

Decision Summary LA22029

This document summarizes my reasons for issuing Approval LA22029 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22029. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

Under AOPA this type of application requires an approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On April 29, 2022, the Hutterian Brethren of Parkland (Parkland Colony) submitted a Part 1 application to the NRCB to construct a layer barn (84 m x 13.5 m) with attached manure pad (10.7 m x 13.5 m), and a pullet barn (72.6 m x 13.5 m) with attached manure pad (10.7 m x 13.5 m) for 18,000 chicken layers and 24,000 chicken pullets. Collectively, I refer to the barns and their storage pads as the barn complex as they are presented as one facility in the Part 2 application. The overall barn complex is to be 30.6 m x 108 m.

The Part 2 application was submitted on May 3, 2022. On May 11, 2022, the application was deemed complete.

a. Location

The proposed CFO is located at SW 32-15-26 W4M in the Municipal District (MD) of Willow Creek, roughly 15 km southeast of the Town of Nanton. The site is characterized by rolling hills and the area of the proposed CFO generally slopes to the northeast towards an unnamed intermittent tributary to the Little Bow River. This tributary is located approximately 270 m from the proposed barn complex.

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 ½ mile. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to the MD of Willow Creek, which is the municipality where the CFO is to be located. A copy of the application was also sent to Vulcan County as that county shares an Intermunicipal Development Plan (IDP) with the MD of Willow Creek that encompasses the application site. A copy of the application was not sent to other municipalities as no other ones are located within ½ mile of the CFO or share an IDP that covers the application site. Further, the CFO is located more than 100 m from the bank of a river, stream and canal.

The NRCB gave notice of the application by public advertisement in the Nanton News on May 11, 2022. The full application was also made available for viewing on the NRCB website. As a courtesy, four 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.

A copy of the application was also sent to Canadian Western Natural Gas (now Atco Energy) as a right of way holder.

Jeff Gutsell, a hydrogeologist with AEP, indicated that AEP had not received an application for a groundwater licence under the *Water Act*. He stated that AEP was not aware of groundwater or surface water diversion authorizations for the application site and that there were no water well logs either. He went on to state that the application site was not located within an irrigation district and this was not an option to legally access water for the proposed livestock. Last, he stated that the applicant must assess their water requirements and determine if they have sufficient allocations which needs to be confirmed by AEP.

Leah Olson, a development and planning technologist with Alberta Transportation, indicated that a permit was not required from her department for the proposed development.

Neither of the above raised concerns with the application.

A response was not received from AHS or Atco Energy.

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 CFO 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 CFO:

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

With the terms and conditions summarized in part 10 and Appendix D, the application meets all relevant AOPA requirements.

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 CFO is located within its boundaries.

Ms. Cindy Chisholm, the 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 did not state in her response if the application is consistent with the land use provisions of the MD of Willow Creek's municipal development plan. The application's consistency with the MD of Willow Creek's municipal development plan is addressed in Appendix A, attached.

The MD of Willow Creek identified that the site plan in the application includes other CFO related facilities such as feed mill, shops, a future dairy with an associated barn and shed, and future lagoons. The MD was of the opinion that all of the CFO should be applied for at the same time to allow for a comprehensive review and requested an application for the "full build out". The MD went on to request a site plan that reflected the setbacks to all property lines.

The above noted feed mill is considered to be an ancillary structure because it is directly related to the CFO's purpose, but it will not be used to store or collect manure or to confine livestock (see section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation). Therefore, under section 4.1 of that regulation, this structure forms part of the CFO, but does not need a permit under AOPA.

While the Part 1 application included dairy livestock, ducks and geese, those livestock and their associated CFO facilities were not included in the Part 2 application. The Part 2 application is for a poultry barn complex. When or if additional livestock and associated manure collection areas and manure storage facilities are applied for a new application will need to be submitted to the NRCB for those facilities.

