

## Decision Summary LA22031

This document summarizes my reasons for issuing Approval LA22031 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22031. 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 May 13, 2022, Van Driel Farm Ltd. (Van Driel) submitted a Part 1 application to the NRCB to expand an existing CFO, by constructing additional feedlot pens, and a catch basin.

The Part 2 application was submitted on May 17, 2022. On May 25, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 4,000 feeder calves to 5,000 feeder calves and removing the 50 dairy cows (plus associated dries and replacements)
- Constructing feedlot pens (109 m x 27 m)
- Constructing a catch basin (30 m x 20 m x 4 m deep)

#### a. Location

The existing CFO is located at NE 22-8-25 W4M and NW 23-8-25 W4M in the Municipal District (MD) of Willow Creek, approximately four km southeast of Fort Macleod, Alberta. The topography of the area is rolling to undulating. The closest common body of water is an ephemeral drainage 505 m to the south.

#### b. Existing permits

The CFO is currently permitted under NRCB Approval LA20039. This approval allows the construction and operation of a dairy CFO with 50 milking cows (plus associated dries and replacements) and 4,000 feeder calves. The CFO's existing permitted facilities are listed in Approval LA20039.

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

The CFO is not located within 100 m of a bank of a river, stream or canal and no other municipality is within the 1.5 miles notification radius.

The NRCB gave notice of the application by public advertisement in a weekly newspaper that is in circulation in the community affected by the application. In this case, public advertisement was in the Macleod Gazette on May 25, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, 25 letters were sent to people identified by the MD of Willow Creek as owning or residing on land within the affected party radius.

### **3. Notice to other persons or organizations**

Under section 19 of AOPA, the NRCB may also notify persons and organizations the approval officer considers appropriate. This includes sending applications to referral agencies which have a potential regulatory interest under their respective legislation.

Referral letters and a copy of the complete application were emailed to Alberta Health Services (AHS), Alberta Environment and Parks (AEP), and Alberta Transportation.

The NRCB received responses from Mr. Robert Rippin, public health inspector with AHS; Ms. Leah Olson, a development/planning technologist with AT; and Mr. Jeff Gutsell, hydrogeologist with AEP.

Mr. Rippin voiced several concerns in his response. He stated that there is an on-going runoff issue from this CFO, large manure stockpiles along county roads and that it seems that Van Driel is not in compliance with the Water Act in respect to his water supply. He also added that there is a general concern with dust from CFOs that can cause respiratory irritation and other negative impacts on human health. These concerns are addressed in Appendix B, attached.

Ms. Olson stated that a permit from her department is not required and that any impacts on county roads should be mitigated by the municipality.

Mr. Gutsell stated in his response that there are no groundwater or surface water diversion authorizations issued for these quarter sections and that it is unclear what legal source of water is used by Van Driel. He requested that the applicant provides AEP with all applicable licenses prior to commencing construction. A copy of Mr. Gutsell’s response was sent to the applicant for his information and action. Since then, Mr. Van Driel forwarded a copy of his water licenses to AEP for review.

#### **4. Alberta Land Stewardship Act (ALSA) regional plan**

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document's Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

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

I have determined that the proposed expansion is consistent with the land use provisions of the MD of Willow Creek's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

#### **6. AOPA requirements**

With respect to the technical requirements set out in the regulations, the proposed expansion:

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Meets the required AOPA setbacks from water wells, springs, and common bodies of water
- Has sufficient means to control surface runoff of manure (see also the discussion in Appendix B)
- Meets AOPA's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

#### **7. Responses from municipality and other directly affected parties**

Directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions relevant to the application and are entitled to request an NRCB Board review of the approval officer's decision. Not all affected parties are "directly affected" under AOPA.

Municipalities that are affected parties are identified by the act as "directly affected." The MD of Willow Creek is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Cindy Chisholm, a manager of planning and development with the MD of Willow Creek, provided a written response on behalf of the MD of Willow Creek. Ms. Chisholm stated that the application is consistent with the MD of Willow Creek's land use provisions of the municipal development plan. The application's consistency with the MD of Willow Creek's municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected."

