creek & MD of Foothills IDP.

APPENDIX B: Additional comments from municipalities

I considered these comments as coming from the municipalities as directly affected parties, and in relation to matters that would normally be considered if a municipal development permit were being issued (section 20(1)(b)(i) of AOPA).

Foothills County

Ms. Hemingway provided additional comments on Foothills County's Land Use Bylaw (60/2014).

The Land Use Bylaw (Appendix C, Confined Feeding Operations) recognizes that the NRCB is the regulator for CFOs; however, the bylaw also states that applicants must apply (to Foothills County) for a Development Permit for a "development incidental or ancillary to a CFO".

"Ancillary structures" are defined under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation as structures or buildings described in the definition of a CFO, but do not include a manure storage facility or a manure collection area. Section 4.1 of that regulation states that these structures do not need to be permitted under AOPA, but form part of the CFO.

However, if the applicant wishes to build other facilities that are not considered ancillary to the CFO (for example, residential dwellings), the applicant will need to contact Foothills County for the appropriate Development Permit.

Ms. Hemingway also noted that a portion of the existing CFO appears to encroach into the road right of way for the Municipal Road, 264th Street East. A map of the encroachment was included as an attachment in her response.

I reviewed the map and note that the CFO area that Ms. Hemingway highlighted consists of existing facilities. These facilities were developed under a municipal development permit, prior to the NRCB's role as a CFO regulator. The proposed new facilities will be located east of the existing facilities, farther away from 264 Street East.

Foothills County also requested that Chinook Feeders enter into an agreement for dust suppression. In their July 11, 2022 letter, Chinook Feeders has indicated that they have met with all three municipalities, and committed to enter into road use agreements.

MD of Willow Creek

Cindy Chisholm provided an additional comment on behalf of the MD of Willow Creek.

In her response, Ms. Chisholm stated that the MD feels that the proposed expansion of the feedlot would significantly impact the MD's road network. MD of Willow Creek further notes that they are the municipality responsible for road maintenance for the boundary road between Foothills County and the MD of Willow Creek.

The letter details that the MD requests that the NRCB include a condition for a Road Use Agreement and a Traffic Impact Assessment (TIA). MD of Willow Creek did not provide rationale for requesting a TIA and road use agreement other than stating that the MD had "concerns regarding road access to the feedlot using Connemara Road (Twp 170) and Range Road 274."

The MD did not provide additional details as to what their concerns were, and what information they hoped a traffic impact assessment would provide. In my view, their primary concern

appears to be road maintenance; road maintenance and dust control are generally terms discussed in road use agreements and are not part of TIAs.

Road use agreements are between the applicant and the municipality. As stated earlier, Chinook Feeders has committed to entering into a road use agreement with all three municipalities.

The NRCB typically has not required applicants to complete traffic impact assessments; however, a recent decision issued by the NRCB (LA21053) included a condition requiring a TIA. This condition was a topic that was discussed in a recent board review (RFR 2022-07, John Schooten and Sons Custom Feedyard Ltd). In that case, the “local” municipality as well as Alberta Transportation both pressed for a TIA in light of specific safety concerns. The review decision observed that TIAs as a CFO permit condition were not common.

In this application, I note that MD of Willow Creek is an adjacent municipality, as the CFO site is in Foothills County. In their responses, Foothills County and Vulcan County also requested road use agreements, but neither of them requested a TIA. Additionally, Alberta Transportation reviewed the application and did not raise concerns.

During my site inspection and after reviewing area road maps, I note that the site can be accessed from a number of different roads. While Connemara Road and Range Road 274 would likely be the most direct route to the site from Nanton, it is not the only road network to the feedlot. The site can be accessed from all directions, using a combination of provincial highways and local roads under the jurisdiction of all three municipalities.

Based upon the information I have received from all three municipalities, as well as Alberta Transportation, I have determined that a road use agreement is the appropriate tool to address MD of Willow Creek’s concerns, and that a TIA is not warranted. Chinook Feeders has met with MD of Willow Creek and has committed to entering into a road use agreement.

Vulcan County

Ms. Erickson provided additional comments on behalf of Vulcan County.

