

Decision Summary LA22038

This document summarizes my reasons for issuing Approval LA22038 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22038. 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 8, 2022, Barrhill Feeders Inc./Ken Van Raay Inc. (Barrhill Feeders) submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on September 27, 2022. On October 4, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 25,000 to 50,000 beef finishers
- Constructing feedlot pens – 421 m x 404 m
- Constructing a catch basin – 95 m x 65.5 m x 4 m deep

The applicant stated that the natural occurring layer present in the feedlot pens will be partially covered with roller compacted concrete. For this reason, the capacity of the catch basin was adjusted to store the expected additional runoff volume.

a. Location

The existing CFO is located at N½ 7-12-21 W4M in Lethbridge County, roughly 12 km north of the Town of Picture Butte. The terrain is predominantly sloping to the north. The closest common body of water is an irrigation canal approximately 840 m to the east, running in a north-south direction.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. The CFO was established under Lethbridge County development permit #2001-10, issued May 2, 2001. This deemed approval allows for the construction and operation of a 25,000 head cattle CFO. The number has been confirmed in a letter from the NRCB to the operator, issued June 16, 2004, and is not disputed by Barrhill Feeders. The deemed facilities are listed in the appendix to the Approval LA22038.

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

A copy of the application was sent to Lethbridge County, which is the municipality where the CFO is located. No other counties or municipalities are within the notification radius and none of the CFO’s facilities are within 100 m of a bank of a river, stream or canal.

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 Sunny South News on October 4, 2022 and on October 11, 2022. The second notice was given because of an error in the legal land location mentioned in the first public notice. The full application was posted on the NRCB website for public viewing. As a courtesy, 86 letters were sent to people identified by Lethbridge County 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 (now Alberta Environment and Protected Areas (EPA)), Alberta Transportation (now Alberta Transportation and Economic Corridors (TRAN)) and the Lethbridge Northern Irrigation District (LNID).

I also sent a copy of the application to Little Bow Gas Co-op Ltd.

The NRCB received responses from Jeff Gutsell, hydrogeologist with EPA, Darren Davis, a planning technologist with TRAN, and Alan Harrold, general manager of the LNID.

Mr. Gutsell (EPA) stated in his response that there are three water well logs on this land location but there are no existing groundwater licenses. He continued to state that Barrhill Feeders is within the LNID which could provide the necessary water and requested the applicant to provide proof that the water needs are covered. The existence of the water wells at this land location is discussed in Technical Document LA22038 and a copy was forwarded to Barrhill Feeders for their information and action.

Mr. Davis (TRAN) had no comments with respect to this proposal.

Mr. Harrold (LNID) stated that the current water conveyance agreement is not sufficient to cover the needs for the increase. He also reminded Barrhill Feeders that no manure shall be stored or spread within the 30 m setbacks of all irrigation works. A copy was forwarded to Barrhill Feeders for their information and action.

No other responses were received.

4. Alberta Land Stewardship Act (ALSA) regional plan

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

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

5. Municipal Development Plan (MDP) consistency

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

6. AOPA requirements

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

- Meets the required AOPA setbacks from nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owners of that residence have signed a written waiver 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 naturally occurring protective layers of manure storage facilities and manure collection areas

7. Responses from municipality and other directly affected parties

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

Municipalities that are affected parties are identified by the act as "directly affected." Lethbridge County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Hilary Janzen, a senior planner with Lethbridge County, provided a written response on behalf of Lethbridge County. Ms. Janzen stated that the application is consistent with Lethbridge County's land use provisions of the municipal development plan. The application's consistency with Lethbridge County'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 responses from four individuals (two parties).

All of the people who submitted a response own or reside on land within the four 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)

The directly affected parties raised concerns regarding nuisance impacts (dust, odor, and noise), negative impact on roads, water supply, health, and enjoyment of their property. These concerns are addressed in Appendix B.

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 party (See NRCB Operational Policy 2016-7: Approvals, part 6.2). T. and T. Van den Hazel provided an MDS waiver and are therefore a directly affected party.

8. Environmental risk of CFO facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing manure storage facilities and manure collection areas. I used the NRCB's environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool provides for a numeric scoring of risks, which can fall within 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.)

