

Decision Summary LA25036 **(corrected August 27, 2025)**

This document summarizes my reasons for issuing Approval LA25036 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA25036. 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 May 2, 2025, MacMillan Hutterian Brethren (collectively referred to as MacMillan Colony) submitted a Part 1 application to the NRCB to construct a new poultry CFO.

The Part 2 application was submitted on May 14, 2025. On May 28, 2025, I deemed the application complete.

The proposed CFO involves:

- Permitting 20,000 chicken layers, 55,000 chicken broilers, 12,000 chicken pullets, 400 geese, and 1,000 ducks
- Constructing two broiler barns (121.9 m x 18.3 m each)
- Constructing a pullet barn (63 m x 13.5 m) with attached, covered manure storage (19 m x 10 m)
- Constructing a layer barn (118 m x 26 m) with attached, covered manure storage (15 m x 10 m)

In 2021, Approval LA21054 was issued to MacMillan Colony for a new CFO. However, MacMillan Colony did not construct any of the facilities prior to the construction completion deadline and requested the permit to be cancelled. The location of the CFO facilities has not changed.

a. Location

The proposed CFO is located at NE 26-17-1 W5M in Foothills County, roughly 13 kilometers west of Cayley, Alberta. The terrain in the immediate area of development is flat, with an overall slope to the south-southwest. The nearest common water body is a spring, approximately 620 m to the northwest. There is also a wetland (slough) approximately 26 m away from the proposed pullet barn. However, this wetland is not considered a common body of water because it is located in its entirety on MacMillan Colony's land.

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
- 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 0.5 mile. (The NRCB refers to this distance as the “notification distance”.)

None of the CFO facilities are proposed to be located within 100 m of a bank of a river, stream or canal and no other municipality shares a border with Foothills County within the notification distance.

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

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the Western Wheel newspaper in circulation in the community affected by the application on May 28, 2025, and
- sending 4 notification letters to people identified by Foothills County as owning or residing on land within the notification distance.

The full application was made available for viewing at the NRCB office in Lethbridge during regular business hours.

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.

A referral letter and a copy of the complete application was emailed to Alberta Environment and Protected Areas (EPA).

The NRCB did not receive a response from EPA.

The application was also sent to Alberta Health Services (AHS) in response to the health concerns raised in the responses we received. AHS’ response is discussed in Appendix B below.

Because the location of the facilities has not changed in respect to the local road system, this application was not sent again to Alberta Transportation and Economic Corridors. In response to the previous application (Application LA21054) TEC stated that a development permit from TEC is not required.

Approval LA25036 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. 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 applicable land use provisions of Foothills County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.) There is no applicable intermunicipal development plan (IDP).

6. AOPA requirements

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

- 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'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." Foothills County is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Ms. Heather Hemingway, director of planning with Foothills County provided a written response on behalf of Foothills County. Ms. Hemingway stated that the application is not consistent with Foothills County's land use provisions of the municipal development plan because the proposal is not consistent with Agriculture Policy 10.2 of the MDP. The application's consistency with the land use provisions of Foothills County'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 14 responses (from 22 individuals, one family and one corporation).

Of the respondents, four individuals and one cooperation own or reside on land within the 0.5 mile notification distance for affected persons. Because of their location within this distance, and

because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1)

The other respondents do not own or reside on land within the 0.5 mile distance for affected persons. Of these respondents, I consider none to be directly affected by the approval application. Appendix B sets out my reasons for determining which respondents are directly affected.

The directly affected parties raised concerns regarding water resources, nuisance impacts, roads, impact on soil health through manure spreading, negative impact on the community, and consistency with municipal planning documents. These concerns are addressed in Appendix C.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements may be assumed to pose a low risk to surface and groundwater. This assumption, that risks to groundwater and surface water are low, is supported by the results of the Environmental Risk Screening Tool assessment (Technical Document LA25036).

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. Hemingway did not list or comment on setbacks to property lines or roadways required by Foothills County's land use bylaw (LUB). The proposed facilities meet all of those setbacks.

I have considered the effects the proposed CFO expansion 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 AOPA's technical requirements.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://eab.gov.ab.ca/status.htm>, accessed August 19, 2025).

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 Foothills County and other directly affected parties, and my own observations from two site visits.

Consistent with NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9, I presumed that the effects on the environment are acceptable because the application meets all of AOPA's technical requirements (see part 6 of this decision summary). In my view, this presumption is not rebutted. Appendix C includes discussion of surface water and groundwater contamination.

Consistent with NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9, if the application is

consistent with the MDP land use provisions that I can consider, then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted. More details can be found below and in Appendix C, including discussion on water availability, planning documents, sufficiency of consultation, nuisance, impact on property enjoyment and values, and traffic.