While all of the property line setbacks were not specified on the site plan in the Part 2 application, the dimensions of the barn complex were along with setbacks to the north and east property lines were. I reviewed the MD's Land Use Bylaw (#1826, last updated May 2022); the proposed barn complex meets the minimum setback requirements of section 3(1) of Schedule 1 to the Land Use Bylaw.

The MD expressed concerns related to the proposed CFO's water source, questioned what the proposed CFO's annual water usage would be, and inquired if a water license had been obtained from AEP. It also requested a road use agreement to be entered into by the applicant.

Water licensing under the *Water Act* is administered by Alberta Environment and Parks, not the NRCB under AOPA. In the Part 2 application a declaration was signed indicating intent to pursue a water license independent of this AOPA application. As part of that declaration, there is an acknowledgement where "...construction or livestock populating will be at the CFO's sole risk if the *Water Act* license application is denied...". Because water licencing is not regulated by the NRCB, rather by AEP (who is aware of these concerns) I will not further discuss this concern.

Part 8.9 of the Approvals Policy (NRCB Operational Policy 2016-7) states that "approval officers will not include conditions requiring operators to enter into road use agreements with the municipality." The applicant is however, made aware of this request from the municipality.

I forwarded a copy of the application to a representative of Vulcan County due to the CFO's proposed location in IDP area between the MD of Willow Creek and Vulcan Country. Anne Erickson, Vulcan County's manager of development services, indicated that the county did not have concerns with this application.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received responses from 14 parties.

The NRCB received one of these submissions after the submission deadline in the notice. Despite this, that party had requested a time extension to submit a response before the submission deadline passed.

Of the 14 parties who submitted responses, four own or reside on land within the 0.5 mile notification radius for affected persons. Because of their location within this radius, and because they submitted a timely response, they qualify for directly affected party status (see NRCB Operational Policy 2016-7: Approvals, part 6.2).

The directly affected parties raised concerns related to impacts to surface water and groundwater, health, manure spreading, negative impacts to the community, AOPA process and requirements, wildlife, nuisances, roads, and property values. These concerns are addressed in Appendix C.

Ten of the respondents do not own or reside on land within the 0.5 mile radius for affected persons. Of these ten respondents, I consider none of them to be directly affected by the approval application. Appendix B sets out my reasons for determining which respondents are directly affected.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low potential risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require monitoring for the facility. In this case I have determined that monitoring is not required as the proposed barn complex has a concrete liner that meets AOPA's liner requirements.

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 listed the setbacks required by the MD of Willow Creek's land use bylaw (LUB). I reviewed the LUB and the site plan included with the application and note that the proposed poultry barn complex meets the applicable setback requirements.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments. AEP has not raised concerns to me related to the administration of natural resources. In addition, 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.

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 August 25, 2022).

Finally, I considered the effects of the proposed CFO modifications 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 parties' concerns have been addressed, see Appendix C for further discussion.

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 because the application is consistent with the MDP, meets AOPA requirements, and for the reasons included in Appendix C.

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

10. Terms and conditions

Approval LA22029 specifies the cumulative permitted livestock capacity as 18,000 chicken layers and 24,000 chicken pullets and permits the construction of the poultry barn complex including the layer barn (84 m x 13.5 m) with attached manure pad (10.7 m x 13.5 m), and a pullet barn (72.6 m x 13.5 m) with attached manure pad (10.7 m x 13.5 m).

Approval LA22029 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 LA22029 includes conditions that generally address a construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix D.

11. Conclusion

Approval LA22029 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22029.

September 7, 2022

(original signed)
Jeff Froese
Approval Officer

Appendices:

- A. Consistency with the municipal planning documents
- B. Determining directly affected party status
- C. Concerns raised by directly affected parties
- D. Explanation of conditions in Approval LA22029

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).

