

Decision Summary LA22040

This document summarizes my reasons for issuing Approval LA22040 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22040. 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 August 5, 2022, A&D Cattle Ltd. (A&D Cattle) submitted a Part 1 application to the NRCB to construct a new 2,500 head beef finisher CFO at SE 27-08-26 W4M. The applicant proposes to construct feedlot pens (250 m x 250 m) and a catch basin (75 m x 75 m x 1.5 m). These facilities are proposed to be constructed approximately 200 m south of the location that was proposed in application LA21037 and are to be located just outside of an exclusion zone established under the intermunicipal development plan (IDP) between the M.D. Willow Creek and the Town of Fort Macleod.

The Part 2 application was submitted on August 18, 2022. On September 7, 2022, I deemed the application complete.

As background, A&D Cattle Ltd. had previously applied to construct a beef CFO adjacent to the application area at NE 27-8-26 W4M (NRCB Application LA21037). This application was denied by the NRCB on April 1, 2022 on the grounds of inconsistency with the IDP between the Town of Fort Macleod and the M.D. of Willow Creek, as the proposed CFO was to be located within a CFO exclusion zone. The NRCB Board upheld the denial, following a review hearing. The Board decision was issued on July 27, 2022 (Review Decision 2022-09 / LA21037).

The new CFO proposed in application LA22040 is located on the quarter section immediately south of the previously proposed CFO location. The SE 27-08-26 W4M falls outside the IDP's exclusion zone.

Since the issuance of denial LA21037, it was brought to my attention that there has been use of the NE 27-08-26 W4 for the purposes of confining and feeding livestock. I understand the livestock are not part of a cow-calf operation. Depending on the number of livestock, this appears to contravene the rules and regulations set out in the AOPA; and once the CFO on the SE 27-08-26 W4 is constructed, the contravention may not depend on the number of livestock. I discussed possible solutions to address this contravention of AOPA with the NRCB compliance division. In order to reduce duplication of effort between NRCB divisions, I will address this aspect in the following paragraphs in conjunction with this application, and I have added an operating condition (see Appendix E for explanation).

In my opinion, the IDP exclusion zone referenced in the denial of LA21037 constitutes good planning practices, and the intent of the IDP was endorsed by the NRCB Board in Review Decision 2022-09. The proposed CFO is located only approximately 200 metres from the rejected site. In addition, the field the proposed CFO is to be constructed on is farmed as a continuous area, with no dividing fence, and in reality, extends from outside of into the CFO exclusion zone on the NE 27-08-26 W4. Optically the property lines and field boundaries, are not distinguishable on the ground. I have determined these factors make these parcels directly adjacent to one another. I note that for adjacent facilities, establishing that a livestock operation is not a CFO is rigorous (see NRCB Operational Policy 2015-1 Distinguishing Confined Feeding Operations and Seasonal Feeding and Bedding Sites (for Cattle Operations) (revised July 5, 2018) at part 4.3 (NRCB SFBS Policy). This is because adjacent facilities contribute incrementally to the nuisance and environmental risks posed by CFOs.

CFO's have the potential to occur over multiple land locations and are not necessarily defined strictly on property boundaries. In my determination, the CFO exclusion zone prevents any use the NE 27-08-26 W4 for CFO or CFO ancillary use. If the co-permit holders intend to house livestock on the NE 27-08-26 W4, in a manner that constitutes a "confined feeding operation" as defined in AOPA, they must abide by AOPA's provisions relating to CFOs. Due to the facts I mentioned above, in my view any livestock confined for growing, sustaining, finishing or breeding by means other than grazing on NE 27-08-26 W4 will be considered as additional to, and part of, the CFO permitted by this Approval LA22040. To evade this consideration, the operator would need to demonstrate to the NRCB that the animals are not a "confined feeding operation" or are being held independently of the CFO on the SE 27-08-26 W4.