I also presumed that the proposed CFO is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan that I can consider (See NRCB Operational Policy 2016-7: Approvals, part 9.10.9). It is also consistent with the Land Use Bylaw (60/2014). The site is zoned Agricultural District. Agricultural intensive use is a discretionary use in this zoning category.

As stated in the Land Use Bylaw, Part 6 - Land Use Districts, section 12.1. Agricultural District, subsection 1: the purpose and intent of this zoning is:

"to promote a wide range of agricultural land uses that encourage growth, diversification and development of the agricultural industry while having regard of the agricultural value and rural character of the area consistent with the policies outlined in the MDP." As discussed below (Appendix A), the application is consistent with all policies in the relevant section of the MDP but one (expressed as a preference): MacMillan Colony does not own the quarter section immediately to the east that is within the MDS. Having said that, there are no residences located on this quarter section. For these reasons, I believe that the presumption that the proposed CFO is an appropriate use of land is not rebutted.

10. Terms and conditions

Approval LA25036 specifies the cumulative permitted livestock capacity as 20,000 chicken layers, 55,000 chicken broilers, 12,000 chicken pullets, 400 geese, and 1,000 ducks and permits the construction of the two broiler barns, a pullet barn with attached solid manure storage, and a layer barn with attached solid manure storage.

Approval LA25036 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 LA25036 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix D.

11. Conclusion

Approval LA25036 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA25036.

August 21, 2025

(Original signed)

Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal land use planning
- B. Determination of directly affected party status
- C. Concerns raised by directly affected parties
- D. Explanation of conditions in Approval LA25036

APPENDIX A: Consistency with the municipal land use planning

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), and any applicable intermunicipal development plan (IDP). In this case, no IDP applies.

This does not mean consistency with the entire MDP/IDP. In general, “land use provisions” cover policies that provide generic directions about the acceptability of various land uses in specific areas.

“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 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 provisions are commonly referred to as “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.)

MacMillan Colony’s proposed CFO is located in Foothills County and is therefore subject to that county’s MDP. Foothills County adopted the latest revision to this plan on October 11, 2017, under Bylaw #52/2016.

In the section ‘Agriculture’, policies 8 to 13 relate to CFOs. None of the CFO references in these policies are specifically to “new” CFOs or to “expansions” of existing CFOs. However, it seems reasonable to interpret these policies as having been intended to apply to new CFOs and to expansions (that is, increases in animal numbers or manure production) of existing CFOs.

Policies 8-11 and 13 are quoted (in italics) and discussed further below. Policy 12 relates to proposed developments near existing CFOs and is regulated by the county itself. I will therefore not discuss this section any further.

As another preliminary matter, policies 8-10 all refer to the term “minimum distance separation (MDS)”. The MDP does not define this term; I therefore presume that it refers to the MDS requirements in AOPA.

8. Ensure that each confined feeding operation (CFO) meets the minimum distance separation (MDS).

Under NRCB policy, approval officers should not consider MDP provisions that are based on or modify the MDS requirements in AOPA. (See Operational Policy 2016-7: *Approvals*, part 9.2.7.). That said, MacMillan Colony’s application meets the AOPA MDS requirements, so it would be consistent with this policy (see Technical Document LA25036 for more details).

9. Encourage each CFO to own the land included within the MDS.

In addition, this policy seeks to modify the MDS provisions under AOPA which do not require a CFO owner to own all the land within the CFO’s MDS.

The MDS for MacMillan Colony’s proposed CFO is 341 m for Category 1 (residences on land zoned for agricultural purposes) and 455 m for Category 2 (residences on land zoned for non-agricultural purposes e.g. country residential). Because MacMillan Colony does not own the

quarter section immediately to the east, it does not meet this policy. However, this policy's use of the word "[e]ncourage," in contrast with the word "ensure" in policies 8 and 10, strongly suggests that this policy was meant to call for a preference, rather than provide a hard and fast or non-discretionary rule. Having said that, in my view, land ownership preferences are not land use provisions.

For both of these reasons, I will not consider this policy.

10. *Ensure that the CFO and the MDS does not fall within a minimum of:*
 - 10.1. *3.2 km (2 miles) of any urban municipality or hamlet and does not encroach into any intermunicipal development plan boundaries*
 - 10.2. *0.8 km (1/2 mile) of a neighbouring dwelling*

Part of this policy enlarges and therefore modifies the MDS under AOPA by adding the 3.2 or 0.8 km respectively to the existing MDS.

I observe that the proposed site does not fall within the setback in 10.1, and is not located on an intermunicipal development plan boundary. The MDP does not appear to identify a rationale for this county-wide setback.