In her response, Ms. Erickson indicated that Vulcan County requests that the applicant enter into a road use agreement. That agreement would also include, but is not limited to, participation in Vulcan County’s dust abatement program.

As previously stated, Chinook Feeders has met with all three municipalities, and has agreed to enter into road use agreements.

APPENDIX C: Concerns raised by directly affected parties

The following parties own or reside on land within the “affected party radius”, as specified in section 5(c) of the Agricultural Operations, Part 2 Matters Regulation, and submitted written responses to the application on or before the deadline:

Karina & Kalib Willard, no physical address provided, but the municipality included the Willards as owning or residing within the affected party radius

Lloyd and Pauline Green, NW 34-16-27 W4M

Rodney and Maureen Green, N1/2 4-17-27-W4M, and two additional addresses

Donald Kjinserdahl, SE 16-17-27-W4M

Eric and Deanne Kjinserdahl, NW 9-17-27-W4M

Jesper Jensen & Karin Madsen, RR #2, Cayley, AB, no physical address provided, but the municipality included Mr. Jensen & Ms. Madsen as owning or residing within the affected party radius

Ronald & Heidi Kjinserdahl, NW 9-17-27-W4M

Therefore, under NRCB policy, these individuals are presumed to be “directly affected” by the application. (See NRCB Operational Policy 2016-7 – *Approvals*, part 6.2)

Concerns from directly affected parties

These directly affected parties raised the following concerns: air quality, surface water quality, impacts to wildlife, road use/dust/traffic, odour, dust/noise/flies/nuisance, previous non-compliance, property values, pests/weeds, illegal road development, littering/road safety, and the number of expansions the site has undertaken.

Air quality

One party raised concerns about air quality but did not elaborate.

Approval Officer’s comments:

Without more specific information, it is difficult to assess the party’s concerns. However, in my experience, most air quality concerns relate to dust and odour.

AOPA’s minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. Chinook Feeders’ CFO is located well outside of the required MDS from other existing residences.

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). A NRCB inspector will follow up on the concern.

Surface water contamination/water quality:

A few parties raised concerns about potential surface water contamination, and the impact on surface water quality.

Approval Officer's comments:

The proposed expansion includes the construction of 7 new catch basins. The catch basins are designed to capture manure impacted runoff and hold the runoff until it can be appropriately land applied. Combined, these 7 catch basins allow for more than the required runoff storage capacity for a feedlot of this size.

Impacts to wildlife:

One party expressed concern about the impacts the expansion would have on wildlife but did not elaborate.

Approval Officer's comments:

I note that the CFO site is zoned as Agricultural and is not in an environmentally sensitive area or similar. Given that the site already exists, I would expect that the impact of an expansion on wildlife in the area is minimal.

Road use/road dust/increased traffic:

Several parties raised concerns relating to the increase traffic, road dust, and road wear and tear.

Applicant's response:

"CF understands the need to maintain local road infrastructure. Accordingly, on June 21, 2022, CF met with the MD of Willow Creek, MD of Foothills and Vulcan County to discuss the local road network. An outcome from this meeting is a commitment from CF to enter into a road use agreement (RUA) with each municipality."

Approval officer's comments:

Local roads are under the jurisdiction of the applicable County or MD. In their responses, all 3 municipalities discussed wanting to enter into a road use agreement with the applicant. Road use agreements typically provide for dust and wear and tear. The applicant has committed to enter into these agreements; therefore, I consider these concerns as addressed.

Odour from site and spreading/stockpiling

A few respondents expressed concern about odours from the site, and from manure spreading/stockpiling locations.

Applicant's response:

"CF believes their feedlot design and application meets the regulations set out in the Agricultural Operation Practices Act (AOPA), and CF is committed to working with their neighbours and the NRCB to meet their manure management obligations."

Approval Officer's comments:

AOPA's minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. The neighbouring residences fall well outside of the required MDS from Chinook Feeders' CFO. Some of the parties may experience some odours and other nuisance impacts from this CFO. However, the frequency of these exposures will likely be limited and of short duration.

