

Big Spruce Law

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INTRODUCTION TO ANNOTATIONS OF AOPA BOARD DECISIONS Covering decisions from mid-2017 – present

January 14, 2023 Update

This is an introduction to the accompanying annotations of NRCB decisions under the *Agricultural Operation Practices Act* (“AOPA”), RSA 2000, c. A-7.

The annotations cover decisions issued by a panel of the NRCB’s board members, on “requests for review” and following “reviews.”¹ The annotations do *not* cover all permit decisions made by NRCB approval officers or all enforcement decisions made by NRCB inspectors.

For convenience and clarity, the annotations use “board” to refer to the NRCB’s board members; the “NRCB” is used for references to the overall organization.

How to read and use the annotations

The purpose of the annotations is to provide a citation or reference to the board decision or decisions relating to a given topic, and to give the reader a sense of whether and how the board has dealt with the topic. *The annotations are not meant as comprehensive descriptions and analyses of the board decisions and underlying issues.* One must read a board decision itself to fully and properly understand the circumstances considered by the board, and the board’s rationale and conclusions.

The annotations are organized by topic. For example, board decisions addressing the adequacy of approval officers’ public notice of permit applications are annotated under a “public notice” topic heading. Within a given topic, the annotations are generally listed in chronological order starting with the most recent decision.

The annotations’ table of contents provides an overview of the topics covered. The scope of topics is limited by the topics raised in the annotated decisions. Therefore, the range of covered topics is narrower than all the topics that have ever been raised under or addressed by AOPA.

The choice and order of topic headings are somewhat arbitrary, and several topics overlap. For example, one topic relates to water quality impacts generally, while other topics relate to specific AOPA technical

¹ For background information on requests for review and review proceedings, please see *NRCB – Confined Feeding Operations – Board Reviews*, online: <<https://www.nrcb.ca/confined-feeding-operations/board-reviews-court-decisions-revamp>>.

requirements that are meant to minimize risks of water contamination. If a reader is using the annotations to see whether and how the board has addressed a certain subject, the reader should review the table of contents to identify all topics that may relate to that subject, and then review all annotations under all those potentially relevant topics.

Many board decisions cover numerous topics and even discrete parts of those decisions may touch on two or more topics. Therefore, a decision may be annotated under several topic headings. However, the annotations of a single decision are not always identical. For many decisions, the annotations have been modified from one topic to another to best suit the relevant topic and to minimize extraneous information. Therefore, the reader should read each annotation of a given decision closely, even if it appears to be identical to another annotation of the same decision.

Writing styles

For brevity, many sentences in the annotations are written in shorthand—without all the prepositions used for full sentences.

Also, for brevity, the annotations generally state board findings without expressly attributing each finding to the board. For example, if an annotation states

The approval officer adequately considered water quality concerns
that statement is intended to mean

*The board found [or concluded or decided] that the approval officer
adequately considered water quality concerns*

The chronological scope of board decisions covered by the annotations

The annotations cover board decisions issued since roughly mid-2017.² I will try to keep updating the annotations as the NRCB publishes future board decisions. There is a list of annotated decisions at the back of this document, so the reader can tell whether the annotations cover a recent decision.

Ideally, it would be useful to have annotations of *all* board decisions since AOPA came into effect on January 1, 2002. For practical reasons, the annotations cover a much more limited, recent time-period. However, the roughly 60 decisions covered by the annotations provide insights into how the board addresses many important and commonly raised issues.

² The first decision covered by these annotations is *Northwest Poultry Farms Ltd.*, RFR 2017-06 (June 13, 2017).

Acronyms and abbreviations

The annotations use the following acronyms and abbreviations:

- Board (or board) – A panel of the NRCB’s board members
- AF – Alberta Agriculture and Forestry
- AHS – Alberta Health Services
- ALSA – The *Alberta Land Stewardship Act*, SA 2009, c. A-26.8
- AOPA – The *Agricultural Operation Practices Act*, RSA 2000, c. A-7
- AO – NRCB Approval Officer
- DAP – Directly Affected Party
- EMS – Earthen Liquid Manure Storage
- LUB – Land Use Bylaw
- MD – Municipal District
- MDP – Municipal Development Plan
- MDS – Minimum Distance Separation
- MSF – Manure Storage Facility
- ERST – Environmental Risk Screening Tool
- NRCB – Natural Resources Conservation Board
- Permit – An approval, registration or authorization issued under AOPA
- RFR – Request for Review
- Standards Regulation
 - The Standards and Administration Regulation, AR 267/2001

DISCLAIMERS

The annotations are intended to provide general information about the board decisions covered by the annotations. I make no representations as to the accuracy of the annotations’ content. (Please contact me if you spot any errors or have comments or suggests for future updates.)

The annotations are not legal advice and are not intended to create a lawyer-client relationship with the reader. Readers should always get the advice of their own lawyer with respect to matters that could have legal consequences.

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Jan. 14, 2023

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I. AOPA'S PURPOSES

"The AOPA employs a prescriptive regulatory framework, using tools such as MDS, in order to achieve a consistent, province-wide approach for siting CFOs." *JBC Cattle Inc.*, RFR 2021-07, p. 3.

RFR of amended authorization to modify the dimensions of an existing EMS. Board declines to consider RFR issues that relate to the original authorization. *Lone Pine Hutterian Brethren*, RFR 2021-01, pp. 2-3. AO was not required to ensure EMS posed zero risk, which is "not a realistic target" because "any activity inherently includes intrinsic risks" and the modified EMS meets AOPA's technical requirements. *Ibid*, pp. 5-6.

RFRs of new beef feedlot. Board rejects procedural fairness claims including RFR claim from neighbour who bought land without notice on title or otherwise of pending CFO application. AO confirmed that "AOPA does not prevent residential developments from being established adjacent to or within the MDS of a CFO, and that land subdivision and housing developments are within the jurisdiction of the municipality in which they are proposed." *Corner's Pride Farms Ltd.*, RFR 2020-10, pp. 6-7.

Following a review, board directs AO to approve the CFO notwithstanding inconsistency with Clear Hills County MDP setbacks to residences, roads, and waterbodies (including wetlands). *Hines Creek Farms*, Decision 2020-03, pp. 3-6. AOPA's purpose was to establish common rules for CFO siting. *Ibid*, p. 4. The AOPA waterbody/wetland setbacks provide "province-wide environmental protection to both surface and ground water." *Ibid*, p. 6.

"One of the primary objectives of AOPA and the standards regulation is to ensure that manure storage facilities and manure spreading activities address risk to surface and groundwater." *Beekman Farms Ltd. & Wessels Farms Ltd.*, RFR 2019-05, p. 3; *Korova Feeders Ltd.*, RFR 2019-06, p. 2 (same regarding risk to groundwater).

"AOPA provides a province wide regulatory framework to manage CFO effects within agricultural communities. It does so by establishing regulatory siting, construction and operating standards that apply in relation to each application and operation." *500016 Alberta Ltd.*, RFR 2018-11, p. 2. "AOPA responds to potential environmental effects through a point source regulatory approach. AOPA regulatory standards require manure collection and storage facilities to be constructed and operated in a manner that will protect surface and groundwater. AOPA regulations also include manure spreading provisions that recognize the value and importance of livestock manure as a fertilizer, and that provide protection to the environment. Manure spreading regulations reduce environmental risk through soil nutrient limits and spreading setbacks from common bodies of water." *Ibid*

"Surface water quality protection is a core principle in AOPA, both in association with CFO facilities and with manure spreading activities." *Silver Winds Hutterian Brethren*, RFR 2018-08, p. 2.

"Surface water protection is a core AOPA objective." *H.E. Livestock Inc.*, RFR 2018-03, p. 2.

II. BOARD REVIEWS

A. Requests for Review (RFRs)

1. Standing to request a review

RFRs regarding AO's denial of approval for a new beef cattle CFO. *G&S Cattle Ltd.*, RFR 2022-11. Board declines to consider RFRs re directly affected status of several summer villages and two persons, all of whom were opposed to the CFO. Given the board's affirmance of the AO's denial, these RFRs are moot.

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. Because the RFR applicant did not request that the approval officer assess his status under AOPA section 19, the Board is unable to review his status under AOPA section 20(6). *Ibid*, pp. 2-3.

RFRs of AO's denial of approval for a new beef CFO. *A&D Cattle Ltd.*, RFR 2022-06. The Board grants the Town of Fort Macleod directly affected party status because the Town is party to the IDP which was the basis for the AO's denial of the permit. *Ibid*, p. 2.

Parties lacked standing to participate in RFRs of grandfathering determination because they did not provide a timely submission to the inspector/AO in the grandfathering process. Parties received adequate notice of that process through newspaper publication and courtesy letter. *Stant Enterprises Ltd.*, RFR 2020-04, p. 3.

RFR of approval for new chicken broiler CFO. RFR applicant did not submit an SOC (or functional equivalent) by the SOC deadline. "AOPA does not give the board authority to consider requests for review filed by a party other than a directly affected party, nor does it provide for considering requests by parties who had not filed a statement of concern with the approval officer during the application review process." "AOPA limits the board's power to review approval officer decisions to those instances where a request to review has been filed by a party that participated in the approval officer's application review process." *Northwest Poultry Farms Ltd.*, RFR 2017-06, pp. 2-3.

2. RFR Deadline

RFR by the Samson Cree First Nation (SCFN) of an approval to expand a beef CFO. *McKelvie*, RFR 2022-12. Board lacks authority to extend the 10-day deadline in AOPA for the filing of RFRs of approvals. *Ibid*, pp. 2-3. (Because the 10-day deadline is from "receipt" of notice of the permit decision, the NRCB presumes that notice is received seven days from when it is mailed. *Ibid*, p. 2.) SCFN's RFR was submitted after the 10-day deadline so the Board must deny the RFR. Board nevertheless reviewed the RFR and would have denied it on its merits. *Ibid*, p. 3.

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. Board rejects two late-filed RFRs—one from the MD of Willow Creek and another from two persons. Board's discretion, in the administrative procedure regulations, to waive or extend a deadline, does not allow the board to extend the RFR filing deadline in AOPA itself. Neither of the RFRs qualifies as a "rebuttal" to the other RFRs. *Ibid*, pp. 4-6. However, since both parties are directly affected by the application, had the board

granted the other RFRs, the board would have allowed the MD and other party to participate in the review, provided their submissions were limited to the issues raised in the other parties' RFRs. *Ibid*, p. 6.

CFO owner's request for review of conditions, and grandfathering determination, in an approval for a beef CFO expansion. *John Schooten and Sons Custom Feedyard Ltd.*, RFR 2022-04. Board dismisses submissions from two DAPs in response to the CFO owner's RFR. The submissions are not proper rebuttals to the RFR because they raise issues outside of the RFR and they were submitted beyond the RFR deadline, which the Board lacks jurisdiction to extend. *Ibid*, p. 3. As DAPs, these parties may participate in the issues the Board has identified for the review. *Ibid*.

RFR of approval for new beef feedlot. RFR deadline appears to have been missed due to errors in fax and email transmissions. Board denies RFR because it has no authority to extend the 10-day deadline in AOPA s. 20(5). Given parties' efforts to contact the NRCB re their RFR, board notes that it would have denied their RFR issues had the board considered the RFR for review. *Beekman Farms Ltd. & Wessels Farms Ltd.*, RFR 2019-05, pp. 1-2.

RFRs of approval for new sheep CFO. One RFR included a "statement seeking additional time"—namely, 120 days to "prioritize and prepare information for a review." Board denies the request for extra time as the "timelines provided to the parties are adequate and reasonable." *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 3. After filing of group RFR, the group submitted documents claiming inadequacy of manure spreading lands because spreading agreement for a corporation was not signed by the corporation's director. Board declines to review this issue, in part, because the group did not raise this issue by the RFR deadline. *Ibid*, p. 7.

3. RFR Rebuttals

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. Board rejects two late-filed RFRs—one from the MD of Willow Creek and another from two persons. Neither of the RFRs qualifies as a "rebuttal" to the other RFRs. *Ibid*, pp. 4-6.

RFRs of AO's denial of approval for a new beef CFO. *A&D Cattle Ltd.*, RFR 2022-06. One couple submitted a rebuttal to the RFRs in which they raised issues normally raised in an RFR. The (The couple did not file an RFR because they supported the AO's permit denial.) The board decides to consider the couple's issues to the extent they are consistent with issues raised in their statement of concern to the AO. *Ibid*, pp. 2-3.

CFO owner's request for review of conditions, and grandfathering determination, in an approval for a beef CFO expansion. *John Schooten and Sons Custom Feedyard Ltd.*, RFR 2022-04. Board dismisses submissions from two DAPs in response to the CFO owner's RFR. The submissions are not proper rebuttals to the RFR because they raise issues outside of the RFR and they were submitted beyond the RFR deadline, which the Board lacks jurisdiction to extend. *Ibid*, p. 3. As DAPs, these parties may participate in the issues the Board has identified for the review. *Ibid*.

"Directly affected parties with an adverse interest to the matters raised in the RFR were provided the opportunity" to submit rebuttals to the RFR before the board decided whether to grant the RFR. *Korova*

Feeders Ltd., RFR 2019-06, p. 1; *Stronks Feedlot Ltd.*, RFR 2019-02, p. 1; *Spruit Farms Ltd.*, RFR 2018-13, p. 1 (also noting that the AO provided a “submission”); *500016 Alberta Ltd.*, RFR 2018-11, p. 1; *Hutterian Brethren of Silver Winds*, RFR 2018-08, p. 1; *Hutterian Brethren of Summerland*, RFR 2018-05, p. 2; *H.E. Livestock Inc.*, RFR 2018-03, p. 1; *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 2; *Milk & Honey Dairy Inc.*, RFR 2018-01, p. 1; *Pigs R Us Inc.*, RFR 2017-11, p. 1; *Fuhrhop Farms Ltd.*, RFR 2017-10, p. 1; *Brad Towle*, RFR 2017-09, p. 1.

