

Decision Summary LA25020

This document summarizes my reasons for issuing Authorization LA25020 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA25020. 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 authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On October 21, 2024, an NRCB inspector conducted a site visit at 5 Star Cattle Ltd. (5 Star) and found that there were calf hutches located east of the permitted footprint of the existing CFO. As a result, Compliance Directive 25-08 was issued, directing 5 Star to obtain a permit for the calf hutch area (as identified in Appendix A of Compliance Directive 25-08, page 5).

On February 28, 2025, 5 Star submitted a Part 1 application to the NRCB to permit the already constructed manure collection area (calf pen) at the existing beef CFO.

The Part 2 application was submitted on April 9, 2025. On April 10, 2025, I deemed the application complete.

The proposed application involves:

- permit the previously constructed calf pen – 47 m x 70 m
- permit a vegetative filter strip for runoff control

The applicant also requested a variance under section 17 of AOPA of the prohibition against constructing manure storage facilities and manure collection areas less than 100 m away from water wells. That variance request is discussed in Appendix B and section 8, below.

a. Location

The CFO is located at SW 27-8-26 W4M in the Municipal District (MD) of Willow Creek, roughly 4.5 km southwest of the Town of Fort McLeod, Alberta. The terrain is slightly sloping to the north-northeast in the immediate area of the CFO but is generally undulating. The closest common body of water is an ephemeral drain approximately 56 m to the north.

b. Existing permits

The CFO is already permitted under Approval LA19022.

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

None of the CFO facilities are located within 100 m of a bank of a river, stream or canal.

A copy of the application was sent to MD of Willow Creek, which is the municipality where the CFO is located and the town of Fort MacLeod because it shares a intermunicipal development plan with the MD of Willow Creek.

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 Environment and Protected Areas (EPA), and Alberta Transportation and Economic Corridors (TEC).

I also sent a copy of the application to Telus (Alberta Government Telephones), and Alta Link Management Ltd. because they are right of way holders on this land.

The NRCB received a response from Mr. Bradley Calder, a water administration technologist with EPA, and Ms. Leah Olson, a development and planning technologist with TEC

In Mr. Calder’s response, he stated that there doesn’t seem to be any licences associated with the wells at this land location and reminded the operator that the diversion of water from any licenced wells for any other purposes than those that are exempt from requiring a licence, is in contravention of the *Water Act*. He requested a copy of any water supplies that 5 Star may have to satisfy its water needs. A copy of this response has been forwarded to 5 Star for their information and action.

Ms. Olson stated that the development falls within the permit area of a provincial highway and requires a permit from TEC. A copy of that response was forwarded to 5 Star for their information and action.

No other responses were received.

Authorization LA25020 does not relieve the permit holder from complying with other applicable laws, such as safety codes, other municipal bylaws, provincial legislation (e.g. Historical Resources Act), and federal legislation (e.g. Migratory Birds Convention Act).

4. Municipal Development Plan (MDP) consistency

I have determined that the already constructed calf pen 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 MD's planning requirements.)

5. AOPA requirements

With respect to the technical requirements set out in the regulations, the already constructed calf pen:

- 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. Operational Policy 2016-7: Approvals, part 7.2.3 presumes that a person who provides a written MDS waiver is automatically considered to be directly affected. However, in the case of an authorization section 21(2) of the Act specifies that the only directly affected parties are the applicant and the municipality.
- Meets the required AOPA setbacks from 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 protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 9, the application meets all relevant AOPA requirements. The variance that is required to address the AOPA requirements around distance to a water well is discussed in the following parts of this decision summary.

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.

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 facility is located within its boundaries.

Ms. Cindy Chisholm, manager 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 might not be consistent with the MD of Willow Creek's land use provisions of the municipal development plan because it might not meet the siting requirements of the land use bylaw. The application's consistency with the MD of Willow Creek's municipal development plan is addressed in Appendix A, attached.

Ms. Chisholm also listed the setbacks required by the MD of Willow Creek's land use bylaw (LUB) and noted that the application might not meet these setbacks.

I also send the application to the Town of Fort MacLeod because the town shares an intermunicipal development plan with the MD of Willow Creek. In their response, Keli Sanford, the planning and development officer stated that council has no comments or concerns.

7. Environmental risk of facilities

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.) 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 9.17.

In this case, the risks posed by 5 Star Cattle's existing CFO facilities were assessed in 2020. The assessment indicated that the potential risks to surface water and groundwater were low.