In a 2022 decision, the NRCB Board directed approval officers to consider the consistency of an application with land use provisions of both the applicable MDP and applicable Intermunicipal Development Plans (IDPs) (see Double H Feeders, Board Decision 2022-02 at 5-7.)

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.)

Parkland Colony’s CFO is located in the MD of Willow Creek and also within the Vulcan County and MD of Willow Creek IDP area and is therefore subject to the Willow Creek MDP and Willow Creek / Vulcan IDP. The IDP was adopted by both municipalities in April 2015. The MD of Willow Creek adopted the latest revision to MDP in August 2019, under Bylaw #1841.

The parts and policies of the IDP and MDP relevant to this application are discussed below.

Vulcan County and MD of Willow Creek IDP

Part 4.3 of the IDP recognizes that CFOs are regulated by the NRCB, but that it is desirable to regulate CFOs in the plan area in an attempt to minimize nuisances and conflict. This part 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 IDP.

Part 4.3.2 and 4.3.3 relate to new CFOs. These policies indicate that there is a CFO exclusion area in the IDP, and in Vulcan County, indicated on Map 12. The proposed CFO is located in the MD of Willow Creek and is not located in the exclusion area indicated on Map 12.

Based on this, the proposed CFO is consistent with the IDP.

MD of Willow Creek MDP

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 states that one of the main objectives of the MDP is to mitigate the siting of a CFOs to minimize conflicts with adjacent land uses.

Policy 2.3 states that the MD shall establish guidelines with regards to the NRCB for the regulation and approval of CFOs within the MD. These guidelines are found in section 9.

This part and policy likely 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 requests 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 those effects.

In a 2011 decision, the Board stated that consideration of cumulative effects is "not within the Board's regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing 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.

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

Parkland Colony's proposed 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).

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 located in an area of potential artesian flow. Section 5.3.6 of the report states that "areas of artesian flow pose severe constraints for construction and excavation, especially where these occur in low-lying areas."

The proposed CFO is not located in a low lying area. Further a water well log (9681713, see Technical Document LA22029, pages 19 and 20) from the Alberta Environment and Parks water well database does not identify artesian conditions at the proposed CFO. I do note how a water well log (AEP# 203922) from NE 32-15-26 W4M, which is adjacent to the proposed CFO and downgradient from it, does identify artesian conditions.

Because the subject area is not identified as of environmental significance at a higher level, because the proposed CFO is not located in a low lying area, and because the water well drilled at the proposed CFO does not identify any artesian conditions, I am of the opinion that the site for the CFO is not located in an area of artesian flow and is therefore consistent with this provision.

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

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 as owning or residing on land within the affected party radius of 0.5 miles, and gave public notice in

the Nanton News. The application therefore met the notification requirements of AOPA. (See also Operational Policy 2016-7: *Approvals*, part 7.5).

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

I interpret “minimum distance separation” as referring to the minimum distance separation (MDS) requirements in section 3 and Schedule 1 of the Standards and Administration Regulation under AOPA. There is no country residential development located within the category 2 MDS for the proposed CFO and the application meets AOPA’s MDS requirements.

Regardless, the NRCB’s board (see Wyntjes, Board Decision 2007-11/RA07019) and the NRCB’s Approvals policy (see NRCB Operational Policy 2016-7, part 8.2.5) have made it clear that approval officers should not consider MDP provisions that are based on, or directly modify and render more stringent, AOPA’s MDS requirements.

(e) Restricting development in the flood plain, floodway, the flood way fringe and flood prone, or hazard lands within or adjacent to any watercourse within the MD;

As discussed in Technical Document LA22029, Parkland Colony’s proposed CFO meets the AOPA setbacks to common bodies of water and is not located within a known flood plain as identified in the Alberta Environment and Parks flood hazard website.

(f) Restricting development in any wetland or riparian area

The proposed CFO is not located in a wetland or riparian area, and it also meets the AOPA setbacks to common bodies of water. This provision is therefore met by the application.

