



## Decision Summary LA22041

This document summarizes my reasons for issuing Authorization LA22041 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22041. 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 authorization. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca).

### 1. Background

On August 10, 2022, Sunrise Hutterian Brethren (Sunrise Colony) submitted a Part 1 application to the NRCB to construct a dairy barn (72.2 m x 77.7 m) at an existing CFO. The proposed dairy barn will replace an existing facility which Sunrise Colony proposes to repurpose for hay storage. There will be no increase in livestock or annual manure production as part of the application.

The Part 2 application was submitted on August 10, 2022 and I deemed the application complete on August 11, 2022.

#### a. Location

The existing CFO is located at NW 22-5-9 W4M in the County of Forty Mile, roughly eight kilometres southwest of Etzikom, Alberta. The terrain is undulating, with a general slope toward the east and toward an intermittent watercourse that is known locally as Etzikom Coulee that runs into Pakowki Lake. The lake is about 350 m from the nearest CFO facility and an unnamed ephemeral draw which drains towards the lake is located approximately 50 m from the CFO.

#### b. Existing permits

The CFO is already permitted under Approval LA08015 and LA07026 and Authorization's LA16049 and LA14011.

### 2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are "affected" by an authorization application. Section 5 of AOPA's Part 2 Matters Regulation defines "affected parties" as:

- the municipality where the CFO is located or is to be located
- 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 municipality entitled to divert water from that body within 10 miles downstream

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

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

Under NRCB policy, 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), Alberta Agriculture, Forestry and Rural Economic Development (AFRED), and Alberta Transportation.

I received responses from AEP and Alberta Transportation. No concerns were raised in relation to the application.

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

I have determined that the proposed construction 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.)

### **5. AOPA requirements**

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

- 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 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 8, the application meets all relevant AOPA requirements.

### **6. Responses from municipality**

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 facility is located within its boundaries.

Mr. Nathan Ogden, planning advisor/ development officer, provided a written response on behalf of the County of Forty Mile. In his response he indicated there were no other planning documents pertaining to the application, and that production of livestock is a permitted use in the applicable land use zone. Mr. Ogden also listed the applicable setbacks from the County Land Use Bylaw and asked that a front setback of 40 m from the center of any road allowances, 15 m from any quarter section boundaries, and 100 m from any road allowance intersections be maintained.

My determination of the applications consistency with the county's municipal development plan is discussed in Appendix A, attached.

## **7. Environmental risk of facilities**

New MSF 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 monitoring for the facility. In this case a determination was made that monitoring is not required.

When reviewing a new authorization 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 this case, the risks posed by Sunrise Colony's existing CFO facilities were assessed in 2016 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

## **8. Terms and conditions**

Authorization LA22041 permits the construction of the proposed dairy barn.

Authorization LA22041 contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization LA22041 includes conditions that generally address construction deadline, document submission, construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix B.

## 9. Conclusion

Authorization LA22041 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22041.

Authorization LA22041 must be read in conjunction with Sunrise Colony's previously issued Approvals LA08015 and LA07026 and Authorizations LA16049, and LA14011, which remain in effect.

September 29, 2022

(original signed)  
Joe Sonnenberg  
Approval Officer

### Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA22041

## **APPENDIX A: Consistency with the municipal development plan**

Under section 22 of AOPA, an approval officer may grant an authorization only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

Sunrise Colony’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. Sunrise 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 and surface water. 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 Authorization LA22041**

Authorization LA22041 includes several conditions, discussed below:

### **1. New conditions in Authorization LA22041**

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

Sunrise Colony proposes to complete construction of the proposed new dairy 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 Authorization LA22041.

#### **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, Authorization LA22041 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the dairy 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. Sunrise Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the dairy 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. Authorization LA22041 includes a condition stating that Sunrise Colony shall not place livestock or manure in the manure storage or collection portions of the new dairy barn until NRCB personnel have inspected the dairy barn and confirmed in writing that it meets the authorization requirements.

#### **c. Decommissioning**

As noted in part 1 of this decision summary, Sunrise Colony proposes to repurpose their existing dairy barn for hay storage. A condition has been included in the permit requiring the existing dairy barn to be decommissioned in accordance with Agdex 096-90: Closure of Manure Storage Facilities and Manure Collection Areas within 1 year of populating the proposed barn.