Foothills County felt that the application was inconsistent with 10.2, and that the applicant should be required to "achieve dual compliance with both the MDP and AOPA." The County's response included a map showing two nearby parcels zoned country residential, one in the quarter to the south and one in the quarter to the southwest of the CFO location. The response also included an illustration of an existing dwelling on the SW 26-17-01 W5M.

I could not identify any dwellings within ½ mile (0.8 km) from the proposed CFO. Under AOPA's Standards and Administration Regulation, MDS is measured from the outside walls of the residence (not the property line) to the point closest to manure storage facilities or manure collection areas.

The distance between the nearest CFO facility (the pullet barn) to the residence to the south (SW 26-17-1 W5M) which is located on land zoned 'Country residential', was measured to be 1,139 from the pullet barn to the property line and 1,311 m to the residence (+/- 2 m). There is no residence on the neighboring parcel on SE 26-17-1 W5 that is also zoned country residential. There are four residences to the east (2 located on SE 36-17-1 W5M and 2 on SE 25-17-1 W5M). The closest CFO facility to those residences is the layer barn which is more than ½ mile away from these residences.

Although the new CFO would be consistent with this provision, in my view, section 10.2 effectively attempts to modify the MDS setback under AOPA. 10.2 does this by imposing a flat 0.8km setback, and by applying the setback to the MDS associated with the CFO not just to the CFO. Under NRCB policy, approval officers should not consider MDP provisions that are based on or modify the MDS requirements under AOPA. (See Operational Policy 2016-7: *Approvals*, part 9.2.7). Therefore, this part of this policy is not relevant to my MDP consistency determination.

11. *CFOs should be located in an area where there will be minimal conflict with existing land uses and must take into consideration future expansion areas when looking at surrounding land uses.*

The "minimal conflict" and "consideration" tests in this policy section both require site-specific and CFO-specific judgements about the individual operation. For this reason, I would not

consider this policy to be a “land use provision.” It is therefore not relevant to my MDP consistency determination.

13. Direct CFOs towards parcels of 160 acres or more.

The policy is also likely not relevant under section 20(1.1) of AOPA, which precludes approval officers from considering MDP provisions “related to ... the site for a confined feeding operation....” At any rate, the CFO is on a parcel that is 160 acres, so policy 13 would be satisfied.

The municipality’s response states that, aside from the setback to dwellings, and owning all the land within the MDS, the application is consistent with the MDP.

As a conclusion, because the policies that were identified by the county to not have been met by the application are not land use policies that I can consider, I determined that MacMillan Colony’s application is consistent with the land use provisions of Foothills County’s MDP that I can consider.

APPENDIX B: Determining directly affected party status

The following individuals and corporation qualify for directly affected party status because they submitted a response to the application and they own or reside on land within the half-mile notification distance, as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation. See NRCB Operational Policy 2016-7: *Approvals*, part 7.2.1:

- M.R.G. Land & Cattle (Owned by Murray and Dawn Giles)
W½ 25-27-01 W5M, NE 25-17-01 W5M, NW 24-17-01 W5M
- Rob and Jennifer Marks
SW 26-17-01 W5M
- Donald and Kirsten Smith
SE 26-17-29 W5M

A person who is not specified in section 5 of the Part 2 Matters Regulation as an affected party can also qualify for directly affected party status. However, they have the burden to demonstrate they are directly affected by the application. The following individuals and one corporation, that submitted a response to the application, may fall under this category (Not listed in any specific order):

- Stephanie Longson & David Truscott
SE 36-17-1 W5M
- Jason and Candice McKay
SE 25-17-01 W5M
- Cody and Kristine Longson
NE 12-18-01 W5M
- Calvin and Wanda Longson (Meridian Cattle Co. Ltd.)
SW 25-17-30 W4M
- Barb and Dan Cranston
NW 2-18-1 W5M
- Keith and Rhonda Longson
SW 30-17-29 W4M
- Lorne and Christine De Paoli
NE 13-17-30 W4M
- Chance De Paoli
SW 19-17-29 W4M
- Lori & Kevin Kelso
NE 36-17-1 W5M
- Erwin Karst
SW 12-18-1 W5M
- Family Stephenson (undisclosed number of people)
SW 1-18-1 W5M

Under NRCB policy, a person has the burden of demonstrating that they are directly affected by an application. In order to meet their burden of proof, the person has to demonstrate all the following five elements (see NRCB Operational Policy 2016:7 *Approvals*, part 7.2.1):

1. A plausible chain of causality exists between the proposed project and the effect asserted;
2. The effect would probably occur;
3. The effect could reasonably be expected to impact the party;