No responses were received from any other person, organization, or member of the public.

## 8. Environmental risk of CFO facilities

When reviewing a new approval application for an existing CFO, NRCB approval officers assess the CFO's existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB's environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST provides for a numeric scoring of risks, which can fall within either a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at [www.nrcb.ca](http://www.nrcb.ca).) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 8.13.

In NRCB Board Decision 06-01, the Board supported the approval officer in his determination that the existing pens (the pens in the northeast corner of the quarter section) do not pose a risk to the environment and, as grandfathered facilities, do not have to meet AOPA requirements in respect to runoff control.

In 2012, the risks posed by Van Driel's existing CFO facilities were reassessed using the newest version of the ERST. According to that assessment, the existing facilities were determined to pose a low potential risk to surface water and groundwater. However, a reassessment of the open calf shelter/calf pens in the NE corner of the CFO in conjunction with this application showed that the risk to surface water falls into the moderate risk category (at the lower end of this category). Subsequent to this determination, I contacted the operator to discuss the issue of runoff leaving the pen area, going through a culvert and through the county roadside ditch further east into the adjacent field. The operator agreed to address this problem and submitted a preliminary plan for the runoff control mechanism. The proposed mechanism will need NRCB approval prior to construction. A condition will be attached, requiring Van Driel to submit an application with the details of this runoff control mechanism and approval of said mechanism within one year of issuance of this permit (Approval LA22031).

Because the proposed facilities meet AOPA's liner requirements, I presume that the risk of these facilities to groundwater and surface water is low.

## 9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Ms. Chisholm also listed the setbacks required by the MD of Willow Creek's land use bylaw (LUB) and noted that it is not clear from the site photo if the application meets these setbacks. Aerial measurements and on the ground measurements from the staked out proposed site to the next nearest property line show that these setbacks can be met.

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments

I am not aware of any statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject of this application or any written decision of the Environmental Appeals Board / the Director under the *Water Act* in respect of the subject of this application. I also checked the Environmental Appeals Board Alberta website but did not see any decisions posted related to this CFO

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 AOPA's technical requirements. In my view, this presumption is not rebutted.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted because.

## **10. Terms and conditions**

Approval LA22031 specifies the cumulative permitted livestock capacity as 50 milking cows (plus associated dries and replacements), and 5,000 beef feeder calves, and permits the construction of the new catch basin and pens for feeder calves.

Approval LA22031 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 LA22031 includes conditions that generally address the construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated Approval LA20039 with Approval LA22031 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. All conditions from Approval LA20039, other than condition 2, are carried forward into the new approval.

## 11. Conclusion

Approval LA22031 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22031.

Van Driel's Approval LA20039 is therefore superseded, and its content consolidated into this Approval LA22031, unless Approval LA22031 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA20039 will remain in effect.

August 29, 2022

(Original signed)

Carina Weisbach  
Approval Officer

### Appendices:

- A. Consistency with the municipal development plan
- B. Responses from referral agencies
- C. Explanation of conditions in Approval LA22031

## APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of an approval if the approval officer holds the opinion that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

This does not mean consistency with the entire MDP. In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, section 20(1.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.” “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Van Driel’s CFO is located in the MD of Willow Creek and is therefore subject to that county’s MDP. The MD of Willow Creek adopted the latest revision to this plan on August 2019, under Bylaw #1841. The parts and policies of the MP relevant to this application area discussed below.

Part 2 states that agriculture is a predominant land use in the MD though it also notes that it is important to balance other interests. One of the objectives in Section 2 of the MDP is to mitigate the siting of a CFO to minimize conflicts with adjacent land uses. Policy 2.3 states that the MD shall establish guidelines with regards to the NRCB for the regulation and approval of CFOs within the MD. These guidelines are found in section 9.

This policy likely isn’t a relevant “land use provision”, rather, I consider this to be a source of insight for the interpretation of the remaining portions of the MDP.