The applicant is required to follow all AOPA requirements, including section 24 of the Standards and Administration Regulation that discusses manure application.

Subsection 24(1) of this section states that manure must be incorporated within 48 hours of application when it is applied to cultivated land. Incorporation reduces odours by working the manure into the soil. This type of land application of manure is typically limited to once or twice per year and is typically of short duration. Odours from manure spreading typically do not persist for extended periods of time.

Section 24(5)(a) states that manure does not need to be incorporated after surface application on forages, or on direct seeded crops. However, in that case, the manure must be applied at least 150 m from any residence. This setback helps mitigate the odour from manure spreading without incorporation.

Often, any issues that arise relating to the operation of a CFO 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). An NRCB inspector will follow up on the concern.

Dust, noise, insects/flies nuisances

A few respondents expressed concern about dust, noise, and insect/flies nuisances from the site.

Approval Officer's comments:

As stated previously in this section, AOPA's minimum distance separation is a means for mitigating nuisance impacts, including dust, noise and flies. The site meets the required MDS from existing residences.

Concerns about dust, odour, and flies can be reported to the NRCB's 24 hour reporting line (1-866-383-6722). An NRCB inspector will follow up on the concern. If required, an inspector can require a specific dust and/or fly control program at the site.

Past non-compliance with manure management

One respondent expressed concern with past non-compliance with manure management.

Approval Officer's comments:

The NRCB's Approvals Policy (Operational Policy 2016-7, 8.12.2) states that approval officers will generally not address an applicant's past compliance record as part of their decision to issue a permit. The AOPA permit decision process is based on the merits of current permit applications.

However, the applicant is required to follow all AOPA requirements, including those relating to manure management. Should a member of the public have concerns regarding if a site is in compliance, they can contact the NRCB's reporting line, and an inspector will follow up.

Property values

Several respondents expressed concern that the application would negatively impact their property values.

Approval Officer's comments:

In previous board decisions, the NRCB's board members have consistently stated that concerns regarding effects on land or property values are "not a subject for [the board's]

review under AOPA or for approval officers' consideration." According to the board, impacts on property values are a "planning matter dealt with by municipalities in municipal development plans and land use bylaws." (See Pigs R Us Inc. RFR 2017-11/BA170025 at 6).

Introduction of pests/weeds

A few respondents expressed concern regarding the possibility of the expansion introducing pests (such as pocket gophers) and weeds (particularly with organic farmed land nearby).

Approval officer's comments:

The control of pests and weeds is outside of the scope of AOPA. However, in response to these concerns, I would direct the respondents to their local Agricultural Fieldman for guidance.

Illegal road development/use of road allowances

A few respondents expressed concern about historical road developments and use.

Approval officer's comments:

Local road development is under the jurisdiction of the applicable municipality. Since this is not under AOPA, I cannot consider it as part of my decision.

Littering on road/road safety

A few respondents expressed concern about employees littering on the road, and the safety of roads.

Approval Officer's comments:

Littering and driving habits/traffic safety are outside of the scope of AOPA; therefore I cannot consider it as part of my decision.

Number of expansions

One respondent expressed concern about the number of expansions the CFO site has undergone.

Approval Officer's comments:

AOPA does not limit the number of expansions a CFO chooses to do. It does however, require that any CFO facilities are permitted as required by Act.

APPENDIX D: Exemption from natural water setbacks

The proposed large catch basin is to be located less than 30 m from a common body of water (CBW), which is in conflict with section 7(1)(c) of the Standards and Administration Regulation (SAR). Section 7(3) allows for exemptions from the 30m setback if the owner or operator demonstrates, before construction, that the natural drainage for the facility or area is away from the CBW, or a berm or other secondary containment is constructed which would protect the CBW from contamination.

I am of the opinion that an exemption for the 30 m setback to a CBW is warranted as due to how runoff will enter the catch basin and the placement of the input piping, the applicant is proposing to only use approximately the bottom half of the large catch basin to capture runoff. This excess capacity, combined with the series of 6 smaller catch basins, more than meets the runoff storage capacity requirements under section 19 of the SAR. That being said, in the event of an emergency event (rainfall greater than the 1:30 year maximum rainfall), the applicant would have the ability to utilize the top half of the catch basin. The overall capacity of the large catch basin itself is nearly 300,000 m³, roughly three times the 1:30 year rainfall storage requirement. In my view, this excess capacity meets the requirements for secondary protection for the common body of water under section 7(3)(b) of the Standards and Administration Regulation.