4. The effect would not be trivial; and
5. The effect falls within the NRCB regulatory mandate under AOPA.

Concern	Respondents
Water scarcity, water quality and presence of springs	Stephanie Longson & David Truscott Jason and Candice McKay Cody and Kristine Longson Calvin and Wanda Longson Barb and Dan Cranston Keith and Rhonda Longson Lorne and Cristine De Paoli Chance De Paoli Lori and Kevin Kelso Stephenson family Erwin Karst
NRCB mandate, coordination between agencies (NRCB/EPA and NRCB /county), planning issues, adequacy of regulations, public consultation	Stephanie Longson & David Truscott Jason and Candice McKay Erwin Karst Stephenson family Keith and Rhonda Longson
Health risks: surface water contamination, ammonia emissions	Cody and Kristine Longson Lorne and Cristine De Paoli Chance De Paoli Stephenson family
Increased traffic, road safety, dust	Stephanie Longson & David Truscott Calvin and Wanda Longson Keith and Rhonda Longson Lorne and Cristine De Paoli Chance De Paoli Lori and Kevin Kelso Stephenson family
Negative effect on the community, property value and enjoyment of property, increase in theft by drawing attention to this remote area	Stephanie Longson & David Truscott Cody and Kristine Longson Calvin and Wanda Longson Keith and Rhonda Longson Barb and Dan Cranston Lori and Kevin Kelso Lorne and Cristine De Paoli Erwin Karst Stephenson family
Nuisance impacts from CFO (noise, odor, flies, light)	Stephanie Longson & David Truscott Lorne and Cristine De Paoli Lori and Kevin Kelso Stephenson family Erwin Karst
Manure application (soil contamination through harmful manure constituents; land base availability, over application),	Chance De Paoli Lori and Kevin Kelso Stephenson family
Spray buffers limit pesticide applications	Stephenson family

Water scarcity, water quality, and occurrence of springs

The concern is the continuing drought conditions and associated decline in available surface and groundwater availability that might not even be able to fill existing water licences. Additional water needs by new CFOs will put additional challenges on water supply, including spring flow in the area.

Approval Officer Analysis

Alberta Environment and Protected Areas (EPA) has jurisdiction over water licencing and has the necessary expertise to do that. There are strict procedures and requirements for the issuance and transfer of water licences that are followed by EPA. Concurrent oversight of the NRCB with EPA would lead to potentially contradictory assessments. Because this concern is beyond NRCB jurisdiction, it does not meet one of the elements (point 5) set out by the NRCB Board (see above).

I would also like to point out that I completed two site visits and inspected the proposed CFO area. I noted the wetland in the center of the quarter section where the CFO is proposed to be located. The wetland is not proposed to be removed or will not change in size due to the proposed development. Because this wetland is located in its entirety on land owned by MacMillan Colony, it is not considered a common body of water.

I also noted a spring on the SE 35-17-1 W5M within an area that was exempt from cropping (the next quarter section to the north of the proposed development). As pointed out by one of the respondents, there is a second spring on that quarter section and one on the quarter section to the east (as shown in Technical Document LA25036, page 7). However, there was no evidence of these additional springs during my site visit. Due to the lay of the land, the spring flows straight north and into a lower lying area in the next quarter section to the east. It seems that the flow rate of this spring (or springs) is low or failing and most of these areas are currently cropped. In addition, the land where the CFO is proposed to be located slopes in the opposite direction of the quarter section where the spring is located. Because there doesn't seem to be a clear connection between the construction of the proposed facilities and the flow rate of the spring that is, as stated by one of the respondents, providing necessary water to livestock, it is my opinion that at least 3 (1, 3, and 4) of the 5 elements of the test set out by the NRCB Board (see above) have not been met.

NRCB mandate, coordination between agencies (NRCB /county), planning issues, adequacy of regulations, public consultation

Several of the respondents pointed out that the application does not align with Foothills County's MDP and land use planning efforts and is therefore not in the spirit of the county's long-term vision of the area. There was also concern that there was not enough public consultation as well as that the MacMillan Colony did not disclose or provide sufficient information about the development.

Approval Officer Analysis

One of the reasons for the existence of AOPA is to provide consistency of CFO development throughout the province and with that a degree of predictability for counties/MDs, residents and CFO operators in respect to siting and environmental protection requirements that must be met by CFOs (e.g. MDS, liner requirements, setbacks to surface water and groundwater wells). Land use zoning allows counties and MDs to dictate the land use in their area to meet individual, localized planning needs. In addition to the MDP, zoning is a strong indication of whether a CFO is an appropriate use of land.

