

## Decision Summary LA23016

This document summarizes my reasons for issuing Authorization LA23016 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23016. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://www.nrcb.ca) under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

Under AOPA this type of application requires an authorization. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca).

### 1. Background

On March 17, 2023, Van Driel Farms Ltd. (Van Driel) submitted a Part 1 application to the NRCB to construct three new pens (90 m x 36 m each) and a catch basin (20 m x 40 m x 3 m deep) and decommission an existing pen at an existing multi species CFO.

The Part 2 application was submitted on April 27, 2023. I deemed the application complete the same day.

The reason for the construction of these pens is a change from raising unweaned calves in calf hutches (located north of the residence) to raising weaned calves (below 550 lb) grouped in the proposed feedlot pens. This does not affect the permitted animal numbers at this CFO. The area where the calf hutches are located was considered a short term manure storage site (STMS) that will no longer be used for that purpose. Because this was not a manure storage or collection area as defined under AOPA, a condition to decommission this area is not required but shall not be used as a STMS in the future.

#### a. Location

The existing CFO is located at NE 22-8-22 W4M and NW 23-8-25 W4M in the Municipal District (MD) of Willow Creek, approximately four km southeast of the Town of Fort Macleod, Alberta. The topography of the area is rolling to undulating. The nearest common body of water is an ephemeral drainage 505 m to the south of the CFO.

#### b. Existing permits

The CFO is permitted under Approval LA22031A.

### 2. Notices to affected parties

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

- the municipality where the CFO is located or is to be located
- in the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a municipality entitled to divert water from that body within 10 miles downstream

- any other municipality whose boundary is within a notification distance. In this case, the notification distance is 1.5 mile(s) (2414 m) from the CFO

A copy of the application was sent to the MD of Willow Creek, which is the municipality where the CFO is located.

The CFO is not located within 100 m of a river, stream, or canal and no other municipality's boundary is within the notification radius.

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

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

Referral letters and a copy of the complete application were emailed to Alberta Health Services (AHS), Alberta Environment and Protected Areas (EPA), and Alberta Transportation and Economic Corridors (TRAN).

The NRCB received a response from Mr. Jeff Gutsell, a hydrogeologist with EPA who had no concerns with this application. The NRCB also received a response from Ms. Leah Olson, a planning technologist with TRAN. In her response she stated that a permit is not required and there are no concerns.

No other responses were received.

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

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

### **5. AOPA requirements**

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

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Meets the required AOPA setbacks from water wells, springs, and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

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

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

Municipalities that are affected parties are identified by the act as "directly affected." The MD of Willow Creek is an affected party (and directly affected) because the proposed facilities are

located within its boundaries.

Ms. Cindy Chisholm, director of planning and development with the MD of Willow Creek, provided a written response on behalf of the MD of Willow Creek. Ms. Chisholm stated that the application is consistent with the land use provisions in the MD of Willow Creek's municipal development plan. The application's consistency with the MD of Willow Creek's municipal development plan is addressed in Appendix A, attached. The MD of Willow Creek voiced concerns in respect to the water source for this CFO. Water licencing is outside the jurisdiction of the NRCB and is directly regulated by EPA. For this reason, I will not discuss this concern any further. However, as mentioned above, Mr. Gutsell did not have any concerns with this application because it does not involve an increase in permitted animal numbers, and therefore water usage, at this existing CFO.

Ms. Chisholm also listed the setbacks required by the MD of Willow Creek's land use bylaw (LUB) and noted that the application does not provide setbacks to property lines or applicable road allowances and requested to make sure that this development can meet these setbacks. Aerial measurements and on the ground measurements at the proposed building site to the next nearest property line show that these setbacks can be met.

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

New manure storage facilities/manure collection areas (MSF/MCA) which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater.

When reviewing a new authorization application for an existing CFO, NRCB approval officers assess the CFO's existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB's environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST provides for a numeric scoring of risks, within either a low, moderate, or high-risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at [www.nrcb.ca](http://www.nrcb.ca).) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment, unless site changes are identified that require a new assessment, or the assessment was supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 8.13.

In this case, the risks posed by Van Driel's existing CFO facilities were assessed in 2022 as part of Approval LA22031. The assessment indicated that the potential risks to surface water and groundwater were low. The moderate risk posed by the north eastern pen has been addressed in Approval LA22031A which remains in effect.

## **8. Terms and conditions**

Authorization LA23016 permits the construction of an additional three feedlot pens and a runoff control catch basin.

Authorization LA23016 contains terms that the NRCB generally includes in all AOPA authorizations, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

In addition to the terms described above, Authorization LA23016 includes conditions that generally address the construction deadline, monitoring, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

## **9. Conclusion**

Authorization LA23016 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23016.

