

Decision Summary LA23034

This document summarizes my reasons for issuing Approval LA23034 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23034. 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 20, 2023, David Slingerland, operating as Tempest Red Angus, submitted a Part 1 application to the NRCB to develop a new 2,000 head beef feeder calf CFO.

The Part 2 application was submitted on June 26, 2023. On July 4, 2023, I deemed the application complete.

The application proposes the conversion of an existing cow calf facility as well as the construction of new feedlot pens and a runoff control catch basin for use as CFO facilities. Groundwater protection is achieved using a naturally occurring protective layer. Some of the existing pens have concrete floors.

The proposed CFO involves:

- Permitting the CFO for 2,000 beef feeder calves
- Constructing three irregularly shaped pens C8 - C10 (approximate dimensions C8: 35 m x 24 m, C9: 35 m x 43 m, and C10: 35 m x 30 m)
- Constructing a runoff catch basin (42 m x 28 m x 4 m deep)
- Permitting the existing feedlot pens (C1 – C7)

a. Location

The existing operation is located at SE 27-9-19 W4M in Lethbridge County, roughly 8 km east of Coaldale. The terrain is relatively flat with a gentle slope towards the southeast.

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 mile. (The NRCB refers to this distance as the “affected party radius.”) The CFO is not located within 100 m of a bank of a river, stream or canal.

A copy of the application was sent to Lethbridge County, which is the municipality where the CFO is located.

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 July 4, 2023. The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing. Twenty-three notification 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 Protected Areas (EPA), Alberta Transportation & Economic Corridors (TEC), and the St. Mary River Irrigation District (SMRID).

I also sent a copy of the application to Atco Gas and Pipelines.

Responses were received from TEC, EPA and SMRID. Their comments are summarized and addressed in Appendix B, attached.

4. Alberta Land Stewardship Act (ALSA) regional plan

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

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

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO is consistent with the land use provisions of 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 confined feeding operation:

- Meets the required AOPA setbacks from nearby residences, with one exception (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS). The owner of that residence has 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 protective layers for manure storage facilities and manure collection areas

With the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements.

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, the supervisor of planning and development with Lethbridge County, provided a written response on behalf of Lethbridge County. Ms. Janzen stated that the application is consistent with the land use provisions in Lethbridge County’s municipal development plan. The application’s consistency with Lethbridge County’s municipal development plan is addressed in Appendix A, attached.

Lethbridge County also raised a concern related to the road setbacks to the proposed runoff control catch basin. A condition will be included in the permit requiring the operator to provide proof that the required road setbacks are met.

Apart from municipalities, any member of the public may request to be considered “directly affected.” No responses were received from any other person, organization, or member of the public.

The NRCB considers a person who owns a residence within the minimum distance separation (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). Frank Sera provided an MDS waiver and is therefore considered to be a directly affected party.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require construction supervision or groundwater monitoring for the facilities. In this case a determination was made, and groundwater monitoring is not required.

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 listed the setbacks required by Lethbridge County's land use bylaw (LUB) and noted that it is not clear that the application can meet the required road setbacks.

I am including a condition in the permit requiring the operator to provide proof that the road setbacks are met.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments.

I am not aware of any statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject of this application.

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

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted and no statements of concern were received relating to environmental effects.

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 confined feeding operation 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 LA23034 specifies the cumulative permitted livestock capacity as 2,000 beef feeder calves and permits the use of the existing pens, the construction of three new pens, and a runoff control catch basin.

Approval LA23034 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 LA23034 includes conditions that generally address construction deadlines, document submission, water table condition, and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

11. Conclusion

Approval LA23034 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23034.

August 23, 2023

(Original signed)

Andy Cumming
Approval Officer

Appendices:

- A. Consistency with Lethbridge County's municipal development plan
- B. Responses from referral agencies
- C. Explanation of conditions in Approval LA23034

APPENDIX A: Consistency with Lethbridge County's municipal development plan

Under section 20 of AOPA, an approval officer may approve an application for an approval only if the approval officer finds that the application is consistent with the "land use provisions" of the applicable municipal development plan (MDP).

The NRCB interprets the term "land use provisions" as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term "land use provisions" also excludes MDP policies that impose procedural requirements. In addition, 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.")

Tempest Red Angus's proposed 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 December 5, 2019, under Bylaw #19-043.