CFO owner’s RFR of AO’s denial of registration for expansion of chicken layer CFO. Board sends notice of RFR and opportunity to respond to all parties identified as DAPs. Board also sent notice to the Tall Cree First Nation even though the TCFN didn’t submit a statement of concern. (CFO was within an MDP setback to the TCFN reserve.) Notice to the TCFN was “warranted given the specific nature of the issue raised.” AO’s public notice satisfied NRCB notice requirements, but the board “suggests that the NRCB Field Services Division review its policy to satisfy itself that notice procedures adequately serve the range of circumstances that may arise.” *Danny Friesen and Tara Warkentin*, RFR 2017-07, pp. 2 and 3.

4. Materials considered by the board at RFR stage

RFRs of AO’s approval of new beef CFO. For its RFR decision, the board didn’t consider letters from NRCB Field Services and from one of the RFR applicants, because the letters didn’t “contribut[e] to the panel’s assessment of the issues raised in the RFRs.” *P&H Wessels Farms Ltd.*, RFR 2020-05, p. 2.

5. Test for granting an RFR and burden of proof

CFO owner’s request for review of conditions, and grandfathering determination, in an approval for a beef CFO expansion. *John Schooten and Sons Custom Feedyard Ltd.*, RFR 2022-04. Board denies CFO owner’s request to review the AO’s grandfathering determination. RFR didn’t substantiate claim that AO relied on “discredited” info and failed to consider other info, so the RFR didn’t meet the “required onus to establish that the issue merits review.” *Ibid*, p. 3.

A party requesting a review of an enforcement order “has the onus of showing that a review is appropriate or warranted.” *John Schooten and Sons Custom Feedyard Ltd. et al.*, RFR 2021-08, p. 6.

“The Board must determine whether the party requesting the review has identified sufficient grounds to merit a review of the approval officer’s decision. This process includes consideration by the Board of whether the issues raised in the RFR were adequately considered by the approval officer.” *Lone Pine Hutterian Brethren*, RFR 2021-01, p. 1; *Manna Farms Ltd.*, RFR 2020-11, p. 2. Similar: *Tateson Ranching Ltd.*, RFR 2022-13, p. 2; *Alieda Farms Ltd.*, RFR 2021-06, p. 2.

Section 8(3) of the *NRCB Act* applies only to reviewable projects under section 4 of that act. Therefore, that section does not require the board to hold a hearing in response to an RFR of an AOPA permit. *Corner’s Pride Farms Ltd.*, RFR 2020-10, p. 5.

In considering RFRs of grandfathering determination, board “finds guidance in section 25 of AOPA which provides that the Board must dismiss a request for review if it determines that the issues raised in the request were adequately dealt with by the inspector or approval officer. The Board also considers that a

party requesting a review has the onus of demonstrating that there are sufficient grounds to merit review of the inspector's or approval officer's decision." *Rimrock Feeders Ltd.*, RFR 2020-08, p. 2; *Stant Enterprises Ltd.*, RFR 2020-04, p. 2.

Under AOPA s. 25(1), the board will dismiss an RFR if it determines that the issue raised "has no merit or was adequately dealt with" by the AO. *Hutterian Brethren Church of Little Bow*, RFR 2021-04, p. 2. "The effect of this provision is to place the burden on the party submitting an RFR to establish that a review is merited." *Vermeer Dairy*, RFR 2018-10, p. 3. *Jos and Dorothy Peters*, RFR 2022-15, p. 1 ("The [RFR] applicant must convince the Board that the grounds for review have merit and/or have not been adequately dealt with by the approval officer; otherwise, the Board will dismiss the request for review.").

"The Board considers that a party requesting a review has the onus of demonstrating that there are sufficient grounds to merit review of the approval officer's decision." *Tateson Ranching Ltd.*, RFR 2022-13, p. 1; *McKelvie*, RFR 2022-12, p. 4. *G&S Cattle Ltd.*, RFR 2022-11, p. 1. *Hutterian Brethren of Parkland*, RFR 2022-10, p. 1; *Double T Cattle Co. Ltd.*, RFR 2022-08, p. 1; *A&D Cattle*, RFR 2022-06, p. 1; *John Schooten and Sons Custom Feedyard Ltd.*, RFR 2022-04, p. 1; *R&T Penner Farms Ltd.*, RFR 2022-03 1; *Double H Feeders Ltd.*, RFR 2022-01, p. 2; *JBC Cattle Inc.*, RFR 2021-07, p. 1; *Alieda Farms Ltd.*, RFR 2021-06, p. 1; *Hutterian Brethren Church of Little Bow*, RFR 2021-04, p. 1; *Muilwijk*, RFR 2021-02, p. 2; *Lone Pine Hutterian Brethren*, RFR 2021-01, p. 1; *Corner's Pride Farms Ltd.*, RFR 2020-10, p. 2; *Hutterian Brethren of Murray Lake*, RFR 2020-09, p. 2; *Hutterian Brethren Church of Starland*, RFR 2020-07, p. 2; *Hutterian Brethren Church of Granum*, RFR 2020-06, p. 2; *P&H Wessels Farms Ltd.*, RFR 2020-05, p. 2; *Hines Creek Farms*, RFR 2020-01, p. 1; *Kramer Dairy Ltd.*, RFR 2019-07, p. 1; *Korova Feeders Ltd.*, RFR 2019-06, p. 1; *Beekman Farms Ltd. & Wessels Farms Ltd.*, RFR 2019-05, p. 2; *Sundown Feeders Ltd.*, RFR 2019-04, p. 1; *Stronks Feedlot Ltd.*, RFR 2019-02, p. 1; *Nelson Family Ranches Ltd.*, RFR 2019-01, p. 1; *Spruit Farms Ltd.*, RFR 2018-13, p. 1; *500016 Alberta Ltd.*, RFR 2018-11, p. 1; *Silver Winds Hutterian Brethren*, RFR 2018-08, p. 1; *Hutterian Brethren of Summerland*, RFR 2018-05, p. 2; *H.E. Livestock Inc.*, RFR 2018-03, p. 1; *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 2; *Milk & Honey Dairy Inc.*, RFR 2018-01, p. 1; *Pigs R Us Inc.*, RFR 2017-11, p. 1; *Fuhrhop Farms Ltd.*, RFR 2017-10, p. 1; *Brad Towle*, RFR 2017-09, p. 1; *Danny Friesen and Tara Warkentin*, RFR 2017-07, p. 2.

"The Board must dismiss a request for Board review if, in its opinion, the issues raised in the request were adequately dealt with by the approval officer or the issues are without merit." *Sundown Feeders Ltd.*, RFR 2019-04, p. 2; *Spruit Farms Ltd.*, RFR 2018-13, p. 3 ("adequately dealt with by the approval officer or the issues are of little merit"); *500016 Alberta Ltd.*, RFR 2018-11, p. 1 (same); *Silver Winds Hutterian Brethren*, RFR 2018-08, p. 2 (issues are of "little merit"); *Hutterian Brethren of Summerland*, RFR 2018-05, p. 5 ("little merit"); *H.E. Livestock Inc.*, RFR 2018-03, p. 2 ("little merit"); *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 3 ("little merit"); *Milk & Honey Dairy Inc.*, RFR 2018-01, p. 2; *Fuhrhop Farms Ltd.*, RFR 2017-10, p. 5; *Danny Friesen and Tara Warkentin*, RFR 2017-07, p. 3 ("little merit").

RFRs of approval for new sheep CFO. Board declines to hold a review on RFR concern about effects of ticks on endangered species, human health, and domestic animals. RFR provides no "actual evidence

studying and documenting a tick population issue". *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 4. AO forwarded application to AHS and relied on AHS to identify health concerns. AOPA MDS "may assist" in reducing tick impacts, but MDS receptor is residences and the receptor for ticks may be livestock and outside domestic animals, so MDS may be "less effective" for those receptors. *Ibid.*

"The RFR raises generic issues related to groundwater risk, odour, and risk from flooding; however, the RFR does not assert any shortcomings in the technical components of the approval officer's decision." *Fuhrhop Farms Ltd.*, RFR 2017-10, p. 5.

6. Scope of issues considered at RFR stage

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. Board rejects RFR portions with "profoundly serious," unsubstantiated and inflammatory language questioning the NRCB's independence. *Ibid.*, pp. 3-4.

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. Board declines to consider RFR issues that the RFR applicants hadn't raised in their SOCs to the AO. "The Board agrees that if directly affected parties do not present issues to the approval officer prior to the issuance of the decision summary, the approval officer is provided no opportunity to address those issues. The Board finds that it would be inconsistent with the direction in AOPA section 25(1) to consider issues raised in the RFRs to which the approval officer had no ability to respond." *Ibid.*, p. 3.

RFRs of AO's denial of approval for a new beef CFO. *A&D Cattle Ltd.*, RFR 2022-06. One couple submitted a rebuttal to the RFRs in which they raised issues normally raised in an RFR. The (The couple did not file an RFR because they supported the AO's permit denial.) The board decides to consider the couple's issues to the extent they are consistent with issues raised in their statement of concern to the AO. *Ibid.*, pp. 2-3.

CFO owner's request for review of conditions, and grandfathering determination, in an approval for a beef CFO expansion. *John Schooten and Sons Custom Feedyard Ltd.*, RFR 2022-04. Board grants review of condition, carried over from the county permit, requiring the CFO owner to submit soil testing records of manure spreading lands every October. Question is whether the date could be moved to December. *Ibid.*, p. 3. In its review decision, the Board accepts the CFO owner's request to change the reporting month because, although this change wasn't part of the CFO owner's permit application, no party opposed this requested change. *John Schooten and Sons Custom Feedyard Ltd.*, Decision 2022-07, pp. 5-6.

RFR of amended authorization to modify the dimensions of an existing EMS. Board declines to consider RFR issues that relate to the original authorization. *Lone Pine Hutterian Brethren*, RFR 2021-01, pp. 2-3. AO also correctly concluded that he lacked jurisdiction to reconsider water quality-related risks associated with the originally approved EMS and that the new dimensions didn't affect or change those risks. *Ibid.*, p. 3.

AO denied permit to expand a swine CFO on grounds of MDP inconsistency and failure to meet minimum distance setback (MDS) requirement in AOPA. CFO owner's RFR only raised MDP consistency

issue. Board denies RFR because, even if the board concluded that the MDP could be bypassed, the MDS hurdle remained. *Manna Farms Ltd.*, RFR 2020-11. “The practice of the Board, consistent with AOPA section 25(1), is that only issues that are raised in requests for review may be the subject of a review hearing.... To allow the incursion of and adjudication of issues that were not raised in the properly filed requests for review would risk creating a situation where either the parties are not informed of the issues to which they must respond at a hearing or where the Board would be raising issues based on its own interpretation of the approval officer’s decision. Neither of these results is fair, efficient, or transparent.” *Ibid*, p. 4.

B. Process after granting an RFR; RFR remedies

RFR of enforcement order to owners of beef cattle CFO in Vulcan County. *John Schooten and Sons Custom Feedyard Ltd. et al.*, RFR 2021-08. AOPA gives the board wide discretion to decide its process for reviewing an enforcement order. Board normally uses a two-step process like that used for review of permit decisions. Here, the two-step process may not be needed but board will keep the review open until the formal grandfathering decision is made. *Ibid*, p. 9.

Review of AO’s denial of permit to convert (and expand) a swine CFO to beef. *Muilwijk*, Decision 2021-03. The Board received written submissions from the Municipal District of Willow Creek and several individuals, none of whom appeared in person at the (virtual) hearing. “However, their written submissions have been received, reviewed, and considered by the Board in its deliberations. Where and if necessary, the Board has referred to these submissions in its deliberations.” *Ibid*, p. 3.

Dairy CFO’s RFR of condition in authorization for dairy barn addition. Contested condition required CFO owner to develop a plan to address the environmental risks posed by the existing EMS and to implement the plan once it’s approved by the NRCB. EMS scored low on ERST but an engineering report said underlying sand/sandstone layers could allow aquifer contamination. Board granted the RFR, concluding that there was insufficient information to conclude that the EMS posed a “risk to groundwater.” *Kramer Dairy Ltd.*, RFR 2019-07, p. 2. Board decides to hold a written hearing and sets out questions for the parties. Questions to AO include: why the AO thought the ERST didn’t “perform well” in scoring the EMS’ risk; how an EMS can score low risk with underlying sand & sandstone layers; what info was provided by the “monitoring review team” and who was on the team. *Ibid*, p. 3.

Board grants RFR of deemed capacity determination in AO amendment for beef feedlot. Rather than going directly to a review, the board directs the AO to make a new grandfathering determination, based on NRCB Operational Policy 2016-5 (Determining Deemed Capacity), AOPA section 18.1, and section 11 of the AOPA Procedures Regulation. *Nelson Family Ranches Ltd.*, RFR 2019-01, pp. 2-3.

CFO operator’s RFR of approval for beef CFO expansion. RFR requested removal of several conditions, including one requiring operator to depopulate the CFO (and remove all manure), or to obtain a permit for an alternate runoff control system, by December 1, 2024, if the soil sampling showed continued nitrogen or electrical conductivity exceedances by October 1, 2024. Board grants the RFR on this condition, based on AO’s lack of explanation for the December 1, 2024 compliance date. Board requires

operator to submit a new nutrient management plan, and sets several parameters for the plan's contents, after which the board will hold an oral hearing. *Stronks Feedlot Ltd.*, RFR 2019-02, p. 4.

RFRs of approval for pig CFO expansion. Board denies RFRs because the water quality issues they raise were adequately addressed by the AO. However, the AO should revise the approval to include the condition, referenced in the decision summary, requiring NRCB's post-construction inspection of the secondary containment system for the EMS. *Spruit Farms Ltd.*, RFR 2018-13, p. 6.