To be clear, this decision does not relate to uses such as grazing or operating within the NRCB's SFBS Policy.

a. Location

The proposed CFO is located at SE 27-08-26 W4M in the Municipal District (M.D.) of Willow Creek, roughly 2.5 km south of the Town of Fort Macleod. The terrain is gently undulating with a slope towards an ephemeral creek located approximately 130 m to the southeast of the CFO.

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 M.D. of Willow Creek, which is the municipality where the CFO is to be located. The Town of Fort Macleod was also made aware of the application both by the M.D. of Willow Creek and by the NRCB directly upon request of the M.D. of Willow Creek.

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 Macleod Gazette on September 7, 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, 32 letters were sent to people identified by the M.D. 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. I received written responses from all of the above agencies. Consideration of the responses from AHS and AEP is found at Appendix D to this decision summary.

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 M.D. of Willow Creek's municipal development plan and the IDP which exists between the Town of Fort MacLeod and the Municipal District of Willow Creek. (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, and with the conditions included in the approval, the proposed CFO:

- Meets the required AOPA setbacks from nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owner of that residence has provided signed written waivers of the MDS requirement to their residence
- 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 protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 10 and Appendix E, the application meets all relevant AOPA requirements. The conditions that are required to address the AOPA requirements around protection of surface water and groundwater are discussed in the following parts of this decision summary.

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 M.D. of Willow Creek is an affected party (and directly affected) because the proposed CFO is located within its boundaries. The Town of Fort MacLeod is also a directly affected municipality as they are a party to an IDP which plan area encompasses the land location proposed for CFO development.

Ms. Cindy Chisholm, a development officer with the M.D. of Willow Creek, provided a written response on behalf of the M.D. of Willow Creek. Ms. Chisholm stated that the M.D. has concerns relating to water licensing, and setbacks to roads and approaches. The application’s consistency with the M.D. of Willow Creek’s municipal development plan is otherwise addressed in Appendix A, attached. The NRCB does not have jurisdiction over water licensing and has referred the application to AEP who holds licensing authority for that project component. In response to the concerns relating to setbacks, a condition is included in the approval to ensure these planning requirements are met.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received responses from 7 individuals.

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered a directly affected (See NRCB Operational Policy 2016-7: Approvals, part 6.2). Martin van Huigenbos provided an MDS waiver and is therefore considered to be a directly affected party.

Of the seven people who submitted responses, five own or reside on land within the 1.5 mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

Two of the respondents do not own or reside on land within the 1.5 mile radius for affected persons. I do not consider these individuals to be directly affected by the approval application. Appendix B sets out my reasons for determining which respondents are directly affected.

The directly affected parties raised concerns regarding:

- Odour, dust, and nuisance impacts
- Potential for aquifer contamination
- Location in relation to NRCB denial LA21037
- Water use and licensing
- Property values
- Manure management
- Surface water recontouring
- Precedence and the potential for more CFO's in the area

These concerns are addressed in Appendix C. Conditions have been attached to the approval to address concerns about contamination of groundwater and surface water.

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 additional confirmation or conditions to ensure the environment is adequately protected.

In this case a determination was made that the subsoil proposed as a protective layer varies in thickness and that coarse materials are present with depth. There are also shallow groundwater resources in the area (see TD LA22040 for further discussion). These factors could combine to act as a conduit for groundwater contamination if the CFO is constructed incorrectly.

In response to this, I have included additional conditions to the permit in order to ensure the environment is adequately protected by the application. See Appendix E for an explanation of the conditions which accompany Approval LA22040.

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 M.D. of Willow Creek's land use bylaw (LUB) and noted that the application does not meet these setbacks. On that basis, I am including a condition in the Approval that written proof, provided by an independent qualified third party, must be submitted to the NRCB, that the as built feedlot meets the setback requirements as contained in the municipalities land use bylaw.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments. AEP has not made me aware of statements of concern submitted under section 73 of the Environmental Protection and Enhancement Act or section 109 of the

Water Act in respect of the subject of this application. I received a response from AEP indicating that A&D Cattle must apply for a water licence.

