

Decision Summary RA20034A

This document summarizes my reasons for issuing amended Approval RA20034A under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Documents RA20034 and RA20034A and Decision Summary RA20034. 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.

1. Background

On September 28, 2022, Rosebud Feeders Ltd. and Agra Risk Solutions Inc. (Rosebud Feeders) submitted an application to the NRCB to amend Approval RA20034 to modify the permitted dimensions for the feedlot pen areas and runoff control catch basins authorized in Approval RA20034. The amendment application also requested condition 3 in Approval RA20034 be removed.

Approval RA20034 permitted the construction of three separate pen areas and three runoff control catch basins applied for by Rosebud Feeders. It also required the realignment of a portion of an existing pen to ensure that the AOPA flooded areas requirement was met (condition 3).

At a post construction inspection for the newly permitted pen areas and catch basins, it was discovered that the permit holder had constructed the approved pen areas and catch basins to different dimensions than those approved by the permit. Additionally, one of the catch basins and pen areas were constructed in different locations than what were applied for and permitted.

Because of this, the applicant was not initially allowed to utilize the constructed facilities without first obtaining an amended permit authorizing their use.

At the later request of the applicant and following the installation of fencing to bring some of the pen area dimensions in line with what was permitted, the NRCB granted temporary permission to utilize pen areas 3 and 4 as well as catch basins 2 and 3. This temporary permission required Rosebud Feeders to obtain an amended permit.

Rosebud Feeders also applied, as part of their amendment application, to remove condition 3 of Approval RA20034 which requires the realignment of an existing pen and decommissioning of the pen below an elevation of 905.1 m, to ensure that the flooded areas requirement in AOPA is met.

The amendment application was submitted on September 28, 2022. On January 3, 2023, following the submission of supporting information, I deemed the application complete.

The proposed amendments involve:

- Removing condition 3 from Approval RA20034 which requires the realignment of an existing pen, and the decommissioning of the pen below an elevation of 905.1 m, to

ensure that the flooded areas requirement in AOPA was met.

- Revising the permitted facility dimensions as follows:

Facility Description	Permitted Dimensions (m) (RA20034)	New Dimensions (m) (as constructed)
Pen Area 1	78 x 95	95 x 156
Pen Area 3	68 x 337	73 x 313
Pen Area 4	68 x 315	73 x 331
Catch Basin 1	55 x 15 x 2.5 deep	35 x 21 x 2.85 deep
Catch Basin 2	40 x 62 x 2.5 deep	40 x 62 x 3.24 deep
Catch Basin 3	40 x 67 x 4 deep	30 x 59 x 3.5 deep

Under AOPA this type of application requires an amendment to approval RA20034. For additional information on NRCB permits please refer to www.nrcb.ca.

a. Location

The existing feedlot is located at SW 28-27-25 W4M and NW 21-27-25 W4M in Rocky View County roughly nine kilometres east of the town of Irricana. The Rosebud River flows near the West and north sides of the CFO (approximately 150 m from the northern pens). An oxbow to the river is located to the east of the CFO (approximately 135 m from existing pens).

b. Existing permits

The CFO is permitted under NRCB issued Approval RA20034. That permit allows for the construction and operation of a 7,000 head beef finisher 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 2 miles. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to Rocky View County, which is the municipality where the CFO is located. The CFO is not located within 100 m of the bank of the river, stream, or canal.

The NRCB gave notice of the application by public advertisement in the Rocky View Weekly, the newspaper in circulation in the community affected by the application, on January 3, 2023. The full application was made available for viewing during regular business hours at the NRCB's Red Deer Office and was posted on the NRCB website for public viewing. As a courtesy, 47 letters were sent to people identified by Rocky View 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 Protected Areas (EPA), and Alberta Transportation and Economic Corridors (TRAN).

I also sent a copy of the application to Rockyview Gas Co-op Ltd. and Ember Resources Inc. as utility right of way holders.

Responses were received from Jen Burns with TRAN, indicating that a roadside development permit was not required, and from Carol Brittain, a public health inspector with AHS indicating that they have no concerns with the application.

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 amendments are consistent with the land use provisions of Rocky View County's municipal development plan. (See Appendix A for a more detailed discussion of Rocky View County's planning requirements.) This is supported by response from the County.

6. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed revised dimensions for pen areas 1, 3, & 4 and catch basins 1, 2, & 3:

- Meet the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS) with the provision of a waiver from the nearest neighbouring residence.
- Meet the required AOPA setbacks from springs, and common bodies of water.
- Have 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 identified in part 11, the application meets all relevant AOPA requirements.