For these reasons, I conclude that the application is consistent with the land use provisions 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 Creek’s Land Use Bylaw (#1826 consolidated to Bylaw No. 1932/May 2022), the subject site is currently zoned as Rural General. CFOs are not listed as prohibited, permitted, or discretionary land use 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 lists 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 thresholds.

Section 3 of the Rural General part of the bylaw lists several setbacks. The proposed barn complex meets the 22.9 m road and 6.1 m other adjacent property line setback requirements.

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

APPENDIX B: Determining directly affected party status

The following parties qualify for directly affected party status because they submitted a timely response to the application and they own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation (see NRCB Operational Policy 2016:7 – Approvals, part 6.2):

A. William and Charlene Powlyk SW 28-15-26 W4M	B. Berger Land and Cattle Co. Ltd. (Thomas and Loretta Berger) SE 32-15-26 W4M, Section 33-15-26 W4M and NW 34-15-26 W4M
C. Jonathan and Sara Poffenroth Section 29-15-26 W4M	D. Peter and Rosemary Hodorek Part of NE 32-15-26 W4M

A party that is not specified in section 5 of the Part 2 Matters Regulation as an affected party can also qualify for directly affected party status. However, they have the burden to demonstrate they are directly affected by the approval application. The following individuals that submitted a timely response to the application may fall under this category:

1. Susie Hunt Section 19-15-26 W4M and W1/2 15-15-27 W4M	2. Richard and Devina Berger SE 28-15-26 W4M
3. Rex and Donna Davis NW 24-15-26 W4M	4. Heidi and Shawn Brousseau (response submitted by Hannah Brousseau) NE 22-15-26 W4M
5. Debbie Pearce NE 23-15-26 W4M, S1/2 26-15-26 W4M, and E1/2 34-15-26 W4	6. Jared, Kirby, Taylor, Cadee and Stella Duyns Part of NE 36-25-27 W4M
7. Hans Lievaart Section 4-16-26 W4M and Section 8-16-26 W4M	8. Kelsey Livingston Part of NE 11-15-27 W4M
9. Lindsay and Teresa Taylor NE 8-15-26 W4M	10. Norman and Diana Andrews Parkland, AB
11. Clarice Siebens SE 14-15-27 W4, E ½ 11-15-27 W4 and, NE 2-15-27 W4	

Under NRCB policy, a person has the burden of demonstrating that they are directly affected by an application. In order to meet their burden of proof, the person has to demonstrate all the following five elements (see NRCB Operational Policy 2016:7 – Approvals, part 6.3):

1. A plausible chain of causality exists between the proposed project and the effect asserted;
2. The effect would probably occur;
3. The effect could reasonably be expected to impact the party;
4. The effect would not be trivial; and
5. The effect falls within the NRCB regulatory mandate under AOPA.

These parties have not demonstrated a chain of causality as to how they would be directly affected.

Several of the concerns raised by those owning or residing on land beyond the “affected party radius”, or if the party did not provide their residence or land ownership location, were similar to those raised by the directly affected parties. The directly affected party concerns are addressed in the following appendix.

Aside from the above, one party who owns or resides on land beyond the affected party radius raised concerns that a local photography business would suffer due to the interruption of the unique prairie views. Another raised concerns related to the applicant not maintaining native vegetation and over use of industrial farming (I interpret this to be a reference to the growing of commercial crops).

In the case of the economic concerns related to the photography business, I am of the opinion that a plausible chain of causality has not been established and that the effect would not be more than trivial. I base this opinion on there being many rolling hills in the area of the proposed CFO to take photos at. Further, the concerned party has not provided me with evidence how related businesses have suffered due to related developments.

For the party that raised concerns related to the loss of native vegetation and industrial farming, these are valid concerns, but they fall beyond the mandate of AOPA.

Based on the above, I am of the opinion that parties 1-11 are not directly affected by this application.