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 on the environment are acceptable because the application meets all of AOPA's technical requirements. To ensure these requirements are met I have also included additional conditions in the Approval relating to the naturally occurring liner. In my view, this presumption is not rebutted by any information that I have considered in this application.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP and other pertinent planning documents (in this case the IDP between the M.D. of Willow Creek and the Town of Fort Macleod) then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted and the directly affected parties' concerns have been addressed within the bounds of AOPA.

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 municipal development plan and applicable IDP (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA22040 specifies the cumulative permitted livestock capacity as 2,500 beef finishers and permits the construction of the feedlot pens and catch basin.

Approval LA22040 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 LA22040 includes conditions that generally address construction deadlines, monitoring, document submission, water table and groundwater protection, and construction inspection. For an explanation of the reasons for these conditions, see Appendix E.

11. Conclusion

Approval LA22040 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22040.

November 21, 2022

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with municipal planning documents
- B. Determining directly affected party status
- C. Concerns raised by directly affected parties
- D. Responses from referral agencies
- E. Explanation of conditions in Approval LA22040

APPENDIX A: Consistency with municipal planning documents

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

However, recently in Decision 2022-02 Double H Feeders Ltd., the NRCB Board directed approval officers away from a narrow reading of section 20 of AOPA. An approval officer should determine an application’s consistency with not just the MDP, but also the IDP (if one applies). Given changes to the hierarchy of statutory plans under the *Municipal Government Act*, the Board suggested that ignoring an applicable IDP could lead to absurd outcomes in the event of a conflict between an MDP and an IDP.

In this case, application LA22040 is consistent with the land use provisions of the MDP of the M.D. of Willow Creek and also located within the area covered by an intermunicipal development plan between the M.D. of Willow Creek and Town of Fort Macleod.

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 provisions are commonly referred to as “tests or conditions.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Municipal Development Plan

A&D Cattle’s proposed CFO is located in the M.D. of Willow Creek and is therefore first subject to that municipality’s MDP. The M.D. of Willow Creek adopted the latest revision to this plan on August 2019, under Bylaw #1841. The parts and policies of the MDP relevant to this application are discussed below.

Part 2 states that agriculture is a predominant land use in the M.D. 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 M.D. shall establish guidelines with regards to the NRCB for the regulation and approval of CFOs within the M.D. These guidelines are found in section 9.

Part 2 and policy 2.3 likely aren’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 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]

A&D Cattle’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). Areas of local significance are not presented 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. I am of the opinion that the application is consistent with this provision; I am not aware of information which refutes this.

(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 M.D. of Willow Creek as owning or residing on land within the affected party radius of 1.5 miles, and gave public notice in the Macleod Gazette. 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 MDS for A&D Cattle’s proposed CFO and, with a waiver, the application meets 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; and

As discussed in Technical Document LA22040, A&D Cattle’s new 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. Based on this information, the application is consistent with this aspect of the provision.

(f) Restricting development in any wetland or riparian area

The proposed CFO is not located in a wetland or riparian area, and it 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 M.D. of Willow Creek's MDP.

Intermunicipal development plan

The "Intermunicipal Development Plan Town of Fort Macleod and Municipal District of Willow Creek No. 26" (IDP) was implemented under Bylaw No. 1949 and Bylaw 1922 on March 9, 2022.

Section 3 of the IDP addresses confined feeding operations. Section 3.1 states:

"New confined feeding operations (CFOs) and expansions to existing permits which would increase livestock numbers are not permitted within the Intermunicipal Development Plan Confined Feeding Operation Policy Area (CFO Exclusion Area) as illustrated on Map 3 – CFO Policy Area".

The proposed CFO is not located within the CFO Exclusion Area identified on this map as it is situated approximately 200 m south of this area. As such, the application is consistent with the IDP. Because of this close proximity and being mindful of the intentions behind the CFO exclusion area, I have included an operating condition in Approval LA22040 to ensure the CFO does not encroach into the CFO Exclusion Zone.

Land Use Bylaw

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 M.D. of Willow Creek's 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 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.

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. Regardless, this application is for a new CFO and does not include a proposal to subdivide an existing land parcel.