Since the 2020 risk assessment, a new water well was established that is within 100 m of the permitted footprint of the calf hutch area. For these reasons, I reassessed the risks posed by the CFO's existing facilities. My reassessment found that the risk to surface and groundwater remains low.

8. Variances

The applicant applied for a variance of the requirement for a water well to be at least 100 m away from an MCA. I determined that the already constructed, unauthorized new calf pen, is located within the required AOPA setback from an existing water well. As explained in Appendix B, I am prepared to issue a variance to the 100 m water well setback due to the lay of land that leads runoff to flow away from the well, the construction of the well, and the presence of a natural occurring protective layer (see Technical Document LA25020). However, as a precautionary measure, I will include a water well monitoring condition in Authorization LA25020.

9. Terms and conditions

Authorization LA25020 permits the use of the already constructed calf pen and a vegetative filter strip for runoff control for the calf pen.

Authorization LA25020 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 LA25020 includes conditions that generally address monitoring and document submission. For an explanation of the reasons for these conditions, see Appendix C.

10. Conclusion

Authorization LA25020 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA25020.

Authorization LA25020 must be read in conjunction with 5 Star's Approval LA19022 which remains in effect.

June 20, 2025

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Variance to the 100 m setback requirement to a water well
- C. Explanation of conditions in Authorization LA25020

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.

However, in Board Decision 2022-02 Double H Feeders Ltd., the NRCB Board directed approval officers away from a narrow reading of section 20 of AOPA. An approval officer should determine an application’s consistency with not just the MDP, but also the IDP (if one applies). Given changes to the hierarchy of statutory plans under the *Municipal Government Act*, the Board suggested that ignoring an applicable IDP could lead to absurd outcomes in the event of a conflict between an MDP and an IDP.

“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 9.2.7.)

5 Star Cattle’s CFO is located in the MD of Willow Creek and is therefore subject to that MD’s MDP. The MD of Willow Creek adopted the latest revision to this plan on June 14, 2017, under Bylaw #1765, consolidated in August 2019 into Bylaw No. 1841.

Section 2 of the MD of Willow Creek’s MDP states that agriculture is a predominant land use in the MD though it also notes that it is important to balance other interests. Section 2 states that one of the main objectives of the MDP is to mitigate the siting of any CFOs 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.

I do not consider Section 2 and policy 2.3 to be “land use provisions.” Rather, I consider them to be a source of insight for the interpretation of the remaining portions of the MDP.

The MDP provisions relating to CFOs are in Section 9 Confined Feeding Operations / Intensive Livestock Operations.

Policy 9.1 of the MDP requests that the following setbacks are to be applied:

- a. *The appropriate setbacks from the right-of-way of any public roadway which is not designated as a primary highway as established in the municipal LUB*

Road setbacks are likely not land use provisions in the sense that AOPA uses the concept in section 22(2)(a) or (b), which recognizes the higher-level land use planning of an MDP. Land use provisions provide generic directions about the acceptability of various land uses

in specific areas. Specific siting rules such as roadway setbacks on the site are found more typically in land use bylaws and is more a condition related to the “site for a CFO” (a test or condition). Infringement into a road right of way setback is not an automatic basis for denying an application under AOPA. Having said that, this does not mean that AOPA disregards such matters as setbacks, which are an important expression of the municipality’s needs. Approval officers consider setbacks as a matter that would normally be considered if a development permit were being issued (section 22(2)(b) AOPA) and can tailor permit terms and conditions to respect the needs of the municipality in relation to the particular site. In this case, the calf pen area in question is located more than 30 m from the center line of the road which is consistent with the setbacks in most municipal plans or land use bylaws. I am therefore satisfied that this provision is met.

b. As required by TEC for roads designated in the Memorandum of Agreement with the MD.

TEC commented in their response that a permit from TEC is required for this development. However, the CFO is outside the permit area of a secondary highway which is 300 m from the highway. The closest CFO facility of 5 Star is 487 m east of the centerline of the highway (457 m from the roadside ditch) but well beyond the 300 m setback. The new calf pen is located 760 m to the east of the highway. Having said that, I forwarded TEC’s response to 5 Star to follow up on this matter.

Policy 9.2 of the MDP directs the NRCB to consider six matters. These are quoted below, followed by my interpretation of how the provision is related to this application.

(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 those 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 authorizing legislation. AOPA does not provide for cumulative effects assessment.” (*Zealand Farms*, RFR 2011-02 at page 5).

For these reasons, I do not consider this MDP provision to be relevant to my MDP consistency determination.