The area in which the proposed chicken broiler barns, layer barn and pullet barn with attached manure storages are located is zoned Agricultural District. CFOs are not specifically listed for this zoning category. However, they could be categorized as 'Agricultural intensive use' which is a discretionary land use under this zoning category. In this zoning category, agricultural activities and related nuisance impacts should be expected.

Apart from setting the standards outlined above, AOPA and its regulations also dictate a clear protocol for notification of affected parties (section 19 of AOPA) which has been followed (see section 2 and 3 above). This included the sending of notification letters to all residents identified by Foothills County of living within the 0.5 mile notification distance and giving public notice in the newspaper. Under AOPA, no other notification is required.

AOPA exclusively regulates CFOs but no other developments, such as residential or industrial. These kinds of developments are therefore not part of an application to the NRCB and cannot be considered when making decisions on CFO developments.

Because these concerns are beyond what I can address, I am of the opinion that at least point 5 of the test has not been met.

Health risks: surface water contamination, ammonia emissions, dust

Some respondents were concerned about health impacts through intense dust and ammonia emissions.

Approval Officer Analysis

In response to these concerns, the application, including the concerns, was forwarded to Alberta Health Services for their input. As pointed out by a representative of AHS, AHS has no objection to this application but pointed out that site specific concerns would fall under the jurisdiction of the NRCB and that health-related concerns and questions should be discussed with the Approval Officer. If a member of the public has specific concerns or questions, they may contact AHS online (<http://ephisahs.albertahealthservices.ca/create-case>) or by phone (1-833-476-4743). Because the CFO meets all applicable setbacks, in particular the required distance to neighbouring residences (MDS). The NRCB generally considers the MDS as the distance beyond which the odors, including ammonia emissions and dust are considered to be acceptable under AOPA. Most of the individuals reside on land further away than the MDS. Therefore, I am of the opinion that point 4 and 5 of the test mentioned above have not been met.

MacMillan Colony is aware and was reminded to adhere to all applicable setbacks during manure spreading and manure storage to avoid manure contaminated runoff from entering any surface water bodies.

Increased traffic, road safety, dust

Another concern that was raised was an expected increase in traffic on country roads with the consequence of more noise and dust, a quicker deterioration of county roads and safety hazards.

Approval Officer Analysis

Some of the respondents will likely be using the same access road system, mainly Township Road 174, as the proposed CFO and some of the respondents might be living close to this road. Those living close to this road will likely experience an increase in dust development due to an

increase in traffic. However, road use and maintenance are outside NRCB jurisdiction and solely governed by the county who has the necessary expertise to do so, including imposing road use agreements which are tools to mitigate nuisance impacts from road traffic. Based on this, I determined that point 5 of the test has not been met.

Negative effect on the community, property value and enjoyment of property, increase in theft by drawing attention to this remote area

Several respondents raised concerns about loss of property value, potential increase in crime rate, enjoyment of property and potential loss of revenue.

Approval Officer Analysis

The concern raised about a potential increase in crime is difficult to evaluate particularly in respect to an actual outcome. The respondents have not provided evidence showing that the effect would reasonably be expected to impact them or that a plausible chain of causality exists between the proposed development and the effects asserted, and in which way it meets points 1 and 2 of the test.

The potential impact on the enjoyment of property depends on many variables such as distance to the CFO, weather, particularly wind direction, the kind of odor, and other parameters. The CFO is located in an area zoned agriculture where some nuisance impacts due to agricultural activities can be expected. Although this concern is difficult to evaluate, particularly in respect to actual outcome and in which way it meets point 2 (would the effect probably occur) and 3 (would the effect be reasonably expected to impact the party?) of the analysis. Because of this more general potential impact, I determined that the respondents have not demonstrated that the effect would reasonably be expected to impact each or any of these individuals in particular.

Although the nature of the concern has the potential to meet some parts of the test, the NRCB Board members have consistently stated that concerns regarding the effect of a CFO on land values is not a subject for review under AOPA. Having said that, the actual impact on the individual is difficult to evaluate and depends on many variables, including distance to the CFO. I therefore believe that point 2 and 3 of the test described above have not been met. Additionally, property values do not fall under the regulatory mandate of AOPA (point 5 above).

Nuisance impacts from CFO (noise, odor, flies, light)

Most of the respondents voiced concerns about nuisance impacts due to the establishment of the CFO.

Approval Officer Analysis

Nuisance impacts depend on many factors, starting with operational practices at the CFO, indoor versus outdoor, wind direction and speed but also perception and odor sensitivity. The MDS is a means of mitigating odor and other nuisance impacts from CFOs. The NRCB generally considers the MDS as the distance beyond which the odors and other nuisance effects of the CFO are considered to be acceptable under AOPA.