Section 3 of the Rural General part of the bylaw lists several setbacks. The Approval contains a condition which will ensure the 22.9 m road and 6.1 m other adjacent property line setback requirements are met.

For these reasons, I conclude that, with the condition as included in this approval, the proposed CFO is consistent with the land use bylaw.

APPENDIX B: Determining directly affected party status

The following individual qualifies for directly affected party status because they own a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing:

- Martin van Huigenbos.

See NRCB Operational Policy 2016:7 – Approvals, part 6.2

The following individuals qualify for directly affected party status because they submitted a 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 Operations, Part 2 Matters Regulation:

- Bryan and Joan Blunden
- Dwain Lewis
- Wade and Kaitlyn Conner

See NRCB Operational Policy 2016:7 – Approvals, part 6.2.

A person who 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 application. The following individuals that submitted a response to the application may fall under this category:

- Ronald and Laurie Conner

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.

Ronald and Laurie Conner are indicating the project will impact them as they ranch in the area and they get their water from wells. They are not located within the affected party radius but otherwise raised very similar concerns to the directly affected individuals identified above. They raised concerns relating to water, groundwater, wetlands, erosion, and unauthorized construction.

Water allocation appears to be the primary concern. As identified elsewhere, water licensing (and therefore allocation) falls outside of what I am to consider under AOPA, and outside of the NRCB’s mandate. Water licensing falls under the Water Act which is administered by AEP. The applicant is required to ensure that they have access to sufficient licensed water for their CFO. The other concerns raised also lack any details which in my determination, adequately assert the project impacts outside of the radius as prescribed in the AOPA.

Because of the limited reasons provided, I have determined that the Conners have not met the burden of proof to be considered directly affected. Besides stating they ranch in the area, they have not established a plausible chain of causality between the proposed CFO and the concerns they raise. I therefore conclude that these individuals are not directly affected under AOPA.

The Conner's also requested inclusion as directly affected under *section (8) Horticulture and Intensive Agriculture Operations* of the municipalities land use bylaw (*Bylaw #1826*). Municipal planning requirements for intensive livestock operation applications require a 2 mile notification distance. As this application is for an above AOPA threshold operation, In my view, the rules and regulations in the *Agricultural Operation Practices Act* apply rather than what is stated in the land use bylaws. As I used the prescribed notification distance in the act, I have determined this argument does not give me the authority to include the Connor's as directly affected by the application.

APPENDIX C: Concerns raised by directly affected parties

Concerns from directly affected parties

- Odour, dust, and nuisance impacts
- Potential for aquifer contamination
- Location in relation to NRCB denial LA21037
- Water use and licensing
- Property values
- Manure management
- Surface water recontouring
- Precedence and the potential for more CFO's in the area

Odour, dust and nuisance impacts

I have grouped these concerns together as in my interpretation they relate to the potential for nuisance impacts to arise from the proposed CFO. As noted in Technical Document LA22040, the proposed CFO meets the minimum distance separation requirement under AOPA to all residences aside from two) one owned by applicant and other provided an MDS waiver). AOPA's minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. The NRCB generally considers the MDS as the distance beyond which the odours and other nuisance effects of a CFO are considered to be acceptable. That said, people residing beyond the MDS may still experience odours and other nuisance impacts from a CFO from time to time.

In addition to odours from the CFO itself, odours and other nuisance impacts are also likely to occur when manure spreading takes place. However, the frequency of these exposures will normally be limited and of short duration.

In order to limit the nuisance impact of manure application on direct seeded or tame forage land, section 24 of the Standards and Administration Regulation under AOPA precludes manure spreading without incorporation within 150 metres of residences. Manure that is spread on conventionally tilled land must be incorporated within 48 hours. Setbacks and incorporation can help to minimize odours from manure spreading.

Potential for aquifer contamination

Concerns were raised that the application would contaminate the groundwater resources and water table in the area. As discussed in section 6 of the above decision summary, the application meets AOPA requirements regarding liners and protective layers for manure storage and collection facilities. In addition, all other AOPA requirements are met and additional conditions have been included in the Approval to ensure groundwater is adequately protected (e.g. see condition #5, #6 and #7 in Approval LA22040).