Policy 9.2 of the MDP directs the NRCB to consider six matters. These are quoted below (*in italics*); each one is followed by my discussion of how the provision related to this application. The requested matters to consider are:

- (a) The cumulative effect of a new approval on any area near other existing CFO’s/ILO’s

This policy is likely not a “land use provision” as it calls for project-specific, discretionary judgements about the types of cumulative effects that should be considered and the acceptable maximum levels of each of these effects.

In a 2011 decision, the NRCB Board stated that consideration of cumulative effects is “not within the Board’s regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorization legislation. AOPA does not provide for cumulative effects assessment.” (Zealand Farms, RFR 2011-02 at 5.)

For these reasons, I do not consider this MDP provision to be relevant to my MDP consistency determination. At any rate, this is not a new CFO.

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

The CFO is not within any of the areas designated as of regional, provincial or national significance in the referenced report (Map 1 of the report). However, areas of local significance are not represented in the report.

The report also assessed the planning area for major physical constraints such as flood plains, unstable slope potential and areas of artesian flow. The map shows that the CFO is not located in any of these areas. However, Van Driel's CFO seems very close to an area identified in this report as a localized 'hazard' area due to the occurrence of aeolian sands. As shown in the Technical Document LA22031, Van Driel was able to prove that the soils in the area of the proposed feedlot and catch basin can meet the requirements for groundwater protection of AOPA and its regulations.

I am therefore of the opinion that the application is consistent with this provision.

*(c) Providing notice to adjacent landowners including applications for registration or authorizations*

This is likely not a "land use provision" because of its procedural focus and thus I do not consider it to be relevant to my MDP consistency determination. At any rate, as explained above, the NRCB sent out courtesy letters to people identified by the MD of Willow Creek who own or live on land within the 1.5 mile notification radius and gave public notice in the MacLeod Gazette. This application is for an approval sized CFO and notification was provided in accordance with AOPA. I consider this requirement to be met.

*(d) applying minimum distance separation calculations to all country residential development*

I interpret "minimum distance separation" as referring to the minimum distance separation (MDS) requirements in section 2 and Schedule 1 of the Standards and Administration Regulation under AOPA. There is no county residential development located within the category 2 MDS for Van Driel's CFO and the application meets AOPA's MDS requirements.

*(e) restricting development in any wetland or riparian area*

The proposed new feedlot pens and catch basin are not located in a wetland or riparian area and meet AOPA's setbacks to common bodies of water. This provision is therefore met by the application

For these reason in conclude that the application is consistent with the land use provision of the MD of Willow Creek's MDP.

In my view the Land Use Bylaw is clearly incorporated in the MDP in several sections throughout the MDP, especially in Policy 15.5 which states:

The development authority shall require the NRCB to take into consideration the policies adopted in this plan and the Land Use Bylaw, when issuing an approval.

Therefore, I also considered the application's consistency with this document. Under the MD of Willow Creeks' Land use Bylaw (#1826 consolidated to Bylaw No 383/2020), the subject land is currently zoned as Rural General. CFOs are not listed as prohibited, permitted or discretionary land uses under this zoning. Ordinarily, a land use bylaw intends to preclude land uses that are

not listed as permitted or discretionary (and that do not meet any other relevant criteria). However, the land use bylaw lists intensive livestock operations (ILOS), defined essentially as CFOs below AOPA's permit thresholds, as a discretionary use within areas zoned Rural General. Therefore, I interpret the omission of CFOs from the list of permitted and discretionary land uses as simply the municipality's recognition that, since AOPA came into effect in 2002, the NRCB is responsible for permitting CFOs above AOPA's thresholds.

As for the lot size restriction in section 2(4) of the Rural General part of the bylaw, which states that the "parcel size shall remain the same size for which the development approval was originally issued". Since CFOs are not listed in the LUB, it is my interpretation that the lot restrictions are intended to apply to ILOs that are permitted by the municipality and are not intended to apply to CFOs above AOPA's permit thresholds.

Section 3 of the Rural General part of the bylaw lists several setbacks. The new feedlot pens and the catch basin both meet the 22.9 m road and 6.1 m setback requirements to adjacent property lines.