APPENDIX C: Concerns raised by directly affected parties

The directly affected parties raised concerns related to impacts to surface water and groundwater, health, manure spreading, negative impacts to the community, AOPA process and requirements, wildlife, nuisances, roads, and property values.

In response to these concerns, the agent for the applicant stated that "... most of the comments pertain to topics outside the scope of this NRCB permit application, so this of course would not be the forum to respond to any of those comments... otherwise, we are choosing to not respond to the public responses..."

After the responses were received, I forwarded them, as applicable, to representatives of Alberta Environment and Parks (AEP: biologists, water licensing), Alberta Agriculture, Forestry and Rural Economic Development (AFRED, dead animal disposal), Alberta Health Services (AHS), and the MD of Willow Creek (see NRCB Operating Policy 2016-7; Approvals, parts 8.8, 8.9, 8.10, 8.11, and 8.12).

Below is a summary of the concerns received and a summary of the responses from AEP, AFRED, AHS, Alberta Transportation, and the MD of Willow Creek as applicable. My deliberations on those concerns follow. The respondent letters correspond to those identified in the first table in Appendix B, above.

Claimed effect(s) or concern(s)	Respondent(s)
1. Impacts to surface water and groundwater: - contamination of local water bodies including Twin Valley Reservoir, an adjacent dam, and ponds - increased demand on water sources - concerns that groundwater resources will be negatively impacted (supply, quality)	A, B, C and D

Response from – AEP

A copy of the application and the concerns related to surface water and groundwater were forwarded to Jeff Gutsell, a hydrogeologist with AEP. The written response from Mr. Gutsell related to the application is discussed in part 3 above.

I discussed the concerned responses to the application with Mr. Gutsell. In summary, he stated that his response to those concerns was largely the same as the response he provided to the application previously (he was not aware of any applications for water licensing and that a license was needed before using water).

Approval Officer considerations

Surface water concerns

Under Section 7(1)(c) of the Standards and Administration Regulation (SAR), the proposed barn complex (a manure storage facility (MSF) and manure collection area (MCA)) must not be constructed within 30 m of a common body of water. As noted in Technical Document LA22029 the closest surface water body to the proposed barn complex is an apparent wetland located approximately 270 m to the northeast.

Groundwater concerns

As noted in Technical Document LA22029 the applicant has proposed to utilize a concrete liner for the barn complex that meets AOPA’s groundwater protection requirements.

AOPA also includes another protection for groundwater, the 100 m setback requirement from new manure collection areas and manure storage facilities to water wells. As noted in Technical Document LA22029, there are no reported water wells within 100 m of the proposed poultry barn complex.

Water supply concerns

The NRCB’s Approvals Policy (Operating Policy 2016-7, part 8.10) states that approval officers will not consider water supply concerns when reviewing an AOPA application other than ensuring that the applicant signs a *Water Act* declaration in their Part 2 application. AOPA applications include options where, in this case, applicants can either link or delink their *Water Act* and AOPA applications. (*Water Act* applications are administered by AEP.) In this case, the applicant signed a declaration where they want their AOPA application processed separately from the requirements of licensing under the *Water Act*.

Claimed effect(s) or concern(s)	Respondent(s)
2. Impacts to health: - decreased air quality (dust) - the proposed CFO creates potential for an avian flu outbreak which poses a risk to local families’ health	B

A copy of the application and the concerns related to health were forwarded to AHS. To date I have not received a response from AHS on these matters.

Approval Officer considerations

AOPA and its regulations do not specify allowable effects on human health. For this reason, I forwarded these concerns and claimed impacts on to AHS. This was done in accordance with the NRCB’s Approvals Policy (Operational Policy 2016-7, part 8.8). The policy goes on to state that approval officers will not, on their own initiative, consider the health effects of CFO when reviewing approval applications.