Water use and licensing

Alberta Environment and Parks (AEP) is responsible for licencing the use of surface water and groundwater in the province. Water users that do not hold an AEP water license have to obtain a water license from AEP. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form. (This declaration is on page 5 of Technical Document

LA22040. See also NRCB Operational Policy 2016-7: Approvals, part 8.10.) AEP has confirmed a license would be required for the project.

Location in relation to NRCB denial LA21037

As discussed in Section 1 of Decision Summary LA22040, the proposed CFO is to be located approximately 200 metres from the site of a previously denied application. The NRCB assesses applications for CFO's under AOPA on their own individual merit. Approval officers consider all AOPA regulations as well as the NRCB's operational policies. As such, past decisions in the region concerning other applications have little bearing on this application.

However, Section 1 of this decision summary does contain additional discussion relating to use of the adjacent land parcel for any CFO purposes to uphold the intentions of the IDP which exists between the Town of Fort Macleod and the Municipal District of Willow Creek. Taking this into account, this concern has been adequately addressed by the application.

Property values

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.)

Manure management

AOPA's Standards and Administration Regulation (section 10) requires that CFOs are able to store a minimum of 9 months of manure production. For feedlot operations, this manure can be stored within permitted pens or at another site following AOPA's regulations for short term manure storage (section 5). AOPA short term manure storage rules allow for manure to be stored for a maximum of 7 months over a 3-year period. Short term manure storage sites are not required to be permitted but must meet certain requirements designed to protect both surface and groundwater and to minimize nuisance. Should a party have concerns with respect to the application or storage of manure they can contact the NRCB's 24-hour reporting line by calling 1-866-383-6722 and an inspector will follow up on their concerns.

CFOs are also required to meet the manure spreading setbacks and to keep manure spreading and soil sampling records for the past five years and to provide them to the NRCB upon request. Together, the above requirements minimize the potential for manure constituents to leave the land on which they are applied, enter water bodies, to impact soil in adjacent fields, and to minimize impacts on the surrounding environment.

Surface water recontouring

Concerns about the CFO's location in relation to surface water drainage contours and the associated risk of surface water contamination was raised as a concern. Section 8 of the Standards and Administration Regulation under AOPA requires that manure storage facilities be at least one meter above any 1:25 year maximum flood level, or if that is not known, the highest known flood level. No manure storage facilities are proposed below this level. Also as noted in part 8 of the decision summary, all of the CFO's proposed facilities are presumed to pose a low risk to surface water as AOPA requirements are met by the application.

If, during the CFO's ongoing operation, the public has a concern related to manure contaminated runoff, they can contact the NRCB's reporting line at 1-866-383-6722 and an NRCB inspector will follow up.

Precedence and the potential for more CFO's in the area

AOPA requires CFOs to meet specific requirements to protect the environment and minimize nuisance impacts. In addition, it also requires approval officers to consider effects on the community and environment as well as the appropriate use of land. NRCB policy on these issues is found in Operational Policy 2016-7: Approvals, part 8.7.3.

AOPA does not expressly require approval officers to consider the cumulative effects of proposed developments together with those of other existing CFOs or other activities in the area, and the NRCB's Board members have directed approval officers to disregard cumulative effects in their permitting decisions. For example, 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.)

NRCB policy presumes that an application meets the "acceptable community effects" and "appropriate use of land" if the application is consistent with the MDP, IDP (if applicable) and the LUB. These provisions were discussed in Appendix A, above. I determined the application to be consistent with the provisions of the MDP. Future applications in the area will be assessed on their own merit.

APPENDIX D: Responses from referral agencies

a. Alberta Health Services (AHS)

In their response, a public health inspector raised concerns relating to water wells, surface water drainage, potential for groundwater contamination, manure spreading lands, manure dust, odour, and water allocation.

As AOPA requirements are met, and additional conditions have been included in the Approval to ensure the adequate protection of surface water and groundwater, I have determined these concerns have been adequately addressed by the application. I have also addressed these concerns, as discussed above in Appendix C.