Most of the respondents reside on or own land that is a minimum of one km away from the CFO site and on lands zoned Agricultural District use.

That said, people residing beyond the MDS may still experience odors and other nuisance impacts from time to time, and in some instances, those impacts may be more than trivial.

However, in this case, the closest of these respondents is located more than two times the MDS for land of category 1. I am therefore of the opinion that point 4 of the test has not been met.

There were also concerns in respect to light pollution. Foothills introduced a Dark Sky Bylaw in April 2009 (Bylaw 27/2009). This bylaw applies to any outdoor lights at the livestock barns. However, this bylaw is solely under the jurisdiction of the county and cannot be enforced through the NRCB.

Manure application (soil contamination through harmful manure constituents; land base availability, over application)

Two of the respondents voiced concerns about manure contaminated runoff reaching their land. There was also concern of nutrient overloading and increase in soil salinity levels.

Approval Officer Analysis

The proposed barns have attached manure storages that are covered and are not expected to create runoff that contains manure constituents. Manure contaminated runoff from manure spreading land is typically addressed through mandatory setbacks to surface water drainages as well as a set time window that excludes spreading of manure on frozen and snow-covered ground.

Increase in salt levels through manure spreading, a concern brought up by one of the respondents, is addressed through mandatory soil testing at a minimum every three years prior to manure application and subsequent restrictions on the amount applied to stay within the limits set out in AOPA and its regulations (section 25, Standards and Administration Regulation AOPA). In addition, MacMillan Colony has a sufficient large land base for manure spreading available to meet these regulations.

Because MacMillan Colony, as the permit holder, has to abide by those regulations as set out in the opening paragraph of this permit, I am of the opinion that points 1 to 4 of the test have not been met.

Spray buffers limit pesticide applications

One respondent was concerned about limiting spray opportunity on his land due to the close CFO.

Approval Officer Analysis

I am not aware of any restriction of pesticide application in proximity to CFOs. Having said that, this aspect is not under the jurisdiction of the NRCB. Therefore, at least point 5 of the test has not been met.

For the reasons given above, I concluded that none of the respondents that do not reside or own land within the notification distance have met their burden of proving that they are a directly affected party of this application. Having said that, most of the concerns raised by these individuals are the same concerns raised by the directly affected individuals. Those topics are discussed further in Appendix C below.

APPENDIX C: Concerns raised by directly affected parties

Concerns from directly affected parties

The four individuals plus one corporation (owned by Murray and Dawn Giles) are directly affected parties and raised a number of concerns which are listed and summarized below, together with my analysis and conclusions:

- Water availability (overdrawing of water resources)
- Surface water contamination
- Effect on community (crowding of area, not consistent with long term vision of area, long term sustainability, different locations available)
- Contradicts planning documents (MDP, Highwood Management Plan, SSRP, ALSA)
- Insufficient consultation (including the setup for a colony)
- Nuisance (odor, light pollution, noise)
- Impact on enjoyment of property and property value
- Traffic (deterioration, volume, dust control)

Water availability

All directly affected parties raised concerns about water availability and the strain the additional need would put on the already scarce water supply.

Approval officer's conclusion

Alberta Environment and Protected Areas (EPA) has jurisdiction over water licencing of surface water and groundwater use under the *Water Act* and has the necessary expertise to do that. There are strict procedures and requirements for the issuance and transfer of water licences that are followed by EPA. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other then ensuring applicants sign one of the water licensing declarations. As noted in Technical Document LA25036, MacMillan Colony signed *Option 2 – Processing the AOPA permit and Water Act licence separately*. The applicant is reminded that it is their responsibility to ensure they have sufficient water for their new CFO. Individuals who have concerns about water licensing and use can contact EPA's Regulatory Assurance Division (Calgary) at 403-297-5891.

Surface water and groundwater contamination

Two individuals were concerned about manure runoff contaminating springs that are located on the adjacent quarter section. The spring water is used to fill dugouts, providing water to people and livestock.

Approval officer's conclusion

During my site visit and looking at aerial pictures from Google earth (also explained above) I identified one visible spring (as shown on Technical Document LA25036 page 7). The immediate area around the spring is not cropped. The water from the spring seems to be running northeast wards, through a low laying, partially cropped depression and continues to flow along highway 540 east wards where the respondents indicate the location of their dugouts. There is a ridge between sections 26 and 35-17-1 W5 that forces surface water flow in different directions. The proposed CFO is located on section 26 and all surface water naturally flows south (see Technical Document LA25036, page 7), while the spring(s) flow northwards.