Section 6.6 Confined Feeding Operations lists several policies under subsection 6.6.3:

a) Urban Fringe: *"The County shall exclude the development of CFOs in the Urban Fringe land use districts."*

The proposed CFO is not within this zoning category as shown on Map 11B.

b) Impacts:

I. *County Council will actively lobby the provincial government for additional funding to counteract impacts to the local transportation infrastructure created by the high density of CFOs within the County.*

This policy refers to lobbying for funding to counteract the impact of CFOs on County infrastructure. Municipal funding is not under the jurisdiction of the NRCB. Therefore, I will not include this policy in my MDP consistency determination.

c) Location:

I. *County Council or the relevant approval authority shall consider the results of a Minimum Distance Separation (MDS) calculation using the Agricultural Operations Practices Act Standards when considering:*

- *The re-designation of a parcel to grouped country residential or other district that may allow uses sensitive to CFO's*
- *Any development, or*
- *Any subdivision application*

II. *The County will apply the MDS to the dwelling or building (restaurant, schools, etc.) wall for an existing structure and it will be measured and applied to the property line for a vacant parcel subdivision.*

III. *For a new proposed subdivision located within a designated urban fringe district where there is an existing CFO operation in the vicinity and also within the fringe, the County shall apply the applicable MDS measurement (from the Agricultural Operation Practices Act [AOPA])*

Standards and Administration Regulation) from the closest point of a CFO operation to the dwelling or property boundary, depending on the situation.

The three listed items under this policy section refer to a reciprocal MDS for residential development in the vicinity of CFOs. Development permits for residential development are under the jurisdiction of the municipality. Therefore, I will not discuss this policy any further.

d) NRCB

I) Given the County's unique perspective regarding CFOs, the County will be proactive when discussing regulation amendments regarding CFOs with Alberta's NRCB.

This policy is likely not a land use provision but rather describes how the County plans to act when considering regulation amendments. I will therefore not discuss this policy in any more detail.

II) The NRCB in its approval review should also consider:

- *The cumulative effect of a new approval on any area near other existing confined feeding operations*
- *Environmentally sensitive areas as shown in the report, County of Lethbridge: Environmentally Sensitive areas in the Oldman River Region (see maps in Appendix C)*
- *Giving notice to adjacent landowners even in the case of applications for registration or authorizations, and*
- *Applying MDS calculations to all county residential clusters whether or not designated in the land use bylaw.*

The first of these four considerations is likely not a land use provision because of its project-specific focus (viewed cumulatively with other existing CFOs), and its request that the NRCB to make a discretionary judgement about the degree of cumulative effects that are acceptable. Because of this, this consideration is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: *Approvals*, part 8.2.5.)

The second provision is likely not a land use provision because of its referral to a specific site. However, I considered it in respect to the CFOs impact on the environment as discussed above. At any rate, the CFO is not located in any of the environmentally significant areas noted in the County's report.

The third consideration is likely not a land use provision because it requests notification to adjacent landowners about registration and authorization applications. Sections 19 and 21 of AOPA provide details on notification requirements for AOPA applications. In this case, the application is for an approval size CFO. AOPA requires public notification, and as identified previously in section 2 of this decision summary, public notice was given.

The fourth consideration appears to refer to AOPA's MDS requirements. Under NRCB policy, approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. (See also Operational Policy 2016-7: *Approvals*, part 8.2.5.) At any rate, there are no specified country residential clusters in the immediate vicinity of the CFO. There are three lots zoned as grouped country residential east of the proposed CFO. The CFO meets the AOPA MDS requirements with the MDS waivers provided, and therefore this provision is considered to be met.

III) The NRCB is requested to take into consideration the requirements and policies of the County Council when making decision on such applications.

This provision is likely not a land use provision because it requests the consideration of requirements and policies of the county's council. AOPA is very specific in what approval officers must consider when determining consistency with the MDP (section 20(1)) and only refers to the MDP document. The provision is also not specifically a land use provision. At any rate, the application was sent to Lethbridge County for their input which has been considered for this application.

IV) CFOs "shall not be approved in the areas shown and designated on Figure 11B as exclusion areas".

The Tempest Red Angus CFO is not located in any of the designated CFO exclusion areas, so the application is consistent with this provision.

V) CFOs "shall not be approved on parcels less than 64.7 hectares (160 acres) or an un-subdivided quarter section, having a minimum of 4.0 hectares (10 acres) of registered exceptions of rights-of-way"

This provision is not a land use provision because it refers to specifics with respect to the site of a CFO, rather than the use of specified lands. I also consider it to be a test or condition which AOPA directs me not to consider. I have therefore not taken this into consideration in my MDP consistency determination.

VI) The NRCB should consider the requirements and regulations as stipulated in the Lethbridge County Land Use Bylaw and Animal Control Bylaw, including the exclusion of confined feeding operations on parcels less than the specified sizes as specified in those bylaws.