RFR of approval for dairy CFO expansion. RFR raised concern about contamination of old water wells on manure spreading lands. While concluding that this issue does not warrant review, board directs the AO to refer the concern to NRCB compliance for follow up to make sure CFO's manure spreading complies with the required manure spreading setback from water wells. *Faberdale Dairies Ltd.*, RFR 2018-12, p. 5.

RFRs requesting board approval of dairy CFO expansion application, notwithstanding inconsistency with Camrose County MDP. Board decides to combine RFR and merits reviews in the same decision and to consider merits based on RFR submissions from CFO owner and county. *Vermeer Dairy*, RFR 2018-10, p. 2.

RFRs of approval for new sheep CFO. One RFR included a "statement seeking additional time"—namely, 120 days to "prioritize and prepare information for a review." Board denies the request for extra time as the "timelines provided to the parties are adequate and reasonable." *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 3. Board grants RFR regarding concern that AO found the application complete without a filed surface water control system design. Board notes that AOPA requires that DAPs have a chance to review and comment on "information relevant to the application" and the control system is a "key design element" of the CFO. AO's failure to require that design as part of the completed application "falls short of the approval officer obligations under Section 20(1)(b)(iii) of AOPA." *Ibid*, pp. 5-6. Board requires applicant to submit an engineer-stamped surface water control plan and board sets out required plan components. Plan should include secondary containment if applicant decides to adopt that component. AO should provide a copy to the board once AO approves the plan. DAPs will then be able to comment on the plan, and applicant can respond to comments, before the board reviews the plan. *Ibid*, p. 8. Board approves the submitted and approved plan, following several revisions, and the CFO in general. *Norlin Investments (Norman & Linda Wever)*, Decision 2018-06.

RFR of AO's denial of a registration for a new dairy CFO. Board grants RFR on issues of whether the proposed CFO is inconsistent with MDP policy requiring a two-mile setback to the Town of Ponoka and, if it is, whether the board should issue the registration notwithstanding the inconsistency. *Milk & Honey Dairy Inc.*, RFR 2018-01. RFR decision encourages the town and county to participate in the review and sets out detailed MDP-related issues for the parties to address in the review hearing. *Ibid*, pp. 3-4.

Board grants RFR of AO's denial of registration to expand an existing chicken layer CFO. RFR decision sets deadlines for parties' written submissions and reply submissions (for written hearing). Board notes that replies are not mandatory, but they allow for filing rebuttal evidence or argument and also enable parties to "raise questions" they believe other parties need to answer, "to complete the record."

Questions should include reasons why they should be answered. Board will then determine “whether an answer should be pursued.” *Danny Friesen and Tara Warkentin*, RFR 2017-07, p. 4.

C. Scope of issues for board review

Board review of AO’s denial of proposed expansion of a multi-species CFO in Vulcan County. AO’s denial was based on inconsistency with MDP provision precluding CFO expansions in specified exclusion zones (EZs). Board granted review to decide whether it should exercise its discretion under AOPA to approve the application notwithstanding the MDP inconsistency. *Hutterian Brethren Church of Little Bow*, Decision 2021-05. Board declines to consider miscellaneous issues raised at the hearing that were “beyond the scope of the review.” *Ibid*, p. 5.

D. Board’s consideration of new evidence (de novo review)

RFRs for beef CFO expansion. One RFR raised concern regarding future CFO expansion, but RFR applicant did not raise this concern in the statement of concern. Board notes these omissions but does not expressly dismiss the concerns on this basis. *Korova Feeders Ltd.*, RFR 2019-06, p. 4; *Faberdale Dairies Ltd.*, RFR 2018-12, pp. 3, 4 and 5 (same regarding concerns about CFO odours, water quantity, and manure spreading contamination of old water wells on spreading lands); *Hutterian Brethren of Summerland*, RFR 2018-05, p. 9 (same, re concern about runoff from CFO facilities).

RFRs of registration for new beef CFO. AO adequately considered runoff risks to nearby intermittent stream, neighbouring lands, and Wolf Creek/Battle River drainage. *H.E. Livestock Inc.*, RFR 2018-03, pp. 3-4. AO properly determined that the CFO applicant met the manure spreading land base required by s. 25(2)(a) of the Standards Regulation. (After the RFRs were filed, the AO had to “recreate” his calculations to show how he made this determination. “Although the Board acknowledges that evidence acquired after the decision is not the preferred approach, the Board is satisfied that the notes, technical documents and decision summary indicate that the work added later was a recreation of earlier work.”) *Ibid*, p. 4.

E. Burden of proof at review stage

Board grants CFO owner’s RFR of AO’s denial of registration for expansion of chicken layer CFO. AO denied application because CFO was within MDP setbacks to a hamlet and to a First Nation reserve. *Danny Friesen and Tara Warkentin*, RFR 2017-07, pp. 2 and 3. Following written hearing, board directs the AO to issue the registration (with AO’s recommended conditions). Decision 2017-08, pp. 4 and 7. First Nation’s concerns are too “generic” for the review stage, at which parties should “identify specific evidence and advocate what outcomes they would like the Board to deliver.” *Ibid*, p. 6.

F. Approval Officers’ roles in reviews

Board grants RFR of AO’s denial of registration to expand an existing chicken layer CFO. RFR decision sets deadlines for parties’ written submissions. Board notes that it “does not anticipate” that the AO will file a submission, but the AO “is a party to the review.” *Danny Friesen and Tara Warkentin*, RFR 2017-07, p. 4.

G. Temporary suspension pending review of decision being reviewed

RFR of enforcement order to owners of beef cattle CFO in Vulcan County. *John Schooten and Sons Custom Feedyard Ltd. et al.*, RFR 2021-08. Board grants CFO owner's request to temporarily suspend the enforcement order pending completion of the review. Board lists factors for deciding whether to temporarily suspend a decision being reviewed. *Ibid*, pp. 9-10.

H. Quorum of board members

Board grants RFR of AO's denial of a registration for a new dairy CFO. Note at end of decision: "The Panel Chair, L. Page Stuart, was absent at the time this report was finalized and as such has not signed this decision. In Ms. Stuart's absence, the remaining panel members, constituting a quorum, continued with the finalization of this panel decision in accordance with the section 19 of the *Natural Resources Conservation Board Act*. Ms. Stuart participated in all panel meetings prior to 10 January 2017 and it is anticipated that she will continue as panel chair of the public hearing to be held in February." *Milk & Honey Dairy Inc.*, RFR 2018-01, p. 5.

III. GRANDFATHERED OPERATIONS

A. Grandfathering process

RFR of enforcement order to owners of beef cattle CFO in Vulcan County. *John Schooten and Sons Custom Feedyard Ltd. et al.*, RFR 2021-08. Section 11 of the Administrative Procedures Regulation addresses when Field Services *must* make a grandfathering determination but doesn't preclude Field Services from making those determinations in other circumstances. Inspectors have implied discretion to make those determinations in other, appropriate circumstances and board has implied authority to review those determinations. *Ibid*, p. 5. Board interprets section 11 of the Administrative Procedures Regulations as giving Field Services staff authority to determine not just a CFO's deemed capacity, but "all relevant aspects of a CFO's grandfathered status, including an identification of the CFO's grandfathered facilities." *Ibid*, p. 5. Inspectors can make presumptions about a CFO's grandfathered status and give the CFO owner a reasonable time to say whether they agree with the inspector's presumption. If the owner agrees, inspector may not need to make a formal grandfathering decision at that time. *Ibid*, p. 8. Field Services should make a grandfathering determination promptly. *Ibid*, pp. 8-9.

Board review of AO's denial of proposed expansion of a multi-species CFO in Vulcan County. AO's denial was based on inconsistency with MDP provision precluding CFO expansions in specified exclusion zones (EZs). Board granted review to decide whether it should exercise its discretion under AOPA to approve the application notwithstanding the MDP inconsistency. Board directs the AO to issue the requested approval. *Hutterian Brethren Church of Little Bow*, Decision 2021-05. Board questions why the AO didn't make a grandfathering determination when he made his permit decision, rather than the AO just recommending a future grandfathering decision if the board affirmed the permit denial. *Ibid*, p. 4.

RFR of Inspector decision that feedlot was grandfathered with 35,000 beef finishers. Inspector was reasonable in publishing notice in the newspaper recommended by the municipality. It's reasonable to

assume the municipality is in the “best position to determine the most appropriate newspaper for notice.” The RFR applicants received notice. *Rimrock Feeders Ltd.*, RFR 2020-08, p. 5.

B. Bases for a grandfathering determination

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. Board affirms AO’s grandfathering determination for the remaining hog CFO facilities. Only one of these facilities will be used for the beef CFO and it’s an ancillary structure. The rest of the beef CFO was assessed as a new CFO, not based on any grandfathered status. *Ibid*, pp. 4-5.

CFO owner’s request for review of conditions, and grandfathering determination, in an approval for a beef CFO expansion. *John Schooten and Sons Custom Feedyard Ltd.*, RFR 2022-04. Board denies CFO owner’s request to review the AO’s grandfathering determination. RFR didn’t substantiate claim that AO relied on “discredited” info and failed to consider other info, so the RFR didn’t meet the “required onus to establish that the issue merits review.” *Ibid*, p. 3.

Board dismisses RFRs of inspector’s determination that beef CFO was grandfathered. RFRs raised multiple issues that aren’t relevant to grandfathering issue—whether the CFO existed on Jan. 1, 2002. Inspector’s decision focused on the key issue, was well-reasoned, weighed the evidence fairly, and followed NRCB policy on grandfathering. Board lists evidence it considered. *Stant Enterprises Ltd.*, RFR 2020-04, p. 5.

RFR of approval for beef feedlot expansion. AO reasonably concluded that the CFO had a grandfathered catchment area on Jan 1, 2002 but lost that grandfathered status due to unauthorized post-2002 excavation of part of the area’s liner. *Sundown Feeders Ltd.*, RFR 2019-04, pp. 5-6. CFO’s deemed status based on county development permit. *Ibid*, p. 5.

Board grants RFR of deemed capacity determination in AO amendment for beef feedlot. Deemed MD permit allowed up to “7,000 animals” and AO determined this meant a deemed capacity of 7,000 beef finishers. In board’s view, it wasn’t clear what factors the AO considered in making his determination, including what consideration the AO gave to the “documents that were prepared to assist the County in considering the development permit application (e.g., Nelson Ranches’ development permit application and Intensive Livestock Operation Management Plan).” *Nelson Family Ranches Ltd.*, RFR 2019-01, pp. 2-3.

C. Deemed capacity (deemed animal numbers)

RFR of enforcement order to owners of beef cattle CFO in Vulcan County. *John Schooten and Sons Custom Feedyard Ltd. et al.*, RFR 2021-08. Board refers to and affirms Field Services’ grandfathering policy saying that deemed capacity will be based on CFO’s physical capacity as of January 1, 2002, if that physical capacity was greater than the capacity allowed by the CFO’s municipal permit. *Ibid*, p. 4. Inspector’s issuance of the enforcement order wasn’t warranted, in part, because it was unclear whether the Mossleigh feedlot was exceeding its municipal permitted capacity. This uncertainty was because of uncertainty whether that permit set a limit on number of feeders or finishers. *Ibid*, p. 6.

Review of AO's denial of permit to convert (and expand) a swine CFO to beef. *Muilwijk*, Decision 2021-03. AO's deemed capacity determination was one of the RFR issues set for a hearing. However, before the hearing the AO "conceded" the deemed capacity to be 100 sows farrow to finish. So this issue wasn't heard after all. *Ibid*, pp. 2-3.

RFR of Inspector decision that feedlot was grandfathered with 35,000 beef finishers. AO's deemed capacity finding is supported by the evidence and NRCB policy on grandfathering determinations. Board refers to record evidence and its own judgement regarding common feedlot turns. If the CFO's actual capacity turns out to be insufficient to hold 35,000 finishers, the CFO will have to apply for an expansion of pen size. *Rimrock Feeders Ltd.*, RFR 2020-08, pp. 4-5.

RFRs of approval for expansion of beef CFO and deemed capacity determination. Board rejects RFR request for condition limiting CFO to existing animal numbers. AO adequately addressed "requirements related to an increase in the permitted number of livestock. The requirement for the Korova CFO to comply with the permitted occupancy of 20,600 head of beef finishers in the Approval is listed as a condition. *Korova Feeders Ltd.*, RFR 2019-06, pp. 4-5.

Board grants RFR of deemed capacity determination in AO amendment for beef feedlot. Deemed MD permit allowed up to "7,000 animals" and AO determined this meant a deemed capacity of 7,000 beef finishers. In board's view, it wasn't clear what factors the AO considered in making his determination, including what consideration the AO gave to the "documents that were prepared to assist the County in considering the development permit application (e.g., Nelson Ranches' development permit application and Intensive Livestock Operation Management Plan)." *Nelson Family Ranches Ltd.*, RFR 2019-01, pp. 2-3. Rather than going directly to a review, the board directs the AO to make a new grandfathering determination, based on NRCB Operational Policy 2016-5 (Determining Deemed Capacity), AOPA section 18.1, and section 11 of the AOPA Procedures Regulation. New determination should address all livestock types within the beef category and determine the CFO's grandfathered footprint on Jan. 1, 2002, considering neighbour's claim that the operator constructed additional pens after that date. *Ibid*, p. 3.

D. Loss of grandfathered status

See other section below re "abandonment"

RFR of approval for beef feedlot expansion. AO reasonably concluded that the CFO lost grandfathered status for the county-permitted catchment area due to unauthorized post-2002 excavation of part of the area's liner. The CFO should decommission the catchment area and construct a new catch basin that meets AOPA requirements. *Sundown Feeders Ltd.*, RFR 2019-04, pp. 5-6.

E. Deemed municipal permit conditions

RFR of approval for beef feedlot expansion. AO adequately addressed related issues of past non-compliance and health risks, related to manure storage locations and dead animal disposal. Board notes and implicitly accepts AO's decision to forego carrying forward municipal condition regarding manure stockpiles and dead animal disposal. *Sundown Feeders Ltd.*, RFR 2019-04, pp. 7-8.