The effects of a CFO on human health may be relevant to my consideration of “effects on the community.” As explained in part nine of the decision summary, above, following NRCB policy, I begin with the presumption that the effects of the proposed CFO on the community are acceptable because the application meets the land use provisions of the municipal development plan, and the municipality does not preclude CFOs from this area under its land use bylaw. Given this, this presumption is not rebutted.

Claimed effect(s) or concern(s)	Respondent(s)
3. Manure spreading - contaminated runoff from manure spreading	B

Approval Officer considerations

Section 24 of the Standards and Administration Regulation (SAR) provides four options for nutrient and manure management. This application opted for the fourth option, where an applicant seeks to satisfy an approval officer that they have access to sufficient land base to apply their manure for the first year following the granting of the application.

For this application 177 hectares of land in the brown soil zone is required for manure spreading. The applicant has provided information in their application indicating that they have access to 220 hectares of land in the brown soil zone for manure spreading. I reviewed air photos of the proposed manure spreading lands and calculated the available area to account for setbacks to bodies of water, residences, and related features that would be challenging for manure spreading. I identified that 180 hectares of the proposed fields are available for manure spreading. Based on this, the application meets the land base requirement in section 24(3) of the regulation.

Other portions of section 24 and section 25 of the SAR includes nutrient loading limits to ensure that the soil is not overloaded with nutrients. Provided that the requirements of these sections are met, the risk of over saturating the land with nitrates and salts is low.

If a person or party has concerns regarding manure collection or storage facilities, spreading or other CFO-related issues, those concerns can be reported to the NRCB's 24 hour reporting line (1-866-383-6722). The call will be followed up on by an NRCB inspector. Parties can also call any NRCB office during regular business hours if they have questions about permit conditions or ongoing AOPA operational requirements.

Claimed effect(s) or concern(s)	Respondent(s)
4. Negative effects on the community: - impacts to the Twin Valley Reservoir recreation area - the proposed development (referring to a colony split) will result in unacceptable land use zoning changes (agricultural to village)	B

Approval Officer considerations

As noted previously, the proposed CFO facilities meet the AOPA requirements related to the protection of groundwater and surface water. The CFO also has access to adequate land base for manure spreading. Accordingly, it is presumed to pose a low risk to surface water and groundwater. The proposed CFO is not located in a CFO exclusion zone in the MD of Willow Creek's municipal development plan. In addition to this, the proposed CFO is not located within the CFO exclusion zone identified in the Vulcan County and MD of Willow Creek Intermunicipal Development Plan. Accordingly, I am of the opinion that it should not impact the Twin Valley Reservoir recreation area that is located three kilometers away.

Land use zoning is a matter administered by the local municipality (the MD of Willow Creek) not the NRCB under the AOPA.

Claimed effect(s) or concern(s)	Respondent(s)
5. Concerns with the application or AOPA processes and requirements: - facilities are stated but not applied for (human waste lagoon, animal waste lagoon), no residences - a collective review should be held for livestock and human residences - public opinion should be considered, everyone locally is opposed - the map part of the Part 2 application does not include all wells on the site, there are springs and a pond missing too	A, B, C and D

Approval Officer considerations

The considerations of approval officers as defined by the AOPA are limited. An approval officer cannot judge a CFO application that is yet to be submitted such as a possible future dairy barn or its associated liquid manure storage. If and when a CFO owner or operator seeks to permit additional facilities not included in this application, that future application will need to be judged on its own merits at that time. In addition, non-CFO related developments such as residential developments are not permitted under AOPA.

As noted in part nine above, AOPA requires approval officers to consider the effects on the community that a CFO might have. This application meets the land use provisions of the MD of Willow Creek’s municipal development plan. In addition, as noted in Appendix A, the application also meets the land use provisions of the Intermunicipal Development Plan between the MD of Willow Creek and Vulcan County.

As in Technical Document LA22029, pages six and eight, the application also meets the required setbacks to springs, water wells, and surface water bodies.