The assessment found that the existing facilities pose a low potential risk to groundwater and surface water. The proposed facilities (feedlot pens and catch basin) meet all of AOPA's requirements and are presumed to pose a low risk to surface water and groundwater.

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. Janzen also noted that the application appears to meet these setbacks required by Lethbridge County's land use bylaw (LUB).

I have considered the effects the proposed CFO expansion 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 and section 109 of the Water Act in respect of the subject of this application. Furthermore, the application meets AOPA's technical requirements. 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 November 2, 2022).

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

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets 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, 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 no other information is available to me to refute this conclusion.

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

10. Terms and conditions

Approval LA22038 specifies the cumulative permitted livestock capacity as 50,000 beef finishers and permits the construction of the feedlot pens and catch basin.

Approval LA22038 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 LA22038 includes conditions that generally address construction deadline, document submission, and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA22038: Development permit #2001-10. (See NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbors and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. Appendix B discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval LA22038 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22038.

Barrhill Feeders' deemed municipal development permit #2001-10 is therefore superseded, and its content consolidated into this Approval LA22038, unless Approval LA22038 is held invalid following a review and decision by the NRCB's board members or by a court, in which case municipal development permit #2001-10 will remain in effect.

December 2, 2022

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by directly affected parties
- C. Explanation of conditions in Approval LA22038

APPENDIX A: Consistency with the municipal development plan

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

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

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

Barrhill Feeders’ CFO is located in Lethbridge County and is therefore subject to that county’s MDP. Lethbridge County adopted the latest revision to this plan on March 10, 2022, under Bylaw #22-001.

The relevant section in the MDP that governs CFOs is section 3 Intensive Livestock/Confined Feeding Operations. The policies relevant to this application are:

3.1 and 3.2 stipulate that establishment/development of new CFOs within the MDP CFO exclusion areas (Map 2 of the MDP), exclusion zones identified in an IDP, or identified residential growth center are not permitted.

This CFO is not a new CFO and is also not located within any of the exclusion areas. These policies (3.1 and 3.2) therefore do not apply.

3.3 states that the expansion of existing CFOs within the county’s CFO exclusion zones is permissible if an IDP exists which allows for such.

This CFO is not within any exclusion zones identified by an IDP or the county’s MDP.

3.4 elaborates on municipal plan consistencies of neighbouring municipalities and is therefore not a land use provision. I will therefore not further discuss this section.

3.5 states that “CFOs shall not be supported to establish or expand within the environmentally sensitive areas as shown in the *Cotton Wood Report: County of Lethbridge: Environmentally Sensitive Areas in the Oldman River Region (1988)*.”

The CFO is not within any of the identified areas. Therefore, this application is consistent with this policy.

3.6 states that all setbacks should be adhered to (e.g. property lines, road setbacks).

The new feedlot pens and catch basin all meet the applicable setbacks. Therefore, this application is consistent with this policy.

3.7 states that CFOs are only permitted in 'Rural Agriculture' land use districts and cannot be established on properties smaller than 80-acres.

The CFO is located within a 'rural agriculture' land use district. Therefore, this application is consistent with this part of the policy. The second part of this provision is referring to what sites are acceptable to establish a CFO. Apart from the fact that this is not a new CFO, I cannot regard this provision as it appears to be 'a test or condition related to the site for a CFO' (section 20(1.1)).

Sections 3.8, 3.9, 3.10, and 3.11 are not considered land use provision because they either deal with conditions under which CFOs are allowed to continue to operate (section 3.8), manure application (section 3.9), reciprocal MDS (section 3.10), or county-NRCB interaction (section 3.11).

For these reasons, I conclude that the application is consistent with the land use provisions of Lethbridge County's MDP that I considered.

APPENDIX B: Concerns raised by directly affected parties

The following individuals qualify for directly affected party status because they own a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing: T. and T. Van der Hazel. 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 Operation, Part 2 Matters Regulation (see NRCB Operational Policy 2016:7 – Approvals, part 6.2.):

Alan and Amy Brecka
NE 26-11-22 W4

Hannah Brown and Josh Horz
NE 21-12-21 W4

Concerns from directly affected parties

Nuisance impacts (odor, dust, noise)

AOPA’s minimum distance separation (MDS) requirements are a proxy for minimizing odours, flies, and other nuisance effects from CFOs. Under Schedule 1, section 2, Standards and Administration Regulation, the MDS is measured from the “outside walls of neighbouring residences (not property line)” to the closest manure storage facility of the CFO (including proposed facilities). The MDS is determined using factors including the number and type of livestock and the zoning of the land on which a residence is located.