RFRs of approval for pig CFO expansion. AO adequately dealt with concerns about odours from manure spreading and about AO's removal of deemed county permit condition requiring manure spreading once per year with incorporation within 72 hours. Board notes AO's conclusion that applicant adequately justified removing the condition and that AOPA's manure spreading requirements provided equivalent nuisance abatement. Board also notes that odour from manure spreading "may linger for many days" and board "acknowledges that incorporation or injection manure spreading methods may mitigate, but not eliminate, manure spreading odours." Board also notes that, since 2002, more crop land has been direct seeding which has reduced amount of crop land available for manure incorporation. "The Board understands that direct seeding is used to better manage moisture, erosion and nutrient uptake, and is considered as a more sustainable cropping system." In this approval, and consistent with AOPA regulations, manure must be incorporated within 48 hours when applied to conventionally tilled land. *Spruit Farms Ltd.*, RFR 2018-13, p. 7.

IV. PERMITS – PERMITTING PROCESS

A. General permitting process

Review of AO's denial of application to convert and expand a swine CFO to a beef CFO. After deciding to issue the permit, board comments on parties conduct in the permitting process. Board is sympathetic with applicant's complaint about time needed to decide the application. Board notes applicant's concern that second AO assigned to the file didn't communicate with applicant about deficiencies after deeming the application complete. Board notes its "hope[]" that both operators and approval officers take the time to reflect upon the delay and regulatory burden that can ensue when expectations are not clearly and consistently outlined, and when parties act outside the scope of the regulatory process. *Ibid*, pp. 18-19.

RFRs of approval for a new beef finisher CFO. Board affirms notice and consultation process followed by AO in processing the approval application. RFRs did not provide "specific evidence of procedural errors." Board refers to AO's explanations re timing of public notice, use of courtesy letters. *Corner's Pride Farms Ltd.*, RFR 2020-10, pp. 6-8.

Board dismisses procedural fairness claims in denying RFRs of registration for a new poultry CFO. *Hutterian Brethren Church of Granum*, RFR 2020-06. Parties "failed to provide sufficient evidence to demonstrate if and how" any lack of procedural unfairness "made a material difference on the decision" and "all parties had sufficient time to enter evidence to the approval officer and indeed this review process". *Ibid*, p. 10.

"AOPA establishes two levels of decision-making relating to approvals. In the first level, the approval officer receives and reviews an application, publishes notice of the application, considers statements of concern, and renders a decision. This gives interested parties an opportunity to make a submission so that the approval officer may determine whether they are directly affected and, if found to be so, the approval officer must then have regard for that submission." *Northwest Poultry Farms Ltd.*, RFR 2017-06, p. 2.

B. Affected parties

RFRs of registration for a new poultry CFO. *Hutterian Brethren Church of Granum*, RFR 2020-06. Under AOPA s. 21(5), for registration applications, only “affected parties” can be DAPs. For this application, owners and occupiers of land within 0.5 miles from the CFO are affected parties. Five RFR applicants didn’t show that they met this criterion, so they are not DAPs, so the board can’t consider their RFRs. *Ibid*, p. 3. Two other parties didn’t submit SOCs so they also don’t qualify as DAPs, so board can’t consider their RFRs as well. *Ibid*.

Ermineskin First Nation’s RFR of registration for dairy CFO expansion. RFR claimed lack of sufficient notice of the application and insufficient consultation. EFN reserve boundary was within the affected party radius. “The Board is satisfied that where a First Nation owns land or reserve lands in the calculated notification radius, it should be treated as an ‘affected party.’ As an affected party it should receive the notice that normally is issued in the NRCB’s courtesy letter, as it could be a directly affected party.” However, in later contacts, the AO gave the EFN an adequate opportunity to provide a response, so the EFN’s notice claim is without merit. *Fuhrhop Farms Ltd.*, RFR 2017-10, pp. 2-4.

CFO owner’s RFR of AO’s denial of registration for expansion of chicken layer CFO. Board sends notice of RFR and opportunity to respond to all parties identified as DAPs. Board also sends notice to the Tall Cree First Nation even though the TCFN didn’t submit a statement of concern. CFO was within an MDP setback to the TCFN reserve. Notice to the TCFN was “warranted given the specific nature of the issue raised.” *Danny Friesen and Tara Warkentin*, RFR 2017-07, p. 2 and 3.

C. Complete applications

RFRs of approval for new sheep CFO. Board grants RFR on concern that AO found the application complete without a filed surface water control system design. AOPA requires that directly affected parties have a chance to review and comment on “information relevant to the application” and the control system is a “key design element” of the CFO. AO’s failure to require that design as part of the completed application “falls short of the approval officer obligations under Section 20(1)(b)(iii) of AOPA.” *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, pp. 5-6. Under AOPA, unless AO authorizes otherwise, an application must contain

- Construction plans for surface water control systems [s.2(3)(a)(iii)]
- A site plan showing the location of all surface water control systems (if required by the approval officer) [s.2(3)(d)(vi)]
- An area plan showing water courses and common bodies of water [s.2(3)(e)(v)]
- Runoff patterns [s.2(3)(e)(vii)]

AO can require applicant to have these materials stamped by an engineer or other appropriate professional. *Ibid*, p. 7. Board requires applicant to submit an engineer-stamped surface water control plan and board sets out required plan components. Plan should include secondary containment if applicant decides to adopt that component. AO should provide a copy to the board once AO approves the plan. DAPs will then be able to comment on the plan, and applicant can respond to comments, before the board reviews the plan. *Ibid*, p. 8.

D. Part 2 Application Extensions

RFRs of approval for a new beef finisher CFO. Part 2 was filed within one year of Part 1 filing, so meets one-year extension deadline in the regulations, even though the AO granted a Part 2 extension beyond one year. *Corner's Pride Farms Ltd.*, RFR 2020-10, p. 5.

E. Public notice (of completed application and of final decision)

Colony's RFR of AO denial of colony's approval application for a new beef CFO (including previously constructed facilities). *Hutterian Brethren Church of Cleardale*, RFR 2022-14. AO denied the application because the CFO is in MDP exclusion zones and setbacks. Board grants RFR to consider ambiguities about relation between the setbacks and the CFO exclusion zone in the county's MDP. *Ibid*, pp. 2-3. Board declines to review DAP's concerns, in their rebuttals, re the colony's unauthorized construction, and about odours, traffic, property values, and public notice. AO adequately addressed these concerns. *Ibid*, p. 3.

RFR of Inspector decision that feedlot was grandfathered with 35,000 beef finishers. Inspector was reasonable in publishing notice in the newspaper recommended by the municipality. It's reasonable to assume the municipality is in the "best position to determine the most appropriate newspaper for notice." The RFR applicants received notice. *Rimrock Feeders Ltd.*, RFR 2020-08, p. 5.

Board dismisses notice claim in denying RFRs of registration for a new poultry CFO. *Hutterian Brethren Church of Granum*, RFR 2020-06. AO satisfied AOPA s. 21 notice requirement for registration applications by publishing notice of the application in the local paper and providing full copy on the NRCB's website. AO also sent courtesy letters to affected parties identified by the MD although AO wasn't legally required to do so. (Board's decision isn't clear whether the RFR applicant who raised the notice issue received a courtesy letter.)

RFRs of AO's approval of new beef CFO. *P&H Wessels Farms Ltd.*, RFR 2020-05. AO's letter accompanying permit decision erroneously stated that the approval was for an expansion of an existing multi-species CFO. Board declines to grant the RFRs on this basis, given AO's follow up conversation with RFR applicants which corrected the error. *Ibid*, p. 8.

For approval application for CFO expansion, AO's publication of notice in local paper satisfied notice requirements in AOPA (and accompanying regulation) and NRCB policy. Courtesy letter to RFR applicant was returned as undeliverable but NRCB later emailed the RFR applicant the notice. *Sundown Feeders Ltd.*, RFR 2019-04, pp. 2-3.

Ermineskin First Nation's RFR of registration for dairy CFO expansion. RFR claimed lack of sufficient notice of the application and insufficient consultation. EFN reserve boundary was within the affected party radius, but NRCB did not send EFN a courtesy letter when it sent such letters to other affected parties. However, NRCB later sent a courtesy letter, with a later deadline for response, but the letter was in form of the notice letter NRCB sends to municipalities. AO extended the response deadline again but EFN did not submit a statement of concern. "The Board is satisfied that where a First Nation owns land or reserve lands in the calculated notification radius, it should be treated as an 'affected party.' As

an affected party it should receive the notice that normally is issued in the NRCB's courtesy letter, as it could be a directly affected party." However, in later contacts, AO gave EFN adequate opportunity to provide a response, so EFN's notice claim is without merit. *Fuhrhop Farms Ltd.*, RFR 2017-10, pp. 2-4.

CFO owner's RFR of AO's denial of registration for expansion of chicken layer CFO. Board sends notice of RFR and opportunity to respond to all parties identified as DAPs. Board also sends notice to the Tall Cree First Nation even though the TCFN didn't submit a statement of concern. CFO was within an MDP setback to the TCFN reserve. Notice to the TCFN was "warranted given the specific nature of the issue raised." AO's public satisfied NRCB notice requirements, but the board "suggests that the NRCB Field Services Division review its policy to satisfy itself that notice procedures adequately serve the range of circumstances that may arise." *Danny Friesen and Tara Warkentin*, RFR 2017-07, pp. 2 and 3.

RFR of approval for new chicken broiler CFO. RFR applicant did not submit a statement of concern (or functional equivalent) by the SOC deadline. AO published general notice in the local newspaper (Central Alberta Life). Board notes this publication is per the NRCB's general practice and implicitly accepts the publication as adequate notwithstanding that the publication is no longer delivered to rural mailboxes. Board denies the RFR because "AOPA does not give the board authority to consider requests for review filed by a party other than a directly affected party, nor does it provide for considering requests by parties who had not filed a statement of concern with the approval officer during the application review process.... AOPA limits the board's power to review approval officer decisions to those instances where a request to review has been filed by a party that participated in the approval officer's application review process." *Northwest Poultry Farms Ltd.*, RFR 2017-06, pp. 2-3.

F. Statements of concern

In denying RFR of approval for beef feedlot expansion, board concludes that AO adequately addressed concerns regarding dead animal disposal. Board notes and implicitly accepts AO's decision to forego carrying forward municipal condition regarding dead animal disposal. RFR applicant didn't raise this concern in his statement of concern, so the AO was unaware of the concern when he decided to issue the approval. *Sundown Feeders Ltd.*, RFR 2019-04, pp. 7-8.

RFRs of approval for new feeder pig CFO. Board denies RFRs from couple who did not submit a statement of concern to the AO. Given this omission, under AOPA s. 20, the board "has no legislative authority to consider" the couple's RFR. *Pigs R Us Inc.*, RFR 2017-11, pp. 2-3.

"AOPA establishes two levels of decision-making relating to approvals. In the first level, the approval officer receives and reviews an application, publishes notice of the application, considers statements of concern, and renders a decision. This gives interested parties an opportunity to make a submission so that the approval officer may determine whether they are directly affected and, if found to be so, the approval officer must then have regard for that submission." *Northwest Poultry Farms Ltd.*, RFR 2017-06, p. 2.

G. Consultation with First Nations

RFR by the Samson Cree First Nation (SCFN) of an approval to expand a beef CFO. McKelvie, RFR 2022-12. Board rejects SCFN's claim the AO failed to properly consult with the SCFN. "[t]he NRCB has a role in fulfilling the Crown's duty to consult, but the NRCB can satisfy its role by providing the notice and comment procedures set out in AOPA and the accompanying regulations." *Ibid*, p. 5. Here, the AO satisfied the AOPA requirements "and then some." It was reasonable for the AO to treat SCFN like a municipality at least for purposes of responding to notices and meeting deadlines. Nor was the board required to conduct any further assessment of whether or how the proposed CFO expansion might hurt SCFN or its members' use of land or resources. *Ibid*, pp. 5-6.

Ermineskin First Nation's RFR of registration for dairy CFO expansion. NRCB satisfied Crown's duty to consult by providing sufficient notice of the application and opportunity to submit a statement of concern. "In this case, the approval officer balanced the landowner interests against those of the applicant. Although the ECN failed to provide its concerns to the approval officer in a reasonable time, the fact is that the very concerns subsequently raised by the ECN's lawyer were addressed in the approval officer's decision. The ECN is not entitled to a one-sided process, but rather, a cooperative one. In this case, the ECN received the same, or greater, opportunity to participate as did other neighbouring landowners." *Fuhrhop Farms Ltd.*, RFR 2017-10, p. 5.

V. PERMITS - DIRECTLY AFFECTED PARTIES

A. Board's standard of review of AO decisions on DAP status

RFRs of approval for pig CFO expansion. Board affirms as "reasonable" the AO's decision that one couple who submitted an RFR are not directly affected parties. *Spruit Farms Ltd.*, RFR 2018-13, pp. 2-3.

RFRs of approval for new feeder pig CFO. Board affirms AO's decision that several people living more than one mile from the CFO (the affected party radius) are not directly affected. *Pigs R Us Inc.*, RFR 2017-11, pp. 2-3. "Having regard for the submissions of each party, the Board has determined that none of these parties are directly affected." *Ibid*, p. 4.

B. Test for standing

Party requesting DAP status has onus to show that

- a plausible chain of causality exists between the proposed project and the effect asserted,
- the effect would probably occur,
- the effect could reasonably be expected to impact the party,
- the effect would not be trivial, and
- the effect falls within the NRCB regulatory mandate under AOPA.

Corner's Pride Farms Ltd., RFR 2020-10, p. 3; *Hutterian Brethren Church of Starland*, RFR 2020-07, p. 3; *Hines Creek Farms*, Decision 2020-03, p. 2 (same test in board review as in AO's permit proceeding); *Pigs R Us Inc.*, RFR 2017-11, p. 3.