Authorization LA23016 must be read in conjunction with Van Driel's Approval LA22031A, which remains in effect.

June 27, 2023

(Original signed)  
Carina Weisbach  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA23016

## APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for an authorization or amendment of an authorization 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 22(2.1) 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.)

Van Driel’s CFO is located in the MD of Willow Creek and is therefore subject to that county’s MDP. The MD 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 area discussed below.

Part 2 states that agriculture is a predominant land use in the MD though it also notes that it is important to balance other interests. One of the objectives in Section 2 of the MDP is to mitigate the siting of a CFO to minimize conflicts with adjacent land uses. Policy 2.3 states that the MD shall establish guidelines with regards to the NRCB for the regulation and approval of CFOs within the MD. These guidelines are found in section 9.

This policy likely isn’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 these effects.

In a 2011 decision, the NRCB 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 authorization 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. At any rate, this is not a new CFO, and is not changing the number of permitted livestock.

*(b) Environmentally Significant Areas contained in the Municipal District of Willow Creek:  
Environmentally Significant Areas in the Oldman River Region Report [the report]*

The 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). However, areas of local significance are not represented 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. However, Van Driel's CFO seems very close to an area identified in this report as a localized 'hazard' area due to the occurrence of aeolian sands. As shown in the Technical Document LA22031, Van Driel was able to show that the soils in the area of the proposed feedlot and catch basin can meet the requirements for groundwater protection of AOPA and its regulations. I am therefore of the opinion that the application is consistent with this provision.

*(c) Providing notice to adjacent landowners including applications for registration or authorizations*

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.

*(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 2 and Schedule 1 of the Standards and Administration Regulation under AOPA. There is no county residential development located within the category 2 MDS for Van Driel's CFO and the application meets AOPA's MDS requirements.

*(e) restricting development in any wetland or riparian area*

The proposed new feedlot pens and catch basin are not located in a wetland or riparian area and meet AOPA's setbacks to common bodies of water. This provision is therefore met by the application.

For these reason I conclude that the application is consistent with the land use provision of the MD of Willow Creek's MDP.

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 MD of Willow Creeks' 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 uses 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 list 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's thresholds.

As for the lot size restriction in section 2(4) of the Rural General part of the bylaw, which state 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.

Section 3 of the Rural General part of the bylaw lists several setbacks. The new feedlot pens and the catch basin both meet the 75 ft (22.9 m) road and 20 ft (6.1 m) setback requirements to adjacent property lines.

For these reasons, I conclude that the proposed new feedlot pens and the catch basin are consistent with the land use bylaw.

## **APPENDIX B Explanation of conditions in Authorization LA23016**

### **a. Construction Deadline**

Van Driel proposes to complete construction of the proposed new pens and catch basin by June 30, 2023. Because this permit will be issued in June of 2023, this time-frame might be too short to complete construction of the proposed work. I will therefore extend the deadline of June 30, 2023 to June 31, 2024, to allow for a complete construction season to complete the work. This date is included as a condition in Authorization LA23016.

### **b. Post-construction inspection and review**

The NRCB's general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Authorization LA23016 includes conditions requiring Van Driel to provide documentation to confirm the location and dimensions of the catch basin

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities.

Authorization LA23016 includes a condition stating that Van Driel shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens and allow manure contaminated runoff to enter the catch basin until NRCB personnel have inspected the feedlot pens and the catch basin and confirmed in writing that it meets the authorization requirements.

### **c. Decommissioning of an existing pen and SFBS**

Van Driel also proposed to decommission one pen that is located immediately north of the existing old 'dairy' barn (as shown on page 2 of Technical Document LA23016). A condition will be included, requiring Van Driel to decommission this pen according to Technical Guideline Agdex 096-90 – low risk facilities by latest June 31, 2024.

Van Driel also proposed to eliminate the calf hutch area (see site photo in Technical Document LA23016) which is considered a SFBS (see Section 1 Background above). A condition will be attached, stating that this area may not be used as a short term manure storage site or SFBS in the future.

### **d. No change in livestock numbers**

As noted in part 1 above, Van Driel proposed to enlarge their feedlot pen area and catch basin. This could enable Van Driel to increase their current livestock numbers above their permitted capacity of 5,000 beef feeder calves. However, Van Driel has not requested to increase that permitted capacity. To ensure that Van Driel does not exceed the current permitted capacity, a condition is included in Authorization LA23016 stating that Van Driel must keep a monthly record of the number and type of livestock on site and provide that record to the NRCB upon request. All records must be kept for a period of two years.