In my view, this section provides a clear intent to adopt provisions from the land use bylaw (LUB). Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I therefore also considered Lethbridge County's Land Use Bylaw #1404 (consolidated to Bylaw 19-016). Under those bylaws, the subject land is currently zoned Rural Agriculture. CFOs are a discretionary use under this zoning category.

As stated in Part 2 (RA) section 3(3) in this bylaw, the minimum parcel size for CFOs is 64.7 hectares (160 acres).

This provision is the same as section 6.6.3.d) V. in the MDP which has been addressed above.

The subsequent sections (Rural Agriculture) in this land use bylaw, require minimum setbacks (sections 4 to 7). These include setbacks to property lines, roadways, canals and distance to neighbouring residences (section 6(6)). Apart from the MDS requirement which has been discussed previously, these requirements could be defined as being 'siting' requirements and would subsequently be exempt from consideration by an approval officer. Nevertheless, I am of the opinion that they ensure proper development of the rural areas in respect to future development and hence dictate a land use or are related to safety issues and will therefore be considered as impact on the community. At any rate, the proposed facilities can meet these setbacks.

Subsection 6.6.3.d) VI of the MDP also seems to clearly incorporate the Animal Control Bylaw (Bylaw17-008). Given that this is not a land use provision, I determined that the Animal Control Bylaw does not apply to my MDP consistency determination. In any event, this operation will hold a permit under AOPA.

e) Development Setbacks

This provision requires CFO developments to meet the setbacks to roadways and property lines as set out in the LUB.

The development can meet these setbacks. Additionally, a condition is being added to require that the road right-of-way setbacks are met.

I therefore conclude that this application is consistent with the land use provisions in Lethbridge County's MDP.

APPENDIX B: Responses from referral agencies

a. Alberta Environment and Protected Areas (EPA)

In their response, Jeff Gutsell a Hydrogeologist with EPA stated that there are no groundwater or surface water diversion authorizations for the proposed site, and that the applicant will need to ensure that they have access to sufficient licenced water for their proposed CFO.

The applicant provided a copy of their water conveyance agreement with the St Mary River Irrigation District which proves that they have access to sufficient licenced water for their proposed development.

b. Alberta Transportation & Economic Corridors (TEC)

In their response, Leah Olsen a Development/Planning Technologist with TEC identified that a permit from TEC is required for the proposed development and provided details of how the applicant can apply for the permit.

The applicant subsequently provided proof that they had applied for a permit with TEC and that one had been issued for the proposed site.

c. St. Mary River Irrigation District (SMRID)

In their response, Linda Park a Land Administrator with the SMRID stated that the operator has a water conveyance agreement in place which will suffice the water needs of the CFO.

They also pointed out that there is an irrigation drain near the southeast corner of the land on which the feedlot is proposed and that no manure or manure contaminated runoff must enter it. They encouraged that an adequately sized lagoon be required.

This information has been passed on to the operator for their information and attention. It is also noted that the runoff control catch basin has been sized larger than the minimum required by AOPA. As such it should provide the operator with more flexibility in managing any runoff from the feedlot. Additionally, because it has a greater capacity than required by AOPA, it will help to mitigate any risk of runoff leaving the CFO property or entering the irrigation drain.

APPENDIX C: Explanation of conditions in Approval LA23034

Approval LA23034 includes several conditions, discussed below:

a. Construction above the water table

Sections 9(3) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

Based on the information in the application drilling logs, it is not clear if the proposed runoff control catch basin can meet the one metre requirement of section 9(3) of the *Standards and Administration Regulation*. Because the depth to the water table is unknown, and since the depth of the water table can vary over time, to ensure that the depth requirement is met at the time of construction, a condition is included requiring Tempest Red Angus to cease construction and notify the NRCB immediately if the water table is encountered during construction.

b. Construction deadline

Tempest Red Angus proposes to complete construction of the proposed new pens and catch basin in the summer of 2025. This timeframe is considered to be reasonable for the proposed scope of work. The construction deadline of October 31, 2025 is included as a condition in Approval LA23034.

c. Road right-of-way setbacks

Because the proposed runoff control catch basin is proposed to just meet the required road right-of-way setbacks, a condition is being included requiring that a survey be carried out by a professional surveyor, following construction of the runoff control catch basin, to confirm that the County’s road right-of-way setback of 38.1 metres, measured from the centre line of the road right-of-way, is met. This report must be provided prior to the post construction inspection.

d. Post-construction inspection and review

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA23034 includes conditions stating that Tempest Red Angus shall not place livestock or manure in the manure storage or collection portions of the new pens, or allow runoff into the new catch basin until NRCB personnel have inspected the pens and catch basin and confirmed in writing that they meet the approval requirements.