For these reasons, I conclude that the proposed new feedlot pens and the catch basin are consistent with the land use bylaw.

## APPENDIX B: Responses from AHS

In his response, an AHS public health inspector stated that he is concerned about the following issues:

- on-going runoff issue from this CFO
- large manure stockpiles along county roads
- not in compliance with the Water Act
- general concern with dust from CFOs

The NRCB has been in communication with the operator in respect to the concerns raised by AHS. The operator shared that he has already started to spread manure and will remove any manure piles in the county ditch within 2 weeks. The NRCB inspector also discussed short term manure storage and explained that manure cannot be stored for more than 7 consecutive months in the same area and that this area can only be used every three years. The operator took notice and will use different locations for short term manure storage in the future.

The NRCB inspector and I also discussed the runoff issue that was identified by AHS. In our discussion, the operator explained that this issue was discussed in NRCB Board review Decision 06-01 (page 15) and that he was under the understanding that his practice is acceptable. However, after this conversation, Mr. Van Driel submitted a preliminary plan to address the runoff from this area. Because the runoff control mechanism has to go through the NRCB application process, I will include a condition that a complete application has to be submitted by December 31, 2022. Subsequent timelines will be determined at this point.

Van Driel sent his water existing water licenses to AEP and is currently in discussion with AEP. Because this is outside the jurisdiction of the NRCB, I will not further discuss this issue.

Mr. Rippin also stated that dust generated by CFOs in general can cause respiratory irritation and other negative impacts on human health. The CFO meets the MDS requirements and there are no residences immediately downwind from this CFO. Having said that, as noted in the decision summary above, and further documented in Technical Document LA22031, the proposed expansion meets all AOPA technical requirements including the distance to all neighboring residences. However, if a member of the public has concerns regarding a CFO, including whether 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.

## **APPENDIX C: Explanation of conditions in Approval LA22031**

Approval LA22031 includes several conditions, discussed below, and carries forward all conditions from Approval LA20039 other than operating condition #2. Construction conditions from historical permits can be found in the appendix to Approval LA22031.

### **1. New conditions in Approval LA22031**

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

Van Driel proposes to complete construction of the proposed new feedlot pens and catch basin by October 2022. This timeframe seems short considering availability with contractors and the remainder of this year's construction season. I will therefore extend the construction deadline to December 31, 2023 which will be included as a condition in Approval LA22031.

#### **b. Runoff control mechanism for the NE corner**

As explained above, Mr. Van Driel submitted a preliminary plan to address the runoff coming from the feedlot pens in the NE corner of the CFO. This plan will need to go through the NRCB application process. I will therefore include a condition, requiring Van Driel to submit a complete application to the NRCB outlining the runoff control mechanism by December 31, 2022.

#### **c. 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 LA22031 includes conditions requiring:

- a. Van Driel shall not populate the feedlot pens until the new catch basin has been constructed
- b. Van Driel to provide evidence or written confirmation from a qualified third party that the catch basin and the feedlot pens have been constructed at the location and with the dimensions as permitted in this approval.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA22031 includes a condition stating that Van Driel shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens and runoff to enter the new catch basin until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.

### **2. Conditions not carried forward from Approval LA20039**

Ongoing condition #2 states: " *The permit holder shall retain a professional agrologist to conduct soil samplings within 100 m (south, east and west) of the area where runoff leaves the pen area. The sampling area shall be divided into 4 equal sections with 3 samples per section that can be combined to composite samples for soil analysis (1 composite sampler per section) Soil sampling and soil analysis shall be done according to Schedule 3 of the Standard and Administration Regulations. Soil test results must be submitted annually by December 15 to the*

*NRCB starting 2020. The NRCB may revise those requirements as determined necessary, in writing.”*

This condition will be deleted because it is no longer necessary. First, the sampling area is the area where the new feedlot pens are located. Secondly, runoff from both pen areas, the one that required the alternative runoff control as well as the proposed new feedlot pens will be directed into and stored in the new runoff control catch basin permitted by this application. The volume of this catch basin is large enough to contain runoff from a 1 in 30 year rainfall event as required in the regulations.