Apart from the fact that the facilities are under roof and no runoff is expected to leave the barns, AOPA and its regulations contain several requirements to prevent or minimize manure leakage from CFO facilities and thus to prevent manure from a CFO from reaching and contaminating surface water. These requirements include the setbacks from common bodies of water as set out in section 7(1)(c) of the Standards and Administration Regulation, which prohibit the construction of a manure storage facility or manure collection area less than 30 m from a common body of water.

During my site visit and looking at aerial pictures from Google earth and the Alberta Biodiversity Monitoring Institute (ABMI) Wetland inventory, I also identified one wetland that is located immediately south of the proposed pullet barn. Because it is confined to this quarter section, this wetland is not considered a common body of water ("common body of water" is defined in AOPA's Standards and Administration Regulation). I would like to add that the manure collection and storage areas of the CFO are under roof, have concrete liners as floors to protect groundwater, and are enclosed by walls. No manure is expected to cause runoff during storm water events or leak into the groundwater. Because the proposed facilities meet AOPA's requirements they are considered to pose a low risk to surface water and groundwater.

The concern also includes the potential contamination of surface water from manure spreading.

Regulations under AOPA include several provisions to prevent surface water and groundwater contamination through manure spreading. These include setbacks to surface water bodies for manure spreading, no spreading of manure on frozen or snow covered ground, and nutrient application limits to prevent the soils from being overloaded with nitrogen to minimize the potential for groundwater to be impacted by manure. The Standards and Administration Regulation under AOPA also requires operators to test soils on farmland to which manure is applied for salts and nitrogen at least every three years, and to make these records available for inspection by the NRCB.

Should any member of the public have concern regarding a CFO or manure spreading practices, including whether or not the operation is complying with AOPA, they may contact the NRCB through its 24 hour reporting line (1-866-383-6722). An NRCB inspector will follow up on the concern.

Effect on community (crowding of area, not consistent with long term vision of area, long term sustainability, different locations available)

In the directly affected parties' responses, concerns were raised that the development might have a negative effect on the community and lead to overcrowding of the area.

Approval officer's conclusion

The high-level planning vision of the County is found in the MDP. For reasons explained in Appendix A, I have found that the application is consistent with the land use provisions of the MDP. In addition, the quarter section on which the new CFO will be located is zoned Agricultural District. As mentioned above, although CFOs are not specifically listed for this zoning category, they could be categorized as 'Agricultural intensive use' which is a discretionary land use under this zoning category. I note that it seems that the concerns are more related to the establishment of a new colony rather than the CFO itself. However, developments related to a new colony (other than CFO portion) is entirely under the jurisdiction of the county. I am therefore not able to consider what impact the establishment of the non-CFO parts of a new colony might have on the community. The proposed CFO facilities are completely indoors and have concrete floors. The application shows that sufficient manure spreading lands are

available to minimize nutrient loading and subsequent potential of groundwater and surface water contamination, the concerns in respect to the CFO itself have been addressed and I presume that the effects on the community are acceptable.

When receiving permit applications, approval officers can only look at the information at hand which includes the proposed location, and evaluate the application based on this information. The evaluation does not include a comparison between alternate locations. This decision has to be made by the applicant prior to submitting the application.

Contradicts planning documents (MDP, Highwood Management Plan, SSRP/ALSA)

The respondents discussed the lack of consistency with the local planning documents specifically in respect to water availability and protection of water quality and included a technical memorandum (2012) relating to groundwater supply and demand, commissioned by the Highwood Management Plan Public Advisory Committee.

Approval officer's conclusion

MDP: As discussed in Appendix A, the application is consistent with the land use provisions that I can consider.

Highwood management plan (Water management plan for the watersheds of the upper Highwood and upper Little Bow rivers Volumes 1 and 2): The location of the CFO appears to be within the Mosquito Creek Subbasin which is part of the Upper Highwood and Upper Little Bow Rivers watershed to which this plan applies. As stated in Volume 1, section 4.6 of this plan; licence transfers are possible if certain requirements have been met. Because water licencing is entirely under the jurisdiction of EPA, I will not discuss this issue any further. In addition and as explained above, AOPA's liner requirements are a means to protect groundwater and surface water from contamination with manure constituents which is in line with the objectives of this plan.

South Saskatchewan Regional Plan (SSRP): The respondents state that the SSRP underscores headwater protection and suggest that MacMillan Creek is a tributary to Mosquito Creek. The SSRP is an overarching document that is designed to provide overall direction on land use planning strategies. In part 4 of this decision summary, I have considered the SSRP which is an ALSA regional plan, and which I am to ensure compliance with for this application. I did not identify any sections in the SSRP that specifically apply to this application under AOPA.

Insufficient consultation (including the setup for a colony)

The respondents concern was that there was insufficient consultation and that the application between the CFO and a new colony cannot be separated.