C. Evidence needed to support a DAP claim

In review of AO's denial of approval for multi-species CFO, Board affirms AO's denial of standing to two people. One lives over 2 km from the CFO site, did not provide any information supporting directly affected claim, and didn't clearly ask the board to reconsider the AO's conclusion that he was not directly affected. *Hines Creek Farms*, Decision 2020-03, p. 2.

RFRs of approval for pig CFO expansion. Board affirms as "reasonable" the AO's decision that one couple who submitted an RFR are not directly affected parties. *Spruit Farms Ltd.*, RFR 2018-13, pp. 2-3. Board references directly affected party test in 2011 decision (*Ijtsma*, 2011-05, p. 4). The couple raised several nuisance-type concerns in their RFR, and concerns regarding pollution and water quantity, but did not provide "specific evidence" to substantiate the concerns. "Listing these concerns in the general terms done in the RFR does not establish a plausible chain of causality between the claimed effects from the CFO" and the RFR applicants. *Ibid*, p. 3. Also, the couple are outside the one mile "affected party" radius in the AOPA Part 2 Matters Regulation. *Ibid*. AO adequately considered neighbours' concerns about diseases to animals and humans from CFO's flies. Only specific disease mentioned to AO (and in RFRs) was pink eye in cattle. AO followed up on this risk by consulting AF staff who provided evidence showing a low risk. Also, AOPA doesn't restrict proximity of CFOs to each other or restrict multi-species at a single CFO. NRCB manages flies "as a compliance matter," through AOPA regulations requiring CFOs to use reasonable fly control measures. RFRs didn't provide any additional, new evidence. *Ibid*, pp. 5-6.

RFRs of approval for new multi-species CFO. Board affirms AO determination that one couple and a nearby village are not directly affected by the application. Board refers to *Ijtsma* and NRCP Operational Policy 2016-17, page 6.3, for DAP test. Board agrees with AO that nuisance effects "may occur," but their frequency, magnitude and duration of the effects are insufficient to warrant DAP status. Both parties are beyond the MDS and well outside the MDP exclusion zone. Couple's reference to a court decision re county's consideration of cumulative effects does not establish cumulative effects from this proposed CFO, as a factual matter. NRCB's enforcement record vis another CFO is irrelevant. County's claim that AHS uses flawed wind data is unsupported; Ohio study cited by county is insufficient. *Hutterian Brethren of Summerland*, RFR 2018-05, pp. 3-4.

RFRs of approval for new feeder pig CFO. Board affirms AO's decision that several people living beyond one mile from the CFO (the affected party radius?) are not directly affected. *Pigs R Us Inc.*, RFR 2017-11, pp. 2-3. "Stating concerns without substantive supporting evidence is not enough to meet the burden of proof necessary for the Board to find a party directly affected. In addition, statements cannot overreach in terms of common logic." *Ibid*, p. 3. For example, no evidence to support one party's claim their water will be impact because of their proximity to the CFO. *Ibid*.

D. "Affected party" radius and MDS as benchmarks for DAP status

In review of AO's denial of approval for multi-species CFO, Board affirms AO's denial of standing to two people. One lives over 2 km from the CFO site, did not provide any information supporting directly affected claim, and didn't clearly ask the board to reconsider the AO's conclusion that he was not directly affected. *Hines Creek Farms*, Decision 2020-03, p. 2. The other person lives 2.5 km from the site.

Her residence is outside the 0.5 mi. affected party radius and is eight and three times farther than the Category 1 and 4 MDSs, respectively. MDS “provides assistance” in board’s understanding of likelihood and magnitude of nuisance effects. *Ibid*, pp. 2-3.

RFRs of approval for pig CFO expansion. Board affirms as “reasonable” the AO’s decision that one couple who submitted an RFR are not directly affected parties. *Spruit Farms Ltd.*, RFR 2018-13, pp. 2-3. The couple are outside the one mile “affected party” radius in the AOPA Part 2 Matters Regulation. “The Board does not doubt that there will be times that the ... [couple submitting the RFR] will experience odour and other nuisance related effects from the Spruit Farms’ operation. However, the Board considers that the ‘affected party’ radius in the AOPA regulations were established to include all lands and residences that, barring special circumstances, would experience effects from the CFO facility that could make the owners or residents directly affected parties.” *Ibid*, p. 3. Board declines to grant RFRs based simply on the number of RFRs from directly affected parties. In so doing, board references, with apparent implicit approval, the NRCB policy that residents within the “affected party” radius are presumed to be directly affected parties. *Ibid*, p. 4.

RFRs of approval for new feeder pig CFO. Board affirms AO’s decision that several people living beyond one mile from the CFO (the affected party radius) are not directly affected. Those parties will “experience odour and other nuisance issues,” but the impacts will be “infrequent and of short duration, so they will be “trivial.” *Pigs R Us Inc.*, RFR 2017-11, pp. 2-3.

E. Affects from manure spreading

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. Board affirms AO’s conclusion that one person is not directly affected based on his land’s adjacency to the manure spreading lands listed in the permit application. The risk of manure runoff contaminating the person’s dam is possible, but not probable, if the manure spreading meets AOPA requirements. (Board refers back to prior board decisions that adjacency to manure spreading is not a sufficient basis for being directly affected.) For this reason, the board would deny the person’s RFR even if the person was directly affected. *Ibid*, p. 4.

RFRs of approval for a new beef finisher CFO. Board affirms AO’s denial of standing to couple who lived 300 m from a manure application site. The parties may experience “some odours” during spreading, but the “infrequency and short duration of manure spreading reduces impacts to a level the Board finds trivial.” *Corner’s Pride Farms Ltd.*, RFR 2020-10, p. 3.

RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. Board affirms AO’s denial of standing to two RFR applicants who live within 500 m of manure spreading lands. Those residents “may experience odour and other nuisance issues associated with manure spreading events, but those impacts would be both infrequent and of short duration.” Spreading will likely occur only twice per year and CFO has ample land base. Because spreading lands may vary, “it is not possible to identify parties that may own or reside adjacent to spreading lands with certainty.” *Ibid*, p. 3. AOPA requirements will effectively manage risks of surface water and groundwater contamination from manure spreading. *Ibid*, pp. 3-4. Water supply issues are beyond AOPA’s regulatory mandate. *Ibid*, p. 6.

In review of AO's denial of approval for multi-species CFO, Board affirms AO's denial of standing to two people. *Hines Creek Farms*, Decision 2020-03, p. 2. One lives 2.5 km from the site and 800 m from designated manure spreading lands. This person "may experience nuisance effects" during spreading, but board has "no general control" over where CFO spreads manure and board doesn't consider spreading effects beyond knowing that the operator has sufficient spreading lands. All operators must adhere to the spreading requirements in the Standards regulation. *Ibid*, p. 3.

F. Loss of aesthetic enjoyment of property

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. Board affirms AO's conclusion that 11 parties were not directly affected by the application. Board accepts couples' claim the CFO will affect their aesthetic enjoyment of their viewshed, but that effect is to be expected given the rural land use zoning of the area which allows CFOs. Couples' concern about effects of establishing a new colony in the area are outside the Board's jurisdiction. *Ibid*, p. 3.

G. Directly affected parties on registration applications

RFRs of registration for a new poultry CFO. *Hutterian Brethren Church of Granum*, RFR 2020-06. Under AOPA s. 21(5), for registration applications, only "affected parties" can be DAPs. For this application, owners and occupiers of land within 0.5 miles from the CFO are affected parties. Five RFR applicants didn't show that they met this criterion, so they are not DAPs, so the board can't consider their RFRs. *Ibid*, p. 3. Two other parties didn't submit SOCs so they also don't qualify as DAPs, so board can't consider their RFRs as well. *Ibid*.

H. Misc. DAP determinations

Review of AO's denial of approval for multi-species CFO. After granting the RFR, board corrected lack of notice to parties who were denied standing by the AO. *Hines Creek Farms*, Decision 2020-03, pp. 1-2. Board applies same standing test as that used by AOs. *Ibid*, p. 2.

In considering RFR of approval for new mixed-species CFO, board finds that certain members of one family are directly affected parties, based on approval officer's submission that the AO mistakenly excluded these members. *Hutterian Brethren of Summerland*, RFR 2018-05, p. 1.

VI. PERMITS – PERMITTING FACTORS

A. General principles

RFRs regarding AO's denial of approval for a new beef cattle CFO. *G&S Cattle Ltd.*, RFR 2022-11. AO was not required to conduct an independent review and generate new evidence. Rather the AO can rely on application materials (and request that the applicant provide additional studies) and other parties' submissions. *Ibid*, pp. 6-7.

The approval officer's job is essentially to make findings as to whether a CFO application meets the relevant legislative criteria. The officers necessarily must form an "opinion" on these issues to carry out their job. *Hutterian Brethren of Parkland*, RFR 2022-10, p. 3.

Review of AO's denial of approval for a new beef CFO. *A&D Cattle Ltd.*, Decision 2022-09. Board notes that "established [NRCB] policy and past review decisions may be persuasive, but are not binding." *Ibid*, p. 2.

B. Consistency with MDPs and other municipal permitting matters

1. General principles

CFO's RFR of AO's denial of permit to expand a swine CFO. "All CFOs are required to comply with the MDP's land use provisions relevant to the county in which they are located." *Manna Farms Ltd.*, RFR 2020-11, p. 2. "Section 20(1)(a) of AOPA requires the approval officer to deny the application if there is an 'inconsistency with the municipal development plan land use provisions'.... The Board recognizes that section 20(1)(a) of AOPA does not provide the approval officer with any discretion when a proposed development or expansion does not comply with the relevant MDP. This section requires the approval officer to deny the application...." *Ibid*, p. 3.

2. MDP "land use provisions"

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. Board concludes that section 2.2 of Ponoka County's MDP is not a "land use provision," so it's not relevant to the AO's MDP consistency determination. That section bans "very large" CFOs in the county and defines "very large" as ten times the approval threshold in AOPA. Board rejects county's input that the MDP's head limit was not meant to be applied to cattle CFOs. However, the Board agrees with the AO's view that section 2.2 calls for a discretionary decision regarding the CFO size so, under NRCB policy section 2.2 is not a land use provision. *Ibid*, p. 5.

RFRs re AO's denial of approval to expand an existing poultry CFO. *Double H Feeders Ltd.*, RFR 2022-01. The proposed expansion is consistent with s. 4.1.5 of the IDP, which allows expansions that will "upgrade and modernize" the CFO, and "reduce negative impacts" and if "additional environmental protection will be considered, and comments from both the County and Town are received and considered by the NRCB." Board concludes proposed expansion is consistent with this IDP provision because the net nuisance impacts are likely to be reduced through decommissioning the west barn even though there will be a 14% net increase in production. *Ibid*, pp. 11-14. When applying this IDP section, the Board accepts the County's perspective of viewing the area "as a whole". *Ibid*, p. 13.

RFRs of approval for new feeder swine CFO. Board disagrees with county's RFR claim that AO improperly concluded that MDP setbacks were not "land use provisions," because the record shows the CFO meets the MDP setbacks. *Pigs R Us Inc.*, RFR 2017-11, p. 5.

RFRs of registration for a new broiler chicken CFO. Board agrees with AO that Red Deer County MDP policy (section 3.3.2) setting out criteria for county's preparation of its response to NRCB, is not a "land use provision." *Brad Towle*, RFR 2017-09, p. 4.

3. MDP policies that “request” or “encourage” the NRCB to follow policy directives

Ponoka MDP setback (policy 2.3) “requests” the NRCB “not to allow” CFOs within the setback area. Reading this language in light of prior board decisions, and the MDP’s accompanying map, board concludes the setback was meant to be mandatory, not discretionary. *Milk & Honey Dairy Inc.*, Decision 2018-04, p. 3.

4. MDP setbacks to “lakes”

RFRs of approval for new dairy CFO. AO adequately determined that the proposed CFO was consistent with county’s MDP setback to “lakes” because the two waterbodies noted by RFR applicants (Lake Pofianga and McFadden/Sigistrom Lake) are not listed as “lakes” on the county map or on land titles. In addition, the county didn’t note any nearby lakes, and affirmed MDP consistency, in its comments on the application. *500016 Alberta Ltd.*, RFR 2018-11, pp. 3-4. Even if the waterbodies were lakes, the setback applies only “unless the regulators are convinced that” the CFO’s manure management system is “fail-safe” and there is “no reasonable risk of contamination of the lake.” This exception applies here given AO’s finding of low risk and compliance with all applicable AOPA requirements. *Ibid*, p. 4. Also, the CFO’s distance to nearest lake well exceeds all MDSs to all receptors. “In past decisions, the Board has consistently respected municipal setbacks to public recreational facilities when it finds that municipal development plan setbacks are reasonable and established to support current and future land uses. When assessing MDP land use provisions that deal strictly with environmental protection related to CFOs, the Board will generally rely on AOPA standards as they provide the statutory tool to accomplish those objectives.” *Ibid*, p. 4.

5. MDP Exemptions or council exemptions to MDP setbacks/exclusion zones

RFRs of approval for new dairy CFO. AO adequately determined that the proposed CFO was consistent with county’s MDP setback to “lakes.” *500016 Alberta Ltd.*, RFR 2018-11, pp. 3-4. Even if the waterbodies were lakes, the setback applies only “unless the regulators are convinced that” the CFO’s manure management system is “fail-safe” and there is “no reasonable risk of contamination of the lake.” This exception applies here given AO’s finding of low risk and compliance with all applicable AOPA requirements. *Ibid*, p. 4. Also, the CFO’s distance to nearest lake well exceeds all MDSs to all receptors. “In past decisions, the Board has consistently respected municipal setbacks to public recreational facilities when it finds that municipal development plan setbacks are reasonable and established to support current and future land uses. When assessing MDP land use provisions that deal strictly with environmental protection related to CFOs, the Board will generally rely on AOPA standards as they provide the statutory tool to accomplish those objectives.” *Ibid*, p. 4.