The request to remove condition 3 from Approval RA20034 was reviewed and a determination made that it would not be appropriate to remove or amend the condition. Because of this the condition will be carried forward to the amended permit. The request to remove this condition is discussed in more detail in Appendix C.

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." Rocky View County is an affected party (and directly affected) because the CFO is located within its boundaries.

Ms. Althea Panaguiton, a planner with Rocky View County, provided a written response on behalf of the county. Ms. Panaguiton stated that the application is consistent with the land use provisions in Rocky View County's MDP and that there are no other area structure plans, conceptual schemes, or intermunicipal plans that would affect it. The application's consistency with the County's MDP is addressed in Appendix A, attached.

The county also identified concerns including property line and right of way setbacks, which are discussed in section 10 below.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received responses from two parties related to the application. Both parties who submitted responses own or reside on land within the 2 mile notification radius for affected persons. Because of their location within this radius, and because they submitted a timely response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

The 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). Mary Anne and Ronald Schwengler provided an MDS waiver and are therefore considered to be directly affected parties.

8. Environmental risk of CFO facilities

When reviewing an approval amendment 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.) 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 Rosebud Feeders existing and proposed CFO facilities were assessed using the ERST as part of Approval RA20034. According to that assessment, the facilities posed a low potential risk to surface water and groundwater. The exception being the existing pens that drained toward the Rosebud River which were determined to pose a moderate risk to surface water. Condition 3 in Approval RA20034 was included to address this risk. This condition was requested to be removed as part of the amendment application. Following a review of the request, I determined that it would not be appropriate to remove or amend this condition and the condition will be carried forward to the amended permit. This is discussed in more detail in Appendix C.

The circumstances have not changed since the assessment was done for Approval RA20034. As a result, a new assessment of the risks posed by the CFO's facilities is not required.

9. Exemptions

I determined that the 100 m water well setback exemption granted in Approval RA20034 and explained in Appendix E of Decision Summary RA20034 is still warranted and that there are no changes to this consideration. The existing water well monitoring condition will be carried forward from Approval RA20034.

10. Other factors

Because the approval 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.

Under section 22(c) of Rocky View County's Land Use Bylaw (LUB) # C-4841-97, last updated September 8, 2020, under bylaw 8186-2021, CFOs are exempt of all requirements in the LUB. Further, the response from the county for this application did not raise any MDP or LUB related concerns apart from the setback issues identified below.

Ms. Panaguiton, in her response, identified that an existing storage structure does not appear to meet the required property line setback and that a development permit may be required to bring this into compliance. This is an older storage shed which is outside of the scope of this application and will be left for Rosebud Feeders to resolve with the county.

Ms. Panaguiton also noted that it appears that the feedlot has constructed an internal access road and feed bunks in the county's undeveloped open public road allowance. She noted that for these alterations to remain in place that approval to close and consolidate the affected section of the undeveloped road allowance would have to be obtained. In accordance with the current county policy if this approval cannot be obtained, then the alterations would not be

allowed to remain. In further discussion with the county, I was able to ascertain that they were referring to some of the older existing feeding pen facilities. The county was not able to provide definitive information regarding whether the facilities being considered under this amendment application impinged on the property line or undeveloped open public road allowance. I was able to ascertain that the county has received an application from the operator relating to the undeveloped open road allowance, however, was informed that processing this application may take several years and that there was no guarantee that the request would be granted. Because of this, and because of the relocation and resizing of the pen areas and runoff catch basins, many of which are adjacent to a property line or the undeveloped open road allowance, a condition will be added to the amended permit requiring the applicant to provide a survey to confirm that the property line and undeveloped public road allowance setbacks are met from the proposed pen areas and catch basins.

The effects the CFO may have on natural resources administered by provincial departments was considered as part of Approval RA20034. No changes to these effects are proposed with this amendment application.

Finally, I considered the effects of the proposed modified dimensions and locations of the pens and catch basins 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 to the environment are acceptable because the application meets 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.

I also presumed that the proposed modifications are 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.

11. Terms and conditions

Approval RA20034A includes all terms and conditions originally specified in Approval RA20034 with the exception that dimensions for the approved pens and catch basins reflect the "as built" dimensions set out in the amendment application.

As set out in Appendix C, the request to remove condition 3 from Approval RA20034 has been denied. This condition is therefore also carried forward to Approval RA20034A.

As identified in 10 above, a condition will also be added requiring a survey to confirm that the required setbacks from property lines and the undeveloped open road allowance are met by all the facilities proposed in this application. This survey must be provided prior to livestock and manure being allowed into pen area 1 and no later than June 30, 2023.