Compliance issues relating to nearby CFO's are not part of my consideration in issuance of this permit. If AHS has a concern relating to any CFO, they can contact the NRCB's reporting line at 1-866-383-6722 and an NRCB inspector will follow up.

b. Alberta Environment and Parks (AEP)

In their response, a hydrologist with AEP indicated that a water license had not been received for the subject land location. AEP indicated that approximately 41,000 m³ of water are needed annually to support the application and that the applicant needed to contact AEP to see if there are options for a legal water source at the site.

I forwarded this response to A&D Cattle and encouraged them to contact AEP to initiate the process for trying to obtain water. As water allocation is outside of the NRCB's regulatory jurisdiction, I remind A&D Cattle that obtaining a legal water source for their operation is their responsibility. A&D Cattle is also reminded that they bear the entire risk of constructing or populating the new CFO before water licensing is in place for the operation.

APPENDIX E: Explanation of conditions in Approval LA22040

Approval LA22040 includes several conditions, discussed below:

a. Construction above the water table

Sections 9 of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of a manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

To address the potential variability of the water table, and to ensure that the depth requirements are met at the time of construction, a condition is included requiring A&D Cattle to cease construction and notify the NRCB immediately if the water table is encountered during construction.

b. Groundwater protection requirements

Additionally, the geotechnical report (attached to TD LA22040) specifies that due to limitations of the natural soils surrounding the site catch basin depth must be limited to a maximum of 1.5 m depth below grade.

To provide assurance that the as-built catch basin adequately protects groundwater, Approval LA22040 includes a condition requiring A&D Cattle to provide an engineer’s completion report certifying that the catch basin was constructed according to the proposed design specifications.

As stated in the engineer’s report which supported the application coarse-grained soils are prevalent at increasing depth. As such, a condition to provide a completion report will be included to provide assurance the facility is built as proposed. This report must confirm whether any soil anomalies were encountered at the time of construction and if so, how they were addressed to insure AOPA protective layer requirements were met by the application.

c. Completion letter

A&D Cattle did not include their proposed setbacks in the original application, and in response to the concerns raised by the municipality, did not propose adequate setback distances. As such, I have determined that applicable setbacks (as included in the municipality’s Land Use Bylaw) must be confirmed by an independent qualified third party.

Written documentation as described above must be provided to the NRCB prior to the NRCB’s post construction inspection.

d. Construction deadline

A&D Cattle proposes to complete construction of the proposed new feedlot pens and catch basin by December 31, 2025. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2025 is included as a condition in Approval LA22040.

e. Post-construction inspection and review

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 LA22040 includes a condition stating that A&D Cattle shall not place livestock or manure in the manure storage or collection portions of the feedlot pens and catch basin until NRCB personnel have inspected the feedlot pens and catch basin and confirmed in writing that they meet the approval requirements.

f. Operating condition

Though every operator needs to follow AOPA requirements in terms of livestock capacity and permitting of infrastructure, I have determined an extra operating condition in relation to unauthorized CFO use adjacent to the proposed CFO is appropriate. This condition, in my opinion, confirms and reminds the co-permit holders that AOPA requirements must be met, and that unauthorized expansion of a CFO is contrary to AOPA. Section 1 of this decision summary further explains my reasoning for this approach.

I recognize it is unusual to address adjacent land use at a CFO. However, the factors at play in relation to this application required attention. In essence, if livestock are confined in a manner that is a “confined feeding operation” under AOPA – whether under or over threshold within the adjacent quarter – the operator will need to establish that such an operation will be functionally and physically independent of the permitted CFO (LA22040). In my view, with the adjacent parcel (NE quarter) falling within the CFO Exclusion Zone under the IDP, a permit amendment for confined feeding of livestock on the adjacent parcel could not be granted.

For these reasons, a condition prohibiting CFO use of the NE 27-08-26 W4 has been included in the Approval. All unauthorized livestock (under the AOPA) must be removed from the adjacent land parcel upon issuance of Approval LA22040.