Approval officer's conclusion

The application for the CFO facilities underwent the process laid out in AOPA and its regulations. This includes notice to affected parties and distribution of notification letters to all landowners within the half-mile notification distance as identified by Foothills County. Because the NRCB has no jurisdiction over permitting and considering effects of other, non-CFO related construction in their decision-making process, the establishment of a new colony cannot be addressed in this context.

Nuisance (odor and noise)

The respondents voiced concerns about constant noise, odor, and dust from the CFO facilities

Approval officer's conclusion

AOPA's MDS requirements are a proxy for minimizing odours, flies and other nuisance effects from CFOs. MacMillan Colony's proposed CFO meets the MDS to all neighbouring residences. In addition, the facilities are all enclosed, including the manure storages on site. Some of the parties outside the MDS may experience odours and other nuisance impacts and these impacts may not be trivial to those parties, however, the frequency of these exposures will likely be limited and of short duration.

Often, issues that arise relating to the operation of a CFO can be resolved through good communication between neighbours and the CFO operator. However, if a member of the public has concerns regarding a CFO, including whether or not the operation is complying with AOPA, they may contact the NRCB through its 24 hour reporting line (1-866-383-6722). An NRCB inspector will follow up on the concern.

Impact on enjoyment of property and property value

Two of the respondents were concerned about the impact on their enjoyment of property as well as property value

Approval officer's conclusion

The potential impact on the enjoyment of property depends on many variables such as distance to the CFO, weather, particularly wind direction, the kind of odor, and other parameters. The CFO is located in an area zoned agriculture where some nuisance impacts due to agricultural activities can be expected.

The NRCB's Board has consistently stated that concerns regarding effects on property values are not a subject for the Board's review under AOPA or for approval officers' consideration of permit applications. According to the Board, impacts on property values are a land use issue which is a "planning matter dealt with by municipalities in municipal development plans..." (Zealand Farms, RFR 2011-02, p.5).

Traffic (road deterioration, volume, dust control)

The respondents raised concerns about an increase in heavy truck traffic, further deteriorating predominantly gravelled roads, causing poor road conditions and dust issues along the transportation routes.

Approval officer's conclusion

The NRCB does not have direct responsibility for regulating road use. Section 18 of the *Municipal Development Act* gives counties "direction and management" of all roads within their borders. It would be impractical and inefficient for the NRCB to attempt to manage road use or upgrades through AOPA permits (see Operational Policy 2016-7: Approvals par 9.13). The NRCB's Board has stated "field staff do not have the requisite expertise to develop, mediate or enforce road use agreements/conditions" whereas "municipalities own the roads within their jurisdiction, have the knowledge and expertise to determine what is required in road use agreements, and have the jurisdiction to implement and enforce road use agreements." (Hutterian Brethren of Murrey Lake, RFR 2020-09, p. 4).

Alberta Transportation (TEC) was informed and notified under the previous application, Application LA21054, and determined that a roadside development permit is not required for this development. Because the location of the proposed facilities has not changed in this application (Application LA25036), TEC was not asked for their input again for this application.

APPENDIX D: Explanation of conditions in Approval LA25036

a. Construction above the water table

Section 9(3) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the liner of a 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 available information (see an expert of page 9 of Technical Document LA21054C on page 7 of Technical Document LA25036), the proposed broiler barns, the layer barn with attached manure storage and the pullet barn with attached manure storage meet the one metre requirement of section 9(3). However, because the height of the water table can vary over time, a condition is included requiring MacMillan Colony to cease construction and notify the NRCB immediately if the water table is observed to be one meter or less from the bottom of the liner during construction.

b. Construction Deadline

MacMillan Colony has not proposed a date for completing construction of the proposed two broiler barns, the layer barn with attached manure storage and the pullet barn with attached manure storage. Looking at the scope of the proposed construction, I determined that a five (5) year window (5 construction seasons) should be sufficient for the construction of these barns with attached manure storages. The deadline of December 30, 2030, is included as a condition in Approval LA25036.

c. 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 LA25036 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portions of the broiler barns, the layer barn with attached manure storage and the pullet barn with attached manure storage 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. MacMillan Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the broiler barns, the layer barn with attached manure storage and the pullet barn with attached manure storage have been met.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed in accordance with the permit requirements. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA25036 includes conditions stating that MacMillan Colony shall not place livestock or manure in the manure storage or collection portions of the the broiler barns, the layer barn with attached manure storage and the pullet barn with attached manure storage until NRCB personnel have inspected the the broiler barns, the layer barn with attached manure storage and the pullet barn with attached manure storage and confirmed in writing that they meet the approval requirements.