For clarity, and pursuant to NRCB policy, I consolidated Approval RA20034 with Approval RA20034A (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbours, 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.

12. Conclusion

Approval RA20034A is issued for the reasons provided above, in the attached appendices, and in Decision Summary RA20034, Technical Document RA20034, and Technical Document RA20034A.

Rosebud Feeders Approval RA20034 is therefore superseded, unless Approval RA20034A is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA20034 will remain in effect.

March 29, 2023

(Original signed)
Andy Cumming
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status and concerns raised
- C. Evaluation of request to delete condition 3 from Approval RA20034

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.)

Rosebud Feeders’ CFO is located in Rocky View County and is therefore subject to that county’s MDP (which the County refers to as the “County Plan”). Rocky View County adopted the latest revision to this plan on April 10, 2018, under Bylaw 018-0409. The relevant parts of the County’s MDP to this application are discussed below. Rocky View County is in the process of developing a new MDP at this time, but that document has not yet been adopted.

Section 8.20 of the MDP states that the county “should make site recommendations on all new or expanded” CFOs and lists several criteria for the county to consider when making these recommendations. The criteria are not directly relevant to my MDP consistency determination as they appear to be intended to govern the county’s responses to individual CFO applications to the NRCB. In addition, the criteria require site and CFO-specific considerations that are involved in permitting decisions, so the criteria are not considered “land use provisions.” Therefore, this section is not relevant to my MDP consistency determination.

Section 8.21 “recommend[s]” that CFO applicants “provide nearby landowners with technical design information, receive feedback through a public involvement process, and report back to the County on how the proposal addresses public input.” This provision is not considered a land use provision because of its project-specific and procedural focus. Therefore, it is also not relevant to my MDP consistency determination. However, neighbouring landowners were notified of the application as required under AOPA. The neighbours have had the opportunity to review and comment on the application. The comments from directly affected respondents to this application’s public notification are summarized in Appendix B.

Section 8.22 states that CFOs should be located in areas where there will be “minimal conflict with non-complementary land uses.” Because the “minimal conflict” and “non-complementary” test calls for a discretionary judgement, the criteria is not considered to be a “land use provision” and the section is therefore not relevant to my MDP consistency determination. Nevertheless, as noted in the county’s response, lands within 3,200 m of the CFO are generally zoned for agricultural purposes. Additionally, AOPA requires CFO applications to meet the MDS requirements to neighbouring residences. The MDS is a means of mitigating nuisance impacts from CFOs. The MDS requirement for this proposed development is met with the provision of a waiver provided by the closest residence owner. It is therefore my opinion that even if this section applied to my consistency determination, the CFO would meet its requirements.

Section 8.23 states that land uses incompatible with a CFO shall not be supported when proposed within the MDS of the CFO. I interpret this section to apply to incompatible uses encroaching on a CFO, not the CFO encroaching on adjacent land uses. Therefore, this section would apply when developments are proposed near an existing CFO. It is therefore not relevant to my MDP consistency determination. Regardless, the CFO meets the MDS requirement in AOPA.

Section 8.24 states that a CFO, including its MDS, “should not be located within the boundary of any intermunicipal development plan or notification zone, statutory planning area, hamlet, residential area, institutional use, or federal, provincial, or municipal park or recreation area.” The facilities in this application are not located in any of these areas. The application is therefore consistent with this section.

For these reasons, I conclude that the application is consistent with the land use provisions of Rocky View County’s MDP. The county’s responses do not conflict with my conclusion.

In its response, Rocky View County identified that the application appears to be consistent with the County Plan (MDP 2013) and that it is not affected by any area structure plans, conceptual schemes, or intermunicipal plans.

APPENDIX B: Determining directly affected party status and concerns raised

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 (see NRCB Operational Policy 2016:7 – Approvals, part 6.2)

Schwengler, M & R
NE 20-27-25 W4M.

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.)

Gagnon, D & S
SW 26-27-27 W4M

Rau, V & J
NE & SE 27-27-25 W4M

No other responses to the amendment application were received.

Because this application is to amend the dimensions and locations of the pens and catch basins authorized by Approval RA20034 and to remove condition 3 from the approval, concerns that will be considered are limited to those which deal directly with the parts of the CFO identified in the amendment application. Other concerns will not be considered as part of this amendment decision. The directly affected parties raised the following concerns related to the amendment application:

Concern: Whether the revised dimensions of the catch basins have sufficient volume to manage runoff.