Board grants CFO owner’s RFR of AO’s denial of registration for expansion of chicken layer CFO and, following a written review, directs the AO to issue the registration. CFO was within an MDP setback to the TCFN reserve. *Ibid*, p. 3. Following a written hearing, board directs the AO to issue the registration (with AO’s recommended conditions). Decision 2017-08, pp. 4 and 7. County’s motion waiving the setback doesn’t overcome the setback inconsistency, because an MDP setback can’t be waived with

respect to a single development “without broad public consultation.” However, board infers that county’s motion implies county considers the CFO to be compatible with adjacent land uses. *Ibid*, p. 4.

6. Measuring distances to setback lines

RFRs of approval for new sheep CFO. Board declines to hold a review on RFR concern the CFO facilities won’t meet property line setbacks and MDS. AO adequately addressed this concern by including a condition in the approval requiring applicant to provide written confirmation from a surveyor that constructed facilities meet all setbacks. *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, pp. 4-5.

7. Delaying a permit decision pending MDP development

Review of AO’s denial of approval for a new beef CFO. *A&D Cattle Ltd.*, Decision 2022-09. AO found that the permit application was inconsistent with an exclusion zone provision in an IDP which was adopted after the AO deemed the application to be complete. Board reiterates that, following the 2017 amendments to the MGA, an IDP is relevant to an AO’s MDP consistency determination under AOPA. *Ibid*, p. 1. AO’s decision to use the IDP was based on NRCB policy, which provides that AOs should make their MDP consistency determination based on the MDP/IDP in effect when they make their final decision. The board affirms the AO’s reliance on the MDP/IDP in effect when the AO made his final decision. *Ibid*, p. 3. The MD of Willow Creek argued that, under AOPA s. 20(1)(b), the AO should have made his MDP consistency determination before issuing public notice of the permit application and denied the application before issuing public notice if there was an inconsistency with the MDP. The board finds that this interpretation is inconsistent with AOPA’s provision (in s. 25(4)(g)) allowing the board to approve an application notwithstanding an MDP inconsistency. This process implies that the AO should develop a full record, based on all relevant factors, even if the AO is denying the permit on MDP inconsistency grounds. *Ibid*, p. 3. The board also rejects A&D’s argument that the AO’s draft decision for internal review should be the operative decision for MDP consistency purposes. *Ibid*, pp. 6-7. The board also concludes that the AO did not deliberately or unnecessarily delay his decision to wait for the new IDP to take effect. The AO provided reasonable explanations for the timing of the permitting process, and the permit was issued within the NRCB’s 65-day target (from the public notice). AO’s have “broad discretion” regarding the timing of permit decisions, although the board expects that AOs will process applications in an “orderly and timely fashion within individual workload constraints.” *Ibid*, pp. 3-4. The AO also reasonably relied on the NRCB’s unwritten policy of avoiding public notice during the Christmas/New Year’s holiday period (although Operations should consult with the Policy Advisory Group to adopt a written policy on this subject). *Ibid*, pp. 5-6.

RFRs of approval for new dairy CFO. Board affirms AO’s decision—based on NRCB policy and prior board decisions—to forego postponing issuing permit while county is in process of revising its MDP. AF Minister declined county’s request to direct NRCB to postpone issuing new permits and county was in early stages of revision process. AO’s decision was not in bad faith. *500016 Alberta Ltd.*, RFR 2018-11, p. 3.

8. Consistency with other land use plans besides MDPs

Review of AO's denial of approval for a new beef CFO. *A&D Cattle Ltd.*, Decision 2022-09. AO found that the permit application was inconsistent with an exclusion zone provision in an IDP which was adopted after the AO deemed the application to be complete. Board reiterates that, following the 2017 amendments to the MGA, an IDP is relevant to an AO's MDP consistency determination under AOPA. *Ibid*, p. 1.

Based on recent amendments to the *Municipal Government Act* (MGA), IDPs trump MDPs in the planning hierarchy. Applying a purposive approach to interpreting AOPA's MDP consistency requirement, approval officers should apply the IDP (where applicable) instead of the MDP, where the two are in conflict. According to the Board, "deference to land use provisions within the hierarchy of the municipal planning framework makes sense and is consistent with a purposive approach to interpreting AOPA. While speculative, presumably this situation exists only because AOPA has not been updated since the *Municipal Government Act* was amended in 2017 to include the revised hierarchy of municipal planning documents." *Double H Feeders Ltd.*, Decision 2022-02, pp. 6-7.

Board review of AO's denial of proposed expansion of a multi-species CFO in Vulcan County. AO's denial was based on inconsistency with MDP provision precluding CFO expansions in specified exclusion zones (EZs). Board granted review to decide whether it should exercise its discretion under AOPA to approve the application notwithstanding the MDP inconsistency. Board directs the AO to issue the requested approval. *Hutterian Brethren Church of Little Bow*, Decision 2021-05. Board notes parties' submissions about inconsistencies between the MDP and the Vulcan/Willow Creek IDP. However, AOPA s. 20(1) requires consideration of MDP consistency only, so the board didn't consider the IDP. *Ibid*, p. 4.

9. Miscellaneous MDPs

Camrose County –

Denial of approval to expand a chicken CFO. *R&T Penner Farms Ltd.*, RFR 2022-03. Proposed expansion is inconsistent with Camrose County's MDP, s. 4.3.9, which precludes CFOs and CFO expansions within 2 miles of any "recreational lake". The CFO is within 2 miles of Dried Meat Lake which is classified as a recreational lake. *Ibid*, p. 2. Board grants RFR to determine whether to issue the approval notwithstanding the MDP inconsistency, because: the County's position on the application wasn't clear; and the County's purposes for the 2 mile setback weren't clear. *Ibid*, p. 3. In the review proceeding, the Board decides to direct the AO to issue the permit notwithstanding the MDP inconsistency. The County supported the CFO expansion and said it was reconsidering its MDP exclusion zones. The CFO was far outside the MDS. No risk to the lake's water quality and no evidence of nuisance risks or risk to the recreational and residential planning objectives of the MDP. *R&T Penner Farms Ltd.*, Decision 2022-05 at 2-3.

Application for permit to expand a swine CFO. AO denied application on MDP and MDS grounds. *Manna Farms Ltd.*, RFR 2020-11. Camrose MDP provision at issue appeared to be a setback from residences at Little Beaver Lake. *Ibid*, p. 4. Camrose County supported the CFO applicant's RFR and stated it was

meeting to discuss relaxing the setback for this project. *Ibid*, p. 3. Board acknowledged that the MDP issue “on its own ... may warrant consideration”. But the board denied the RFR because it didn’t appeal the AO’s denial on MDS grounds. *Ibid*, p. 5.

Board directs AO to issue approval for dairy CFO expansion, notwithstanding inconsistency with 2 mile exclusion zone from recreational lakes, in s. 4.3.9 of county’s MDP. *Vermeer Dairy*, RFR and Review Decision 2018-10.

Clear Hills County –

Colony’s RFR of AO denial of colony’s approval application for a new beef CFO (including previously constructed facilities). *Hutterian Brethren Church of Cleardale*, Decision 2022-16. In its review decision, the board directs the AO to issue the approval. “Given the indiscriminate and far reaching impact of the Schedule G setbacks [in the MDP], the Board notes that most, if not all, applications for CFOs will be found inconsistent with the County’s MDP. In the Board’s view this outcome is inconsistent with the legislative scheme and the spirit of the Act.” *Ibid*, p. 6. The CFO exclusion area in Appendix G of the MDP covers almost the entire county. The Appendix G setbacks are the same for all receptors, suggesting the setbacks are not based on any form of risk analysis. *Ibid*, p. 3. Board is unclear which of the Schedule G setbacks are “intended to be definitive, restrictive or discretionary.” But the MDP provisions suggest the county “expects to make a discretionary decision on each and every CFO application.” *Ibid*, p. 4. The CFO setbacks are unlike the “more typical[]” setbacks that target CFO development in some areas but not in others that will create significant land use conflicts. *Ibid*. Board doesn’t comment specifically on the MDP’s CFO setbacks from roads. *Ibid*, p. 4. The MDP’s 3.2km setback from residences is “indiscriminate and inappropriately replaces the MDS provisions in AOPA and is inconsistent with the spirit of the Act.” *Ibid*, p. 5. The MDP’s 3.2 km setback from waterbodies is a “broad based non-targeted provision intended to replace environmental setbacks in section 7(1) of the Standards [Regulation]. This setback is “indiscriminate and is not consistent with the spirit of the Act.” *Ibid*, pp. 5-6. MDP also has 3.2 km setbacks from a town, aquifer, “intensive recreation area” and “environmental sensitive area.” Board finds that these setbacks “have merit,” but not at issue because the colony’s CFO isn’t within any of them. *Ibid*, p. 6.

Following review, board directs AO to approve mixed-CFO notwithstanding inconsistency with Clear Hills County MDP setbacks to residences, roads, and waterbodies (including wetlands). *Hines Creek Farms*, Decision 2020-03, pp. 3-6. Board has “consistently respected municipal exclusion zones when it finds that the zones are reasonable, and established to support current and future land uses.” *Ibid*, pp. 4 and 5. County’s MDP effectively prohibited CFOs throughout the entire land the County had zoning authority over. *Ibid*. AOPA’s purpose was to establish common rules for CFO siting. *Ibid*, p. 4. County couldn’t provide rationale for the MDP exclusions. *Ibid*, p. 5. MDP setbacks weren’t meant to protect land uses “associated with specific local features” in the county. *Ibid*. CFO meets AOPA MDS to residences and AOPA setbacks to water bodies and wetlands. *Ibid*, pp. 5 and 6. The AOPA waterbody/wetland setbacks provide “province-wide environmental protection to both surface and ground water.” *Ibid*, p. 6. AO and county should work out any problem with incursion on MDP setback to roads. *Ibid*, p. 6.

Cypress County –

Cypress County's RFR of authorization to expand an animal shelter at a multi-species CFO. MDP section setting out road access requirements applies only to new CFOs, not to existing CFOs. AO lacks jurisdiction to revisit the CFO's prior permits. *Hutterian Brethren of Murray Lake*, RFR 2020-09, p. 3.

RFRs of approval for new sheep CFO. Board declines review of RFR concern regarding odour, dust, light pollution and flies and attendant effects on future land use and land value. "The regulation of development, including confined feeding operations, is in part a planning matter governed by municipal planning." County confirmed that proposed CFO is consistent with MDP land use provisions and property line setbacks, notwithstanding county's acknowledgement of neighbours' concerns. *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 6.

Lac Ste. Anne County –

RFRs of approval for new feeder swine CFO. Board disagrees with county's RFR claim that AO improperly concluded that MDP setbacks were not "land use provisions," because the record shows the CFO meets the MDP setbacks. *Pigs R Us Inc.*, RFR 2017-11, p. 5.

Lethbridge County -

RFRs re AO's denial of approval to expand an existing poultry CFO. Board agrees with AO that the proposed expansion is inconsistent with Lethbridge County's MDP but grants the RFR to consider whether to approve the expansion notwithstanding the inconsistency. *Double H Feeders Ltd.*, RFR 2022-01. In the review, the Board agrees with AO that sections 6.6.3(a) and (d)(VI) of Lethbridge County's MDP clearly intend to adopt CFO exclusion zone in Rural Urban Fringe provision of County's LUB and that this exclusion applies to both new and expanding CFOs. Proposed CFO expansion is therefore inconsistent with the MDP. *Double H Feeders Ltd.*, Decision 2022-02, pp. 7-8. Board also finds that the exclusion zone reflects proper municipal planning given the planned "distinct development note" near the Town of Coalhurst, and that the exclusion zone is "clearly outlined". *Ibid*, p. 8. Board nevertheless concludes that the IDP is also relevant, because its provisions are "specific" to CFO expansions (and under MGA amendments, IDPs trump MDPs in the planning hierarchy). *Ibid*, p. 14. The proposed expansion is consistent with s. 4.1.5 of the IDP, because the net nuisance impacts are likely to be reduced through decommissioning the west barn even though there will be a 14% net increase in production. *Ibid*, pp. 11-14.

RFR of approval for beef CFO expansion. AO adequately addressed general community effects (and effects on RFR applicant and his property), based on application's compliance with all AOPA technical requirements and consistency with the county's MDP and LUB, and with the South Sask. Regional Plan. *Sundown Feeders Ltd.*, RFR 2019-04, pp. 6-7.

Mackenzie County –

Board grants CFO owner's RFR of AO's denial of registration for expansion of chicken layer CFO. AO denied application because CFO was within MDP setbacks to a hamlet and to a First Nation reserve.

Mackenzie County originally noted the inconsistency but submitted a follow up letter stating that the county had granted a variance for up to 12,000 hens. AOPA enables the board to approve a CFO application, notwithstanding MDP inconsistency, “in order to achieve more consistent CFO siting provisions across the province”. Danny Friesen and Tara Warkentin, RFR 2017-07, p. 2. CFO was within an MDP setback to the TCFN reserve. *Ibid*, p. 3. Following written hearing, board directs the AO to issue the registration (with AO’s recommended conditions). Decision 2017-08, pp. 4 and 7. County’s motion waiving the setback doesn’t overcome the setback inconsistency, because an MDP setback can’t be waived with respect to a single development “without broad public consultation.” However, board infers that county’s motion implies county considers the CFO to be compatible with adjacent land uses. *Ibid*, p. 4. Board reviews MDP’s provisions relating to agriculture and “accepts” that the MDP buffers from CFOs and industrial parks are being used as a “planning tool to manage and avoid conflict from incompatible land uses.” *Ibid*. CFO exclusion zones were “driven by sensitivity to the common nuisance effects associated with CFOs. *Ibid*. AOPA MDS is not a “definitive answer” for municipal planning objectives. Board “supports” MDP setbacks to “achieve specified planning objectives” and this MDP’s setbacks are “consistent with those objectives.” *Ibid*, p. 5. However, nuisance effects from this CFO expansion are “inconsequential,” because hamlet is more than three times the MDS to category 4 residences (which include hamlets), so CFO expansion is unlikely to impact the MDP’s planning objectives. *Ibid*, p. 6. MDP setback to hamlet is meant to protect current and future land uses related to the hamlet, not uses of lands within the exclusion zone between the CFO and the hamlet. *Ibid*, p. 6.