Claimed effect(s) or concern(s)	Respondent(s)
6. Impacts to wildlife: - avian flu outbreak(s) associated with the proposed livestock will affect local migratory birds - fish in the reservoir will be affected	A, B and C

Response from – AEP (Fish and Wildlife)

Brett Boukall, a senior wildlife biologist with AEP, indicated that avian influenza viruses associated with wild birds can pose a significant risk to wild and domestic birds. He indicated that there were extensive mortalities in wild birds and in poultry in 2022 and that the risk of events of this nature occurring will always be present. He went on to state that in light of this and the proposed CFO’s proximity to the Little Bow River and Twin Valley Reservoir, it is

recommended that strict bio-security measures should be incorporated into the operation and management of the proposed facility.

Approval Officer considerations

The NRCB’s Approvals Policy (Operational Policy 2016-7, part 8.12) states that approval officers will not consider whether a proposed development complies with legislation and regulations other than AOPA, except if that legislation has been delegated to the NRCB or if compliance with that legislation is a benchmark for compliance with AOPA.

In this case, avian flu out breaks, affects on migratory birds, and the status of fish in a reservoir are not delegated to the NRCB, nor are they benchmarks for compliance with AOPA.

Claimed effect(s) or concern(s)	Respondent(s)
7. Nuisance effects: - smell or odours - increase in noise - dust - increases in insects	A, B and C

Approval Officer considerations

In the NRCB’s Approvals Policy (Operational Policy 2016-7, part 8.8.1) approval officers will presume that if a proposal for a new CFO meets AOPA’s MDS requirements, the nuisance effect on nearby residences is acceptable. As noted above and in Technical Document LA22029 this application meets the AOPA MDS requirements.

I realize that some of the neighbours to the CFO may still experience some CFO related nuisance impacts from time to time. These should be limited and of short duration. Many 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 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.

Claimed effect(s) or concern(s)	Respondent(s)
8. Impacts from road use: - increase in traffic - negative impacts to municipally controlled roads - increase in road dust	A, B and D

The MD of Willow Creek has jurisdiction over the gravel roads surrounding the proposed CFO. I forwarded the concerns related to impacts to a representative of the MD of Willow Creek on August 3, 2022. To date I have not received correspondence from the MD on this matter.

Approval Officer considerations

Traffic and maintenance requirements on the county roads will change over the years due to the development of a CFO. However, the county has jurisdiction over local roads, not the NRCB. I note how the MD's response to the application requested a road use agreement between the applicant and the MD.

As noted in this decision summary and in Part 8.9 of the Approvals Policy (NRCB Operational Policy 2016-7) "approval officers will not include conditions requiring operators to enter into road use agreements with the municipality."

Claimed effect(s) or concern(s)	Respondent(s)
9. Impacts to property values	A, B and D

Approval Officer considerations

In several review 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 of permit applications. According to the board, impacts on property values are a land use issue which is a "planning matter dealt with by municipalities in municipal development plans and land use bylaws." (See, Board Decision (Pigs R Us) RFR 2017-11/BA17002, page 6.)

APPENDIX D: Explanation of conditions in Approval LA22029

Approval LA22029 includes several conditions, discussed below:

a. Construction Deadline

Parkland Colony proposes to complete construction of the proposed barn complex by November 1, 2025. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 1, 2025 is included as a condition in Approval LA22029.

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 LA22029 includes conditions requiring the concrete used to construct the liner of the manure collection and storage portion of the poultry barn complex (the combined layer and pullet barns with associated manure storages) to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas." In addition, a completion report, prepared by a qualified third party, must be submitted to the NRCB confirming the specifications of the above liner requirements.

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 LA22029 includes a condition stating that Parkland Colony shall not place livestock or manure in the manure storage or collection portions of the new poultry barn complex until NRCB personnel have inspected the barn complex and confirmed in writing that it meets the approval requirements.