(b) environmentally significant areas contained in the “Municipal District of Willow Creek: Environmentally Significant Areas in the Oldman River Region” report

5 Star’s CFO is not within an area designated as of natural significance in the referenced report (Map 1 of the report) or any other areas identified as environmentally sensitive.

(c) providing notice to adjacent landowners including applications for registrations or authorization

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. Because this was an application for an authorization, the Town of Fort MacLeod was notified because it shares

an IDP with the MD of Willow Creek, but notification of adjacent neighbours is not required (Operational Policy 2016-7: *Approvals*, part 8.7.3).

(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 3 and Schedule 1 of the *Standards and Administration Regulation* under AOPA. The MDS is met to all neighbouring residences with the waiver provided.

(e) restricting development in the flood plain, floodway, the flood way fringe and flood prone, or hazard lands within or adjacent to any watercourse within the MD; and

5 Star's CFO is not located within a known flood plain, floodway, the floodway fringe and flood prone, or hazard lands as identified in the Alberta Environment and Protected Areas flood hazard website. Also, as illustrated in Technical Document LA25020, the CFO meets AOPA setbacks to common bodies of water. Based on this information, the application is consistent with this provision.

(f) restricting development in any wetland or riparian area

5 Star's CFO is not located in a wetland or riparian area, and it meets the AOPA setbacks to common bodies of water. Therefore, the application is consistent with this provision.

For these reasons, I conclude that the application is consistent with the land use provisions of the MD of Willow Creek's MDP that I may consider.

Intermunicipal Development plan with the Town of Fort MacLeod

As directed by the NRCB Board in Board Decision 2022-02 LA21033 – Double H Feeders Ltd., I also considered land use provisions of the IDP that exists between the MD of Willow Creek and the Town of Fort MacLeod and that applies to this land location.

The Intermunicipal Development Plan Town of Fort MacLeod and Municipal District of Willow Creek No. 26" (IDP) was implemented under Bylaw No. 1949 and Bylaw No. 1922 in March 2022.

Section 3 of the IDP addresses CFOs. The policies of this section are quoted below, followed by my interpretation of how these policies relate to this application.

3.1 New confined feeding operations (CFOs) and expansion to existing permits which would increase livestock numbers are not permitted within the Intermunicipal Development Plan Confined Feeding Operation Policy Area (CFO exclusion Ara) as illustrated on Map 3 – CFO Policy Area.

This application is to get a permit for an already constructed calf pen (authorization) at an existing CFO. No increase in livestock is proposed. Therefore, the application is consistent with this provision.

3.2 In regard to manure application on lands within the Plan Area or the lands adjacent to the Town boundary, the standards and procedures as outlined in the Agricultural Operations Practices Act, Standards and Administration Regulation shall be applied.

I am prohibited under section 22(2.1) of AOPA from considering provision respecting the application of manure. At any rate, manure application is addressed in section 24(1) and 24(5) of the Standards and Administration Regulation. The regulations provide rules for manure application as an ongoing operating matter, rather than a permitting matter. Therefore, I do not consider this to be a “land use provision” and not relevant to my IDP consistency determination.

3.3 Both municipalities request the NRCB to circulate all application for CFO registrations or approvals with the Plan Area to each respective municipality.

Although this is not a land use provision and regulates the notification process between the two municipalities, both municipalities were notified of this application.

3.4 Both municipalities recognize and acknowledge that existing CFOs located within the CFO exclusion area will be allowed to continue to operate under acceptable operating practices and within the requirements of the Agricultural Operations Practices Act and regulations. Consistent with Policy 3.1 of the IDP, existing CFOs in the CFOs Policy Area may continue to operate only within the scope of their existing permit.

5 Star's CFO is not within this policy area. Therefore, this section does not apply.

Sections 3.5-3.8 discuss intermunicipal communication or planning issues between both municipalities and I do not consider them land use provision. Therefore, these policies are not relevant to my IDP consistency determination.

I conclude that this application is consistent with all applicable sections of the IDP.

APPENDIX B: Variance

Because the MCA has already been constructed (unauthorized), an exemption under section 7(2) of the SAR is not available and 5 Star has applied for a variance.

The new calf pen is located less than 100 m from a water well. I have confirmed that one water well is located approximately 24 m from it during a site visit. This is in conflict with section 7(1)(b) of the Standards and Administration Regulation (SAR).

Approval officers must not grant variances lightly or in the absence of substantive evidence they will produce equivalent levels of protection (see Decision 03-04, *AAA Cattle Ltd.* p 24). I will consider whether a variance to the water well is warranted.