Ponoka County –

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. Board concludes that section 2.2 of Ponoka County’s MDP is not a “land use provision,” so it’s not relevant to the AO’s MDP consistency determination. That section bans “very large” CFOs in the county and defines “very large” as ten times the approval threshold in AOPA. Board rejects county’s input that the MDP’s head limit was not meant to be applied to cattle CFOs. However, the Board agrees with the AO’s view that section 2.2 calls for a discretionary decision regarding the CFO size so, under NRCB policy section 2.2 is not a land use provision. *Ibid*, p. 5.

RFRs of approval for new dairy CFO. AO adequately determined that the proposed CFO was consistent with county’s MDP and that AO should not wait until county finished its MDP revision process. *500016 Alberta Ltd.*, RFR 2018-11, p. 2. Proposed CFO was consistent with MDP setback to “lakes” (section 2.5) because the two waterbodies noted by RFR applicants (Lake Pofianga and McFadden/Sigistrom Lake) are not listed as “lakes” on the county map or on land titles and county didn’t note any nearby lakes, and affirmed MDP consistency, in its comments on the application. *500016 Alberta Ltd.*, RFR 2018-11, pp. 3-4. Even if the waterbodies were lakes, the setback applies only “unless the regulators are convinced that” the CFO’s manure management system is “fail-safe” and there is “no reasonable risk of contamination of the lake.” This exception applies here given AO’s finding of low risk and compliance with all applicable AOPA requirements. *Ibid*, p. 4. Also, the CFO’s distance to nearest lake well exceeds all MDSs to all receptors. “In past decisions, the Board has consistently respected municipal setbacks to public recreational facilities when it finds that municipal development plan setbacks are reasonable and established to support current and future land uses. When assessing MDP land use provisions that deal

strictly with environmental protection related to CFOs, the Board will generally rely on AOPA standards as they provide the statutory tool to accomplish those objectives.” *Ibid*, p. 4.

Proposed CFO is consistent with reverse-MDS policy MDP section 2.7, because that section applies to residential developments which are subject to county permitting. *500016 Alberta Ltd.*, RFR 2018-11, p. 4.

RFR of AO’s denial of a registration for a new dairy CFO. Board grants RFR on issues of whether the proposed CFO is inconsistent with MDP 2-mile setback to Town of Ponoka and, if it is, whether the board should issue the registration notwithstanding the inconsistency. *Milk & Honey Dairy Inc.*, RFR 2018-01, p. 2. In the MDP setback (policy 2.3), the county “requests” the NRCB “not to allow” CFOs within the setback area. In its review, board concludes that the proposed CFO is inconsistent with the MDP setback. Reading this language in light of prior board decisions, and the MDP’s accompanying map, board concludes the setback was meant to be mandatory, not discretionary. *Milk & Honey Dairy Inc.*, Decision 2018-04, p. 3. MDP wording, hearing testimony, and related planning documents show that the setback was intended to be measured to the town’s (expanded) boundary, not to the nearest residence in the town. *Ibid*, pp. 3-4. Board declines to overrule the MDP setback. “The Board agrees with both the Town and the County that the proposed Milk & Honey CFO has the potential to create land use conflicts with contemplated land uses in the Town of Ponoka.” Board considers, among other things, testimony regarding ongoing IDP/ASP planning initiatives and history of growth in area and annexation objectives. *Ibid*, pp. 4-5.

Red Deer County –

RFRs of registration for a new broiler chicken CFO. Board agrees with AO that criteria for county’s preparation of its response to NRCB, in Red Deer County MDP policy (section 3.3.2), are not MDP “land use provisions.” CFO isn’t in any of the MDP exclusion zones. *Brad Towle*, RFR 2017-09, p. 4.

Starland County

RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. CFO is not in the exclusion zone in s. 8.3(c) of the county’s MDP, which applies to any quarter section that “touches any area” identified on Map 6 “as being an Exclusion Zone.” The ¼ where the CFO will be located doesn’t touch on any high-risk area on Map 6. *Ibid*, pp. 5-6.

Stettler County (No. 6)

RFRs of approval for pig CFO expansion. Board notes that effects on community are presumed to be acceptable based on AO’s conclusion that the proposed CFO expansion was consistent with the county’s MDP and land use bylaw. *Spruit Farms Ltd.*, RFR 2018-13, p. 4.

Vulcan County

Board grants RFR of AO’s denial of application to expand the chicken layer component of a multi-species CFO in Vulcan County. *Hutterian Brethren Church of Little Bow*, RFR 2021-04. AO correctly denied

application based on county MDP s. 4.1 which precludes new CFOs and CFO expansions within designated exclusion zone. Application doesn't fall within MDP exemption for "improvements" for maintenance or environmental protection. *Ibid*, p. 2. Following its review, the board directs the AO to issue the requested approval. *Hutterian Brethren Church of Little Bow*, Decision 2021-05.

10. Board's exercise of discretion to issue a permit notwithstanding MDP inconsistency

Colony's RFR of AO denial of colony's approval application for a new beef CFO (including previously constructed facilities). *Hutterian Brethren Church of Cleardale*, Decision 2022-16. "Although ... [section 25(4)(g) of AOPA] affords clear discretion to the Board with respect to its consideration of MDPs, the Board is conscious of its responsibility to weigh carefully the planning objectives of municipal planning documents in relation to an application to develop or expand a CFO." *Ibid*, p. 2. In its review decision, the board directs the AO to issue the approval. "Given the indiscriminate and far reaching impact of the Schedule G setbacks [in the MDP], the Board notes that most, if not all, applications for CFOs will be found inconsistent with the County's MDP. In the Board's view this outcome is inconsistent with the legislative scheme and the spirit of the Act." *Ibid*, p. 6. The CFO exclusion area in Appendix G of the MDP covers almost the entire county. The Appendix G setbacks are the same for all receptors, suggesting the setbacks are not based on any form of risk analysis. *Ibid*, p. 3. Board is unclear which of the Schedule G setbacks are "intended to be definitive, restrictive or discretionary." But the MDP provisions suggest the county "expects to make a discretionary decision on each and every CFO application." *Ibid*, p. 4. The CFO setbacks are unlike the "more typical[]" setbacks that target CFO development in some areas but not in others that will create significant land use conflicts. *Ibid*. Board doesn't comment specifically on the MDP's CFO setbacks from roads. *Ibid*, p. 4. The MDP's 3.2km setback from residences is "indiscriminate and inappropriately replaces the MDS provisions in AOPA and is inconsistent with the spirit of the Act." *Ibid*, p. 5. The MDP's 3.2 km setback from waterbodies is a "broad based non-targeted provision intended to replace environmental setbacks in section 7(1) of the Standards [Regulation]. This setback is "indiscriminate and is not consistent with the spirit of the Act." *Ibid*, pp. 5-6. MDP also has 3.2 km setbacks from a town, aquifer, "intensive recreation area" and "environmental sensitive area." Board finds that these setbacks "have merit," but not at issue because the colony's CFO isn't within any of them. *Ibid*, p. 6.

RFRs regarding AO's denial of approval for a new beef cattle CFO. *G&S Cattle Ltd.*, RFR 2022-11. Board finds that the AO adequately based the denial on AOPA s. 21(b)(ix) and concluded that the proposed CFO would pose "materially negative and long-lasting effects on the community, and would not be an appropriate use of land." AO reasonably based community effects decision on the Pigeon Lake Watershed Management Plan, including its "CFO Adverse Effects Background Report". *Ibid*, pp. 7-8. "In the Board's view, the nature in which the watershed Plans were developed and the commitment to those Plans as represented by the signatories represent a solid example of best practice in formalizing community interests." *Ibid*, p. 8.

Review of AO's denial of approval for a new beef CFO. *A&D Cattle Ltd.*, Decision 2022-09. After affirming the AO's IDP inconsistency determination, the board considers whether to approve the permit notwithstanding the inconsistency. Board affirms relevant factors referenced in *R&T Penner Farms Ltd.*,

Decision 2022-05. *Ibid*, p. 8. The IDP exclusion zone reasonably reflected MD & Town planning objective to locate CFOs away from the town (and *future urban growth*), to minimize conflicts between urban and rural land uses, and factoring in local knowledge of prevailing wind directions. *Ibid*, p. 9. Board recognizes that inter-municipal negotiations on IDP provisions require a “political process” and reasonably consider future land use objectives. *Ibid*. Board won’t rely solely on MDS compliance because that doesn’t address the IDP’s future land use objectives and prevailing winds. *Ibid*. Board “appreciates that establishing CFO exclusion zones are one of the few opportunities that municipalities have to provide input to the NRCB regarding suitable locations for CFOs and their potential impacts on municipal planning... [E]xclusion zones is a reasonable planning tool for municipalities and has been supported by the Board in previous decision[s].” *Ibid*, pp. 9-10.

Denial of approval to expand a chicken CFO. *R&T Penner Farms Ltd.*, RFR 2022-03. Proposed expansion is inconsistent with Camrose County’s MDP, s. 4.3.9, which precludes CFOs and CFO expansions within 2 miles of any “recreational lake”. Section 25(4)(g) of AOPA “expressly empowers the Board not to follow the requirements of an MDP in appropriate cases, a responsibility the Board takes seriously and with great caution.” *R&T Penner Farms Ltd.*, Decision 2022-05 at 1. In applying its discretion under section 25(4)(g), with respect to an exclusion zone, the Board generally focuses on the municipality’s planning objectives behind the CFO prohibition. *Ibid*. In the review proceeding, the Board decides to direct the AO to issue the permit notwithstanding the MDP inconsistency. The County supported the CFO expansion and said it was reconsidering its MDP exclusion zones. The CFO was far outside the MDS. No risk to the lake’s water quality and no evidence of nuisance risks or risk to the recreational and residential planning objectives of the MDP. *Ibid*, p. 2-3.

When exercising its discretion under AOPA s. 25(4), the Board is “conscious of its responsibility to weigh carefully the planning objectives of municipal planning documents in relation to an application to develop or expand a CFO.” Decision 2022-02, p. 4. *Ibid*, p. 11 (Board’s exercise of discretion under AOPA s. 25(4) is “undertaken with caution”). Longstanding Board criteria when making a determination under s. 25(4). *Ibid*, p. 4.

Denial of approval to expand an existing poultry CFO. Board agrees with AO that the proposed expansion is inconsistent with Lethbridge County’s MDP but grants the RFR to consider whether to approve the expansion notwithstanding the inconsistency. *Double H Feeders Ltd.*, RFR 2022-01. In the review, the Board agrees with AO that sections 6.6.3(a) and (d)(VI) of Lethbridge County’s MDP clearly intend to adopt CFO exclusion zone in Rural Urban Fringe provision of County’s LUB and that this exclusion applies to both new and expanding CFOs. Proposed CFO expansion is therefore inconsistent with the MDP. *Double H Feeders Ltd.*, Decision 2022-02, pp. 7-8. Board also finds that the exclusion zone reflects proper municipal planning given the planned “distinct development note” near the Town of Coalhurst, and that the exclusion zone is “clearly outlined”. *Ibid*, p. 8. Board nevertheless concludes that the IDP is also relevant, because its provisions are “specific” to CFO expansions (and under MGA amendments, IDPs trump MDPs in the planning hierarchy). *Ibid*, p. 14. The proposed expansion is consistent with s. 4.1.5 of the IDP, because the net nuisance impacts are likely to be reduced through decommissioning the west barn even though there will be a 14% net increase in production. *Ibid*, pp. 11-

14. When applying this IDP section, the Board accepts the County's perspective of viewing the area "as a whole". *Ibid*, p. 13.

Board grants RFR of AO's denial of application to expand the chicken layer component of a multi-species CFO in Vulcan County. *Hutterian Brethren Church of Little Bow*, RFR 2021-04. AO correctly denied application based on county MDP s. 4.1 which precludes new CFOs and CFO expansions within designated exclusion zone. *Ibid*, p. 2. For the review, the board invites parties' written submissions to address matters the county would normally consider if it was issuing a development permit, the county's rationale for the exclusion zone, whether the exclusion zone reflects "good planning," whether there is a "direct link" between the exclusion zone and the "planning objectives," and whether the MDP conflicts with the AOPA objective of "establishing common rules for the siting of CFOs across the province." *Ibid*, pp. 3-4. Following its review, the board directs the AO to issue the requested approval. *Hutterian Brethren Church of Little Bow*, Decision 2021-05. County speculated that the EZ's purpose was to protect waterbodies. (The EZ at issue was a 1600 m setback from the Little Bow River.) However, there was no evidence of need for more environmental protection than that provided by AOPA and the application met all AOPA technical requirements. "The Board expects that, as land use planning tools, MDPs would reflect the results of a county's associated public consultation process, delineating the site-specific characteristics that warrant the application of a CFO exclusion area." *Ibid*, p. 3. No evidence suggesting the proposed expansion would "elevate environmental risks" to the river. *Ibid*, p. 4.