The proposed CFO meets the MDS to all neighbouring residences except one. The owners of this residence signed a waiver, waiving the MDS requirement for their residence. Typically, it is presumed that nuisance effects from CFO facilities are within an acceptable range if the MDS has been met.

It cannot be excluded that neighbouring residences will be exposed to some odor and other potential nuisance impacts from a CFO from time to time. Incidences of non-compliance or other concerns can be reported to the NRCB’s 24 hour a day complaint line (1-866-383-6722 or 310-0000 toll free line).

There was also concern about the level of dust resulting from constant traffic past neighbouring properties. This issue is discussed below.

Health and enjoyment of property

The negative health impacts in the response were characterized in general terms. The application was sent to AHS for their review but I have no information, e.g. from a health professional, that this CFO would cause the health impacts asserted.

I understand that there are nuisance impacts, such as odor, that have the potential to impact the ‘enjoyment of property’ in the vicinity of any CFO. However, MDS requirements together with the county’s land use zoning seeks to minimize those impacts for the general public. The land

within a 1.5-mile radius of this CFO is zoned Rural Agriculture where CFOs are a discretionary use. Therefore, some nuisance impacts from existing confined feeding operations can be expected.

Livestock number and feedlot size don't add up. Concern of 'constructing bigger'

The NRCB does not dictate animal density within permitted livestock housing facilities. The main concern from a regulatory perspective is if housing facilities are larger than typical housing densities, offering the possibility of an unpermitted expansion. The reverse is a lesser concern from the NRCB's perspective. Having said that, all permits, permitting the construction of a facility, do include a condition that requires a post construction inspection prior to populating the facilities. Should the facilities be constructed larger than permitted, the operator will have to acquire a permit for the additional facilities.

Increase of traffic has negative impact on road safety and drivability

The NRCB does not have direct responsibility for regulating road use. Section 18 of the *Municipal Government Act* gives counties "direction, control and management" of all roads within their borders. Because of this it would be impractical and inefficient for the NRCB to attempt to manage road use through AOPA permits. (See Operational Policy 2016-7: *Approvals*, part 8.9.). Having said that, Lethbridge County and Alberta Transportation and Economic Corridors did not voice any concerns with respect to traffic or deterioration of roads due to the predicted increase in traffic.

Blowing garbage

The operator is encouraged to contain all blowing waste from the feedlot itself and litter thrown by its employees within its perimeters. However, the NRCB has no jurisdiction over this aspect of an operation. Often, any issues and disagreements that arise relating to the operation of a CFO can be resolved through good communication between neighbours and the CFO operator. Additionally, concerned citizen can report incidences of such kind to the County for potential action.

Water supply: irrigation canals almost at maximum capacity. Negative impact on water users downstream

Water supply is a serious concern, particularly in Southern Alberta where many people rely on the irrigation districts to meet their water needs. Having said that, canal capacity and availability of water conveyance agreements from the irrigation districts is solely under the control of the irrigation district.

In a follow-up conversation with the LNID, the representative stated that there are no capacity issues and that the required water can be delivered the expanded CFO without compromising downstream users.

Cumulative effects (concentration of livestock)

Lethbridge County is known to have a fairly high density of livestock operations and it is understandable that there are some concerns surrounding this topic. Having said that, all counties and municipalities strive to limit land use conflicts through proper land use planning. The area where the CFO is located is zoned Rural Agriculture and CFOs are a discretionary land use under this category. There is no objective threshold to determine the level of

acceptable nuisance impacts arising from multiple (but separate) CFOs. Although, I don't want to under-evaluate this concern, it is impossible to predict the degree to which the additional effect from this CFO expansion would impact neighbouring residences.

Effects on the community (foreign investors, transient workers or local employees contributing to community)

As explained above, the proposed expansion of Barrhill Feeders meets all of AOPA's technical requirements and is located in an area zoned Rural Agriculture. As laid out in the MDP of Lethbridge County (Part 3 of the MDP), agriculture is one of the county's main economic drivers and its development is encouraged. I therefore presume that, as stated in section 9 above, the development has an acceptable effect onto the community.