Approval Officer response:

I have confirmed that the revised dimensions of the runoff control catch basins can accommodate the runoff required to be controlled under AOPA. Details on this are included in the technical document for this application.

Concern: The potential for contaminants from manure to seep into groundwater.

Approval Officer response:

The liners for the pen areas and catch basins, as revised, can still meet the AOPA groundwater protection requirements. Because they meet these requirements, the potential for manure to impact groundwater is minimized.

Concern: Opposition to the removal of condition 3 and concerns related to contamination of the Rosebud River when it floods.

Approval Officer response:

As identified in Appendix C, I have made the determination that condition 3 is still valid and will not be removed from the amended permit. As discussed in Decision Summary RA20034, condition 3 in Approval RA20034 was included to address the moderate risk to surface water from existing pens that flow toward the Rosebud River. Because this condition is not being removed, it is my opinion that the potential impact to surface water from these pens is mitigated and the concerns as they relate to surface water contamination are therefore also mitigated.

APPENDIX C: Evaluation of request to remove condition 3 from Approval RA20034

Rosebud Feeders provided a survey completed by a professional surveyor to support their request to remove condition 3 from Approval RA20034. I forwarded the information to Sheila Cunningham, an Environmental Specialist with the NRCB who measured the elevations on site when Approval RA20034 was being considered. Sheila provided an updated report to me (attached on the following page) providing a comparison of the survey information provided with this application to what was measured and considered in the original permitting decision (RA20034). Given that the two surveys were carried out at different times of the year and in different years it was expected that the measured elevations would not match exactly. They do however, correlate very closely. The comparison shows that the information provided with this amendment application is consistent with the information used when Approval RA20034 was considered and supports keeping condition 3 from Approval RA20034.

In reviewing all of the information provided, together with the information detailed in Decision Summary RA20034, I have concluded that it is not appropriate to remove or amend condition 3 from Approval RA20034. Accordingly, the request to remove condition 3 from Approval RA20034 is denied. This condition will therefore be carried forward to Approval RA20034A.

Copy of Report from Sheila Cunningham:

December 9, 2022

Andy Cumming Approval
Officer

andy.cumming@nrcb.ca

Hi Andy,

Thanks for your request for me to review the Tulloch Geomatics survey elevations (December 8, 2022) as part of the operator's condition 3 amendment request of Approval RA20034.

The Tulloch survey information from the bridge (Point K) is helpful because it clarifies the elevation difference between the water level in the Rosebud River and the lower bridge underside as 4.82m (898.12m – 893.30m). Therefore, 4.82m can be considered the flood depth of the highest known flood level for this stretch of the Rosebud River. This is similar to the 4.75m highest known flood depth measured and calculated by the NRCB (Technical Document RA20034, pdf44).

The Rosebud River water level elevation from Tulloch adjacent to Point G is 900.11m. This is the base number for calculating the flood plain elevation relative to the existing northern pens at Rosebud Feeders. The Tulloch elevation is approximately 0.8m higher than the 899.3m Rosebud River ice surface measured and calculated by the NRCB (Decision Summary RA20034, pdf11).

Table 1. Flood plain elevation calculations for the existing northern pens at Rosebud Feeders

Column 1	Column 2	Column 3
	NRCB RA20034 ¹	Tulloch ²
Rosebud River water level elevation adjacent to Point G	899.3m	900.11m
Add depth of highest known flood for this stretch of Rosebud River	+ 4.75m	+ 4.82m
Equals highest known flood elevation at Rosebud Feeders	= 904.1m	= 904.93m
Add 1m above highest known flood elevation (regulation)	+ 1.0m	+ 1.0m
Equals elevation 1m above highest known flood at Rosebud Feeders	= 905.1m	= 905.93m

¹ Decision Summary RA20034, Appendix A, pdf11, 3rd para.

² Tulloch Geomatics, Survey, Submitted December 8, 2022.

If the approval officer had the Tulloch elevations (Table 1) at the time of issuing Approval RA20034:

- my advice to the approval officer would have been to rely on the surveyed elevation from Tulloch when calculating the minimum fence elevation for the existing northern pens for appropriate flood plain separation instead of the NRCB measurements, and,
- my opinion is the approval officer would have used the 905.93m elevation in Table 1, Column 3 (or rounded it up to 906.0m) for the elevation in Approval RA20034 conditions 1, 2, and 3.

If you have any questions, please contact me.

(Original Signed)

Scott (Sheila) Cunningham
NRCB Environmental Specialist
scott.cunningham@nrcb.ca