Board grants RFR of AO's denial of application to expand the chicken layer component of a multi-species CFO in Vulcan County. *Hutterian Brethren Church of Little Bow*, RFR 2021-04. AO correctly denied application based on county MDP s. 4.1 which precludes new CFOs and CFO expansions within designated exclusion zone. *Ibid*, p. 2. For the review, the board invites parties' written submissions to address matters the county would normally consider if it was issuing a development permit, the county's rationale for the exclusion zone, whether the exclusion zone reflects "good planning," whether there is a "direct link" between the exclusion zone and the "planning objectives," and whether the MDP conflicts with the AOPA objective of "establishing common rules for the siting of CFOs across the province." *Ibid*, pp. 3-4. Following its review, the board directs the AO to issue the requested approval. *Hutterian Brethren Church of Little Bow*, Decision 2021-05. County speculated that the EZ's purpose was to protect waterbodies. (The EZ at issue was a 1600 m setback from the Little Bow River.) However, there was no evidence of need for more environmental protection than that provided by AOPA and the application met all AOPA technical requirements. "The Board expects that, as land use planning tools, MDPs would reflect the results of a county's associated public consultation process, delineating the site-specific characteristics that warrant the application of a CFO exclusion area." *Ibid*, p. 3. No evidence suggesting the proposed expansion would "elevate environmental risks" to the river. *Ibid*, p. 4.

Board grants RFR of denial of approval for multi-species CFO to consider whether to approve the CFO notwithstanding inconsistency with the MDP. Board notes that in prior decisions it has honoured MDP land use provisions that are "reasonable" and that "address a site-specific planning objective," as opposed to provisions addressing a matter that is "included in the AOPA legislation and provides a province-wide standard." *Hines Creek Farms*, RFR 2020-01, p. 3. Following review, board directs AO to approve the CFO notwithstanding inconsistency with Clear Hills County MDP setbacks to residences,

roads, and waterbodies (including wetlands). *Hines Creek Farms*, Decision 2020-03, pp. 3-6. Board has “consistently respected municipal exclusion zones when it finds that the zones are reasonable, and established to support current and future land uses.” *Ibid*, pp. 4 and 5. County’s MDP effectively prohibited CFOs throughout the entire land the County had zoning authority over. *Ibid*. AOPA’s purpose was to establish common rules for CFO siting. *Ibid*, p. 4. County couldn’t provide rationale for the MDP exclusions. *Ibid*, p. 5. MDP setbacks weren’t meant to protect land uses “associated with specific local features” in the county. *Ibid*. CFO meets AOPA MDS to residences and AOPA setbacks to water bodies and wetlands. *Ibid*, pp. 5 and 6. The AOPA waterbody/wetland setbacks provide “province-wide environmental protection to both surface and ground water.” *Ibid*, p. 6. AO and county should work out any problem with incursion on MDP setback to roads. *Ibid*, p. 6.

“When reviewing an approval officer decision to deny an application because of an inconsistency with a municipal development plan, the Board is directed by section 25(4)(g) of AOPA to ‘have regard to’ but not be bound by the applicable municipal development plan. The result is that AOPA expressly empowers the Board not to follow the requirements of a municipal development plan in appropriate cases.” When considering an MDP exclusion zone, board will focus on the MD “planning objectives behind the CFO prohibition.” *Vermeer Dairy*, RFR 2018-10, pp. 3-4. “While the Board must in each case determine whether it is prepared to approve the CFO notwithstanding an inconsistency with an MDP, the Board will look to identify a compelling site specific need to prohibit a CFO in those cases where the MDP provision appears to address environmental issues that AOPA also addresses.” *Ibid*, p. 5. Board directs AO to issue approval notwithstanding MDP inconsistency based on support from the county, lack of opposition from neighbours, negligible environmental risks, no evidence of materially significant nuisance risks to recreation and residents at Driedmeat Lake. *Ibid*, pp. 4-5.

RFRs of approval for new dairy CFO. AO adequately determined that the proposed CFO was consistent with county’s MDP setback to “lakes” (MDP section 2.5) because the two waterbodies noted by RFR applicants (Lake Pofianga and McFadden/Sigstrom Lake) are not “lakes”. *500016 Alberta Ltd.*, RFR 2018-11, pp. 3-4. Even if the waterbodies were lakes, the setback applies only “unless the regulators are convinced that” the CFO’s manure management system is “fail-safe” and there is “no reasonable risk of contamination of the lake.” This exception applies here given AO’s finding of low risk and compliance with all applicable AOPA requirements. *Ibid*, p. 4. Also, the CFO’s distance to nearest lake well exceeds all MDSs to all receptors. “In past decisions, the Board has consistently respected municipal setbacks to public recreational facilities when it finds that municipal development plan setbacks are reasonable and established to support current and future land uses. When assessing MDP land use provisions that deal strictly with environmental protection related to CFOs, the Board will generally rely on AOPA standards as they provide the statutory tool to accomplish those objectives.” *Ibid*, p. 4.

RFR of AO’s denial of a registration for a new dairy CFO. Board grants RFR on issues of whether the proposed CFO is inconsistent with MDP 2-mile setback to Town of Ponoka and, if it is, whether the board should issue the registration notwithstanding the inconsistency. “Municipal development plans commonly include land use provisions that allow, preclude, or restrict CFO development in order to further planning objectives. However, in order to achieve more consistent CFO siting provisions across the province, AOPA provides the Board with the review authority to approve CFO applications,

notwithstanding a municipal development plan exclusion zone provision.” *Milk & Honey Dairy Inc.*, RFR 2018-01, p. 2. RFR decision encourages the town and county to participate in the review and sets out detailed MDP-related issues for the parties to address in the review. *Ibid*, pp. 3-4. AOPA expressly empowers the Board not to follow the requirements of an MDP in appropriate cases. Previous Board decisions have stated that the purpose of this provision is to establish common rules for the siting of CFOs across the province. In its review decision, the Board declines to overrule the MDP setback. “AOPA expressly empowers the Board not to follow the requirements of an MDP in appropriate cases. Previous Board decisions have stated that the purpose of this provision is to establish common rules for the siting of CFOs across the province.... The Board agrees with both the Town and the County that the proposed Milk & Honey CFO has the potential to create land use conflicts with contemplated land uses in the Town of Ponoka.” Board considers, among other things, testimony regarding ongoing IDP/ASP planning initiatives and history of growth in area and annexation objectives. *Ibid*, pp. 4-5.

Board grants CFO owner’s RFR of AO’s denial of registration for expansion of chicken layer CFO. AO denied application because CFO was within MDP setbacks to a hamlet and to a First Nation reserve. Mackenzie county originally noted the inconsistency but submitted a follow up letter stating that the county had granted a variance for up to 12,000 hens. AOPA enables the board to approve a CFO application, notwithstanding MDP inconsistency, “in order to achieve more consistent CFO siting provisions across the province”. *Danny Friesen and Tara Warkentin*, RFR 2017-07, pp. 2-3. Following a written hearing, board directs the AO to issue the registration (with AO’s recommended conditions). Decision 2017-08, pp. 4 and 7. “Municipal development plans commonly include provisions that allow, preclude, or restrict CFO development in order to further planning objectives. However, to achieve more consistent CFO siting provisions across the province, AOPA provides the Board with the review authority to approve CFO applications, notwithstanding a municipal development plan exclusion zone provision. In the Board’s 2011 Zealand Farms decision, it stated that, “where the Board is satisfied that the MDP respects the intent of AOPA to create a level playing field for this component of the agricultural industry across the province, the Board will not interfere with the municipal land use planning mandate.” *Ibid*, p. 4. County’s motion waiving the setback doesn’t overcome the setback inconsistency, because an MDP setback can’t be waived with respect to a single development “without broad public consultation.” However, board infers that county’s motion implies county considers the CFO to be compatible with adjacent land uses. *Ibid*, p. 4. Board reviews MDP’s provisions relating to agriculture and “accepts” that the MDP buffers from CFOs and industrial parks are being used as a “planning tool to manage and avoid conflict from incompatible land uses.” *Ibid*. CFO exclusion zones were “driven by sensitivity to the common nuisance effects associated with CFOs. The magnitude of these effects may vary greatly depending on the size, type, and design of operation.” Board accepts that CFO nuisance effects are “appropriate considerations” for a municipality in establishing a land use plan (under s. 617 of the *Municipal Government Act*), but board is “less convinced” that CFO prohibitions on environmental grounds are a “reasonable planning provision” given AOPA’s specific provisions addressing manure storage and handling. *Ibid*. AOPA MDS is not a “definitive answer” for municipal planning objectives. Board “supports” MDP setbacks to “achieve specified planning objectives” and this MDP’s setbacks are “consistent with those objectives.” *Ibid*, p. 5. However, nuisance effects from this CFO expansion are “inconsequential,” because hamlet is more than three times the MDS to category 4 residences (which

include hamlets), so CFO expansion is unlikely to impact the MDP's planning objectives. *Ibid*, p. 6. First Nation's concerns are too "generic" for the review stage, at which parties should "identify specific evidence and advocate what outcomes they would like the Board to deliver." *Ibid*, p. 6. MDP setback to hamlet is meant to protect current and future land uses related to the hamlet, not uses of lands within the exclusion zone between the CFO and the hamlet. *Ibid*, p. 6.

11. Consistency with municipal land use bylaws

RFR of denial of approval for multi-species CFO to consider whether to approve the CFO notwithstanding inconsistency with the MDP. *Hines Creek Farms*, RFR 2020-01. AO was correct in declining to consider LUB consistency; AO "should only consider planning documents beyond the MDP when the MDP text provides a clear intent to adopt the specific LUB provision." *Ibid*, p. 2.

RFR of approval for new beef CFO. AO adequately addressed concerns re fire hazard. No AOPA provisions relate directly to this risk, but AOPA permit holders must abide by other applicable legislation including the *Forest Prairie Protection Act* and applicable county bylaws. *Beekman Farms Ltd. & Wessels Farms Ltd.*, RFR 2019-05, p. 5.

RFRs of registration for a new broiler chicken CFO. RFRs note inconsistency with LUB section stating that CFOs are not a permitted use on parcels under 80 acres. Board finds that the LUB provisions "are not a relevant consideration for the Board in considering an AOPA application. The Board does not accept the requesters' argument that parcel siting size is a relevant consideration for refusal of the proposed CFO, as the parcel size limitation is not a land use criteria for CFOs required by the MDP." *Brad Towle*, RFR 2017-09, p. 4.

12. Matters a municipality would "normally consider" if it was issuing a development permit

Cypress County's RFR of authorization to expand an animal shelter at a multi-species CFO. MDP section setting out road access requirements applies only to new CFOs, not to existing CFOs. AO lacks jurisdiction to revisit the CFO's prior permits. *Hutterian Brethren of Murray Lake*, RFR 2020-09, p. 3. The authorization won't increase animal numbers and therefore won't increase road use. For that reason, and because the MDP access requirement is inapplicable, the board dismisses county's request that the board require the CFO to enter into a road use agreement with the county or to upgrade its haul roads. *Ibid*. However, board acknowledges that AOs, when issuing authorizations, have authority under AOPA s. 22 to include terms and conditions a municipality could impose when issuing a development permit. *Ibid*, p. 3.

RFR of denial of approval for multi-species CFO to consider whether to approve the CFO notwithstanding inconsistency with the MDP. *Hines Creek Farms*, RFR 2020-01. In considering whether to override the MDP, the Board "must have regard for matters that would normally be considered if a municipal development permit were being issued by considering the effects on the environment, the economy, and the community; and by considering the appropriate use of land." *Ibid*, p. 3. Board repeats this explanation in its review decision. *Hines Creek Farms*, Decision 2020-03, p. 3.

RFRs of approval for new feeder swine CFO. Board rejects county's RFR claim that AO failed to comply with AOPA s. 20(1)(b)(i) by "failing to afford considerable weight to the issues" raised by the DAPs. AO properly determined that the proposed CFO is consistent with the county MDP's land use provisions and, in fact, is in a CFO buffer zone. Given this consistency, "the AOPA regulatory provisions establish the standard by which to assess the source, magnitude, and mitigation related to general nuisance concerns." *Pigs R Us Inc.*, RFR 2017-11, p. 5.

13. Miscellaneous MDP-related issues

RFR by the Samson Cree First Nation (SCFN) of an approval to expand a beef CFO. *McKelvie*, RFR 2022-12. Board rejects SCFN's claim that Ponoka County did not give SCFN a sufficient chance to participate in the county's development of its MDP. AOPA doesn't give AO's or the board authority to question whether there was a sufficient opportunity to participate in MDP development, at least, when the proposed CFO expansion is consistent with the MDP. *Ibid*, pp. 6-7.

C. Minimum distance separation (MDS)

1. Date for determining MDS compliance

RFRs of approval for new mixed-species CFO. CFO would not meet MDS to location of two residences approved by county development permits, but AO properly excluded these residences from MDS consideration because the development permits took effect after the CFO filed its Part 1 application, and the CFO filed its Part 2 within the 6-month deadline in the Standards Regulation. *Hutterian Brethren of Summerland*, RFR 2018-05, pp. 8-9. Board explains difference between the Part 1 and 2 application forms and notes that AOs have discretion to require more info than that requested by the forms. The two-part application allows AOs to use the Part 1 filing date to set the MDS, but the six-month deadline for submitting the Part 2 application "ensures that an applicant cannot indefinitely establish a MDS." *Ibid*, pp. 8-9. "The Board understands that the Alberta government made this regulatory provision [re the two-part application] to give applicants certainty with respect to whether they can meet the MDS requirement, before they commit the considerable time and resources needed to collect technical information and finish the engineering work needed to complete their entire application." *Ibid*, p. 9.

2. Odour objective factors

MDS category 4 is the "highest odour objective factor" and provides for the "greatest separation distance" under AOPA. *Vermeer Dairy*, RFR 2018-10, p. 5.

3. Measuring distance to neighbours

CFO operator's RFR of approval for beef CFO expansion. RFR requested removal of condition requiring survey to neighbouring residence to confirm MDS compliance. Applicant argued survey was no longer necessary because neighbour provided an MDS waiver. Board declined to hold a review on this issue, "as it is a matter that is more appropriately managed by the approval officer and field services." *Stronks Feedlot Ltd.*, RFR 2019-02, p. 2.

RFRs of approval for pig CFO expansion. AO adequately considered whether 509 metre MDS to neighbours was met, using Google Earth Pro which measured the distance to be 580 metres. Based on evidence considered in a prior decision (*