Water Well Considerations:

On February 27, 2025, the CFO operator requested a variance to the water well setback requirement on the grounds that the land is sloping away from the water well and no runoff can reach it, as well as the construction of the well.

In this case, the facility has already been constructed (without a permit) but may cause a risk to the environment. I therefore need to either deny the application or alternatively consider if a variance is warranted under AOPA's section 17(1). It is my opinion that considering a variance is appropriate in this case.

I have used the same tools that I would normally use to determine if an exemption is warranted. I consider the water well exemption framework as useful for assessing the degree of protection for the water well in relation to a manure collection area (MCA). In this case I presume that the risks of direct aquifer contamination from the MCA are low if the MCA meets (or otherwise meets) AOPA's technical requirements to control runoff and leakage. However, when determining whether an MCA that otherwise meets AOPA's technical requirements provides the same or greater protection and safety as provided for by the regulations, I also assess whether water wells themselves could act as conduits for aquifer contamination.

One indicator that a variance provides the same or greater protection and safety is if the aquifer into which the well is drilled is not likely to be contaminated by the MCA.

The potential risks of direct aquifer contamination from the MCA are presumed to be low if the applicant's MCA meets AOPA's technical requirements to control runoff and leakage. Approval officers may also assess whether the water well itself could act as a conduit for aquifer contamination.

In this case, I felt the following factors were relevant to determine the protection of the aquifer in relation to the water well:

- a. How the well was constructed
- b. Whether the well is being properly maintained
- c. The distance between the well and the MCA
- d. Whether the well is up- or down-gradient from the MCA and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

The water well:

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well located approximately 24 m north of the calf pen is likely EPA water well ID # 9681624. This well is reported to have been installed in 2021 and has a perforated zone from 6.71 m to 9.45 m below ground level across stratigraphy.

The well is pit-less with a 2 foot high above ground casing. The use is reported to be for domestic purposes. The UGR is in a gravel layer overlaying bedrock. I note that in my conversations with the applicant, the water well is only used presently for livestock. The well's log identifies a protective layer from ground surface to 3.96 m below ground level. The well has a bentonite seal from ground surface to 6.71 m below ground level (across the two layers). The well appeared to be in good condition at the time of my site inspection. All surface flow is directed away from the well.

The NRCB has developed a "water well exemption screening tool," based on the factors listed above, to help approval officers assess the groundwater risks associated with a nearby water well¹. This tool is useful in gauging the level of protection of groundwater.

We use the water well exemption screening tool to determine if a water well is going to be impacted when an exemption is considered. The water well exemption screening tool indicates that there is a low potential for groundwater to be impacted by the MCA. It is my opinion that in this case, the water well provides an equivalent level of protection if an exemption was considered.

Based on the above information, it is my assessment that varying the 100 m setback rule for the calf pen would offer the same degree of protection and safety as that provided for by the regulations for the following reasons:

1. All surface flow is directed away from the well
2. There is an existing berm between the MCA and the water well
3. The calf pen meets AOPA liner requirements

Although a variance is granted, as a precautionary measure, I am of the opinion that monitoring groundwater from this well is advisable. A condition will be included in this authorization requiring annual testing of water well ID 9681624.

¹ A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.

APPENDIX C: Explanation of conditions in Authorization LA25020

a. Runoff control from calf pen

5 Star proposed an alternative runoff control from the new calf pen by using a vegetative filter strip. The expected runoff from this pen area is 192 m³. The manure will be removed regularly (after every two cycles) which will decrease nutrient loading of the runoff. The runoff is proposed to flow to the south into adjacent cropland. To ensure that the nutrient limits set out in Schedule 3 and sections 24 and 25 in the Standards and Administration Regulation are not exceeded by the area receiving manure contaminated runoff, annual soil testing is required. The soil sampling shall be done in the cropped area, located within 50 m from where the runoff enters the field (as shown in Technical Document LA25020). Three soils samples shall be taken which can be combined as composite samples for soil analysis. Soil sampling and analysis shall be done according to Schedule 3 Standards and Administration Regulations. Soil test results must be submitted annually by December 15 to the NRCB, starting in 2025. The NRCB may revise those requirements as determined necessary, in writing.

b. Groundwater monitoring

As explained in Appendix B, a variance is granted, however, as a precautionary measure, annual groundwater monitoring from the water well is required. Therefore, I will include a condition that requires the operator to sample raw groundwater according to the water well monitoring schedule prescribed by the NRB in writing.