



Decision Summary LA22037

This document summarizes my reasons for issuing Approval LA22037 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22037. 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 June 29, 2022, Fairlane Hutterian Brethren and Rose Bank Farming Co. Ltd. (Rose Bank Farming) submitted a Part 1 application to the NRCB to construct a new broiler breeder barn (137.2 m x 109.7 m (450 ft. x 360 ft.)) with the capacity for 27,500 broiler breeders.

The Part 2 application was submitted on July 26, 2022. On August 2, 2022, I deemed the application complete.

a. Location

The proposed CFO is located at W½ 27-5-14 W4M in the County of Forty Mile, roughly 9 km south of the Hamlet of Skiff, AB. The terrain is flat to gently sloping southwards towards Crow Indian Lake.

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
- 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 0.5 miles. (The NRCB refers to this distance as the “affected party radius.”). The CFO is also not located within 100 m of a river, stream, or canal.

A copy of the application was sent to the County of Forty Mile, which is the municipality where the CFO is to be located.

The NRCB gave notice of the application by public advertisement in a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Forty Mile Commentator on August 2, 2022. The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing. As a courtesy, 15 letters were sent to people identified by the County of Forty Mile as owning or residing on land within the affected party radius.

3. Notice to other persons or organizations

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

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

I received responses from AEP and Alberta Transportation. AEP asked that the applicant confirm water allocation with their department. AEP's response has been forwarded to Rose Bank Farming for their information and action. Alberta Transportation confirmed an exemption for permitting has been issued for the development.

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 County of Forty Mile'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/protective layers of manure storage facilities and manure collection areas

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

7. Responses from the 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 County of Forty Mile is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

I did not receive a response from the County of Forty Mile. At any rate, the application's consistency with the County of Forty Mile'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." The NRCB received no responses from individuals or other parties.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require groundwater or surface water/ monitoring for the facility. In this case a determination was made that monitoring is not required.

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.

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

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

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP land use provisions 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 construction is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA22037 specifies the cumulative permitted livestock capacity as 27,500 chicken broiler breeders and permits the construction of the broiler breeder barn.

Approval LA22037 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 LA22037 includes conditions that generally address construction deadline, document submission, and construction inspection. For an explanation of the reasons for these conditions, see Appendix A.

11. Conclusion

Approval LA22037 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22037.

September 22, 2022

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA22037

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may grant an approval only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

Rose Bank Farming’s confined feeding operation (CFO) is located in the County of Forty Mile and is therefore subject to that county’s MDP. The county adopted the latest revision to this plan on September 2009 under Bylaw 9/2009. The portions of that MDP that are applicable to this application are discussed below.

Part 3.2 of the MDP, titled “Intensive Agriculture”, is most relevant to CFOs. As relevant here, section 3.2(b) of the MDP states that, pursuant to AOPA, the county “may designate areas where confined feeding operations are to be encouraged or discouraged”. Section 3.2(c) then states that CFOs “will be excluded from the areas shown on Figure 3.1 unless otherwise approved by the County”. This section likely refers to Map 3.1, titled: Confined Feeding Operation Exclusions Area Map. Rose Bank Colony’s CFO is not within any of the exclusion zones marked on this map.

One other relevant section is 3.2(d) which states: “The County expects developers to implement those technologies that are most effective at reducing adverse effects on the environment, especially with respect to odour and groundwater contamination.” By referring to acceptable technologies rather than acceptable land uses, this section is likely not a “land use provision” and therefore is likely not relevant to my MDP consistency determination. At any rate, regulations under AOPA require a minimum distance separation to nearby residences, which is a method of reducing conflicts due to nuisance and odour. The regulations also include several requirements to protect groundwater. The application meets or exceeds all AOPA requirements and I therefore conclude that it is consistent with section 3.2(d) of the MDP.

For these reasons, I conclude that the application is consistent with the land use provisions of the county’s MDP.

The CFO is also subject to the County of Forty Mile Land Use Bylaw #10/2009 (LUB) which is referenced in the MDP. Under that bylaw, the subject land is currently zoned as Agricultural District. CFOs are not listed as either a permitted or discretionary use under this zoning. However, the general purpose of this district is “to permit activities associated with the primary production of agricultural goods and services,” which implicitly includes CFOs. In addition, Schedule B of the LUB, titled “Protection of existing confined feeding operations,” makes it clear that the county contemplates the occurrence of CFOs within the Agricultural District. Based on these provisions, I conclude that the county considered CFOs to be an acceptable land use within the Agricultural District, notwithstanding that CFOs are not expressly listed as either permitted or discretionary land uses.

APPENDIX B: Explanation of conditions in Approval LA22037

Approval LA22037 includes several conditions, discussed below:

a. Construction Deadline

Rose Bank Farming proposes to complete construction of the proposed new broiler breeder barn by November 30, 2025. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2025 is included as a condition in Approval LA22037.

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 LA22037 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the broiler breeder barn 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.”
- b. Rose Bank Farming to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the broiler breeder barn.

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 LA22037 includes a condition stating that Rose Bank Farming shall not place livestock or manure in the manure storage or collection portions of the new broiler breeder barn until NRCB personnel have inspected the barn and confirmed in writing that it meets the approval requirements.