APPENDIX E: Variance

The existing feedlot pen area that is proposed to be converted to a solid manure storage area is located less than 30 m from a common body of water (CBW). During a site visit, I confirmed that the CBW is located approximately 20 m from the existing feedlot pen area. This is in conflict with the section 7(1)(c) of the Standards and Administration Regulation (SAR).

The feedlot pen area has already been constructed (under a municipal permit) less than 30 m from a small common body of water (CBW). The applicant has requested a variance for this requirement.

Because the feedlot pen area has already been constructed, an exemption under section 7(3) of SAR (as done in Appendix D) is not possible. For an exemption, the applicant must demonstrate protection before construction. Accordingly, only a variance is possible, upon request of the applicant.

I therefore need to either deny the application or alternatively consider if a variance is warranted under AOPA's section 17(1.1). It is my opinion that a variance is appropriate in this case.

Approval officers must not grant variances lightly or in the absence of substantive evidence that the variance will produce equivalent or greater levels of protection and safety. In considering whether a variance is appropriate, in this particular circumstance, I have used similar tools to those I would normally use to determine if an exemption is warranted under section 7(3) of the SAR.

The applicant has proposed to upgrade the existing portions of this existing feedlot pen area and re-slope it (including the pens proposed to be converted to a solid manure storage area) to direct any runoff into the new large catch basin. Additionally, for management reasons, the applicant is proposing to add roller compacted concrete on top of the permitted liner, which will ensure that the proposed sloping to the new large catch basin will remain on a long term basis. In my view, these improvements provide greater degree of protection and safety than what currently exists.

Based on the above, I am of the opinion that a variance to the 30 m setback to a CBW is warranted.

APPENDIX F: Explanation of conditions in Approval LA21060

Approval LA21060 includes several conditions, discussed below, and deletes two ongoing conditions from Approval LA05006 (see section 2).

1. New conditions in Approval LA21060

a. Construction Deadline

Chinook Feeders proposes to complete construction of the proposed new feedlot pens and catch basins by December 30, 2025. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 30, 2025 is included as a condition in Approval LA21060.

b. Post-construction inspection and review

The NRCB's general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Approval LA21060 includes conditions requiring the permit holder to provide written confirmation from a qualified third party confirming:

- That the 7 catch basins were constructed in accordance with the proposed design
- The final constructed dimensions, including elevations above and below grade, and side slopes of the 7 catch basins.

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 LA21060 includes conditions stating that Chinook Feeders shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens and shall not allow manure impacted runoff enter into the catch basins until NRCB personnel have inspected the pens and catch basins and confirmed in writing that they meet the approval requirements.

c. Decommissioning of the three existing catch basins

As the applicant has proposed to decommission the three existing catch basins, a condition will be included requiring Chinook Feeders to properly decommission these facilities. This must be carried out in accordance with the requirements for all risk levels in Technical Guideline Agdex 096-90, "Closure of Manure Storage Facilities and Manure Collection Areas". The permit holder also must notify the NRCB and submit a completed "Manure Storage/Collection Area Closure Worksheet" to the NRCB once all work has been completed.

2. Conditions not carried forward from Approval LA05006

Approval LA21060 includes the terms and conditions in LA05006, except for those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #4 and 5 from Approval LA05006 should be deleted and therefore are not carried forward to Approval LA21060.

Condition 4 states that "The operator must maintain manure application records as identified in

AOPA and its associated regulations. “

Condition 5 states that “a. Manure application setbacks as specified in AOPA must be met.
b. Manure must not be spread on frozen or snow covered ground.”

My reasons for deleting these conditions are that both conditions simply repeat the requirements already included in AOPA for manure application records, and manure application requirements. The applicant is already required to follow all of these requirements set out in AOPA.