APPENDIX C: Explanation of conditions in Approval LA22038

Approval LA22038 includes several conditions, discussed below, and carries forward a number of conditions from municipal development permit #2001-10. Construction conditions from historical municipal development permit #2001-10 are found in the appendix to Approval LA22038.

Approval LA22038 includes several conditions, discussed below:

1. New conditions in Approval LA22038

a. Construction Deadline

Barrhill Feeders proposes to complete construction of the proposed new feedlot pens and catch basin by December 30, 2024. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2024 is included as a condition in Approval LA22038.

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 LA22038 includes conditions requiring:

- a. a completion report, prepared by a qualified third party, certifying that the feedlot pens (dimensions) and the catch basin have been constructed in accordance with the proposed design including location, depth, slope, and final dimensions.

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 LA22038 includes a condition stating that Barrhill Feeders shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens and catch basin until NRCB personnel have inspected the facilities and confirmed in writing that it meets the approval requirements.

2. Conditions not carried forward from municipal development permit #2001-10

Approval LA22038 includes the terms and conditions in municipal development permit #2001-10, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #3, 4, 5, and 7 from municipal development permit #2001-10 should be deleted and therefore are not carried forward to Approval LA22038. My reasons for deleting these conditions are as follows:

Condition 3 states: "A total of 3,860 irrigated/cultivated acres are to be dedicated to this feedlot for manure utilization. A detailed map specifying which lands will be the subject of this permit shall be submitted to the County. The above land base value may be altered through the development and submission of a Nutrient Management Plan prepared by a professional agronomist."

This condition consists of several parts. The first part lists the required land base for manure spreading. This land base is not sufficient to support the proposed expansion permitted in this approval. The required land base for 50,000 head beef finishers is 7660 acres of irrigated land. Hence, this part of the condition will be adjusted to meet the current AOPA requirements. Barrhill Feeders has shown that enough manure spreading lands are available for the manure produced at this CFO. Therefore, a nutrient management plan is not required.

Condition 4 states: "The feedlot operator must initiate and maintain accurate records of the volume of the manure applied to each field, the date of application, the area of each field and annual soil sampling to determined levels of N, P, and K (available K). These records must be made available upon request by either the county, Alberta Agriculture, Food & Rural Development or Chinook Health Region."

This condition consists of several parts. The first part, keeping records, is redundant because it is included in the opening paragraph of this permit that states that the permit holder must adhere to AOPA and its regulations, in this case section 28, Part 2 General Administration Matters. The second part is annual soil sampling and determining N (nitrate), P (soil test P (modified Kelowna extractable Phosphorus)), and K (potassium) levels. This part of the condition is more stringent than AOPA and will therefore be carried forward into the new approval. The last part is the reporting. This part of the condition is outdated since nutrient levels in soils are no longer reported to Chinook Health Region or the County and reporting – or having records available upon request rather, should be done to the NRCB. Therefore, this part is redundant because it is included in the opening requirement of this approval.

Condition 5 states: Consideration of any neighbours must be included in land application of manure, this includes allowing adequate separation distance from residences and incorporation within 48 hours of spreading."

This condition, the words 'consideration' and 'adequate' specifically, are rather vague and open to interpretation. Both would benefit from more enforceable time frames as given in AOPA and its regulations. Because this condition is impractical to enforce, I therefore determined that this condition can be replaced by the opening requirement of this permit that states that the permit holder must adhere to AOPA and its regulations, in this case section 24, Standards and Administration Regulation (Amending municipal permit conditions – NRCB Policy 2016-1).

Condition 7 states: "A specific site is to be selected and maintained for dead animal storage. The site must include good drainage easy access, be protected from predators, and be out of view from the general public. Deads are to be picked up regularly by rendering truck."

The disposal of dead animals is regulated by Agriculture and Irrigation (AGI)'s Regulatory Services Branch under the *Animal Health Act*. Given AGI's regulatory role, concurrent oversight of dead animal disposal by the NRCB would be inefficient and might lead to inconsistency with AGI's requirements. Therefore, this condition will be deleted and not carried forward into the new approval.