



## Decision Summary LA23029

This document summarizes my reasons for issuing Approval LA23029 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23029. 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 approval. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca).

### 1. Background

On May 17, 2023, Greenwood Hutterian Brethren (Greenwood Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on June 5, 2023. On June 14, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 0 to 50,000 turkeys
- Constructing three turkey barns
  - 2 barns - 152 m x 29 m (500 ft. x 95 ft.) (Turkey barn 1 (north) and 2 (south) or feeder barns)
  - 1 barn – 152 m x 18.3 m (500 ft. x 60 ft.) (Turkey barn center or brooder barn)

#### a. Location

The existing CFO is located at SW 26-7-25 W4M in the Municipal District (MD) of Willow Creek, roughly 11 km southeast of Fort Macleod, Alberta. The topography of the site is relatively flat, with an unnamed ephemeral creek approximately 736 m to the southeast that flows into the Belly River.

#### b. Existing permits

The CFO is currently permitted under NRCB Approval LA16026 and Authorization LA17009. These permits allow the construction and operation of a multi-species CFO. The CFO's existing permitted facilities are listed in the appendix to Approval LA23029.

### 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 MD of Willow Creek, which is the municipality where the CFO is located. A copy was also sent to the Blood Tribe which has a boundary within the notification distance for the CFO.

No CFO facilities are located 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 Macleod Gazette on June 14, 2023. The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing. Twelve (12) notification letters were sent to people identified by the MD 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 Protected Areas (EPA), Alberta Transportation & Economic Corridors (TRAN), and the Blood Tribe.

I also sent a copy of the application to Atco Gas and Pipelines Ltd., Carbon Development Corporation, Fording Inc., Canadian Natural Resources Ltd., and Canpar Holdings.

The NRCB received a response from Mr. Jeff Gutsell, a hydrogeologist with EPA and Ms. Leah Olson, a planning technologist with TRAN.

Mr. Gutsell stated in his response that EPA has not received an application for a water licence to address the additional water needs for the expansion. He continued to state that there are no groundwater or surface water diversion authorizations for that land location and that the two water wells that are in the database are not licenced. He requested proof from the colony that sufficient water is available prior to constructing the new barns. A copy of EPA’s response was forwarded to Greenwood Colony for their information and action. Greenwood Colony has since sent all their water licenses to EPA for their review. It is Greenwood Colony’s responsibility to ensure that sufficient water is available for this expansion. Because water allocation and licensing are outside the NRCB’s jurisdiction, this issue is not discussed any further as part of this decision.

Ms. Olsen stated that a permit from TRAN is not required.

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 the MD of Willow Creek'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 all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS) with the use of the expansion factor
- 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 liners 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." The MD of Willow Creek is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Cindy Chisholm, the 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 MD of Willow Creek's land use provisions of the municipal development plan. The application's consistency with the MD of Willow Creek'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 a response from one individual.

One person who submitted a response owns or resides on land within the 1.5 mile notification radius for affected persons. Because of his location within this notification radius, and because

he submitted a response, this person qualifies for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

The directly affected party raised concerns regarding an increase in heavy traffic and road dust. These concerns are addressed in Appendix B.

## **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.

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

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

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

## **9. Other factors**

Because I determined that 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 also listed the setbacks required by the MD of Willow Creek's land use bylaw (LUB) and noted that the application does not specify the setbacks. The setback requirements were discussed with the applicant who provided information to confirm that the required setbacks to the barns will be met.

I have considered the effects the proposed turkey barns may have on natural resources administered by provincial departments. EPA 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. Furthermore, the application meets AOPAs 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 July 14, 2023).

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land. In doing so, I had before me information in the application, views from Willow Creek County, and my own observations from a site visit.

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. 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 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, and I note that Willow Creek County's response states that the application is consistent with their MDP.

## **10. Terms and conditions**

Approval LA23029 specifies the cumulative permitted livestock capacity as 100 dairy milking cows (plus dries and replacements), 19,000 chicken layers (plus associated pullets), 6,000 chicken broilers, 500 sow farrow to finish, 1,000 ducks, 200 beef finishers, and 50,000 turkeys and permits the construction of the three turkey barns.

Approval LA23029 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 LA23029 includes conditions that generally address construction deadlines, 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 LA23029: Approval LA16026 and Authorization LA17009 (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. All construction conditions in Approval LA16026 and Authorization LA17009 have been carried over into the new approval and included in the appendix of Approval LA23029. All operating conditions are carried forward and are included as operating conditions in the new permit except two (see Appendix C).

## **11. Conclusion**

Approval LA23029 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23029.

Greenwood Colony's Approval LA16026 and Authorization LA17009 are therefore superseded, and their content consolidated into this Approval LA23029, unless Approval LA23029 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA16026 and Authorization LA17009 will remain in effect.

July 25, 2023

(Original signed)  
Carina Weisbach  
Approval Officer

### **Appendices:**

- A. Consistency with the municipal development plan
- B. Determining directly affected party status and concerns raised
- C. Explanation of conditions in Approval LA23029

## 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.)

Greenwood Colony’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 in August 2019, under Bylaw #1841. The parts and policies of the MP relevant to this application are discussed below.

Part 2 states that agriculture is the 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 states that one of the main objectives 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 part and 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 is 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.

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

Greenwood Colony's 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. I am of the opinion that the application is consistent with this provision; I have not been privy to information that refutes this.

*(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. At any rate, as explained above, the NRCB sent out notification letters to people identified by the MD of Willow Creek as owning land or residing within the 1.5 mile notification radius, published notice in the MacLeod Gazette, and posted the notice and application on the NRCB website. 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 2 and Schedule 1 of the Standards and Administration Regulation under AOPA. There is no country residential development located within the category 2 MDS for Greenwood Colony's CFO and the application meets AOPA's MDS requirements with the expansion factor.

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

The proposed new turkey barns 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 reasons, 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, 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 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 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 states that the "parcel size shall remain the same size for which the development approval was originally issued", the lot size does not change due to this development. However, 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 turkey barns meet the 22.9 m road and 6.1 m property line setback requirements.

For these reasons, I conclude that the proposed new turkey barns are consistent with the land use bylaw.

## **APPENDIX B: Determining directly affected party status and concerns raised**

The following individual qualifies for directly affected party status because he submitted a response to the application and he owns or resides 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):

Jim Alock  
W½ 26-7-25 W4M

The directly affected party raised the following concerns:

- Intensification of heavy traffic
- Road dust
- Alternate routes should be considered

### Approval officer comments and conclusions:

The respondent was concerned about the level of dust resulting from constant traffic past his property.

The MD of Willow Creek and Alberta Transportation and Economic Corridors did not voice any concerns in respect to traffic or dust due to the possible increase in traffic.

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.).

## APPENDIX C: Explanation of conditions in Approval LA23029

Approval LA23029 includes several conditions, discussed below, and carries forward all conditions from Authorization LA17009 and all conditions from Approval LA16026 other than Operating conditions #6 and #8 (see sections 2 of this appendix). Construction conditions from historical Approval LA16026 and Authorization LA17009 that have been met are identified in the appendix to Approval LA23029.

### 1. New conditions in Approval LA23029

#### a. Construction Deadline

Greenwood Colony proposes to complete construction of the proposed new turkey barns by December 31, 2026. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2026, is included as a condition in Approval LA23029.

#### 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 LA23029 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the turkey barns to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Greenwood Colony to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area meets the required specifications.

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. Approval LA23029 includes a condition stating that Greenwood Colony shall not place livestock or manure in the manure storage or collection portions of the new turkey barns until NRCB personnel have inspected the turkey barns and confirmed in writing that they meet the approval requirements.

### 2. Conditions of Approval LA16026 that are not carried over into Approval LA23029

Operational condition 6 states:” *Solid manure applied to cultivated land must be incorporated within 48 h.*”

This condition is repetitive from the terms and conditions of this new approval, Approval LA23029, that requires the permit holder to comply with the requirements of the *Agricultural Operation Practices Act (AOPA)* and the regulations passed pursuant to that act (section 24(1) standards and Administration Regulation). To avoid duplication, I will delete this condition.

Operating condition #8 states: “*When transporting manure to be disposed of by land application, the shortest and most practical route must be used. Covered water-tight containers are required if public roadways are accessed.*”

This condition, although more stringent than AOPA requirements, is impossible to enforce because it is unreasonable to assume that NRCB inspectors are present during all manure spreading events to determine the shortest and most practical route and the usage of water-tight containers for the transport of manure (Amending Municipal Permit Conditions, Operational Policy 2016-1). I therefore determined that based on this reason, this condition should be deleted and not carried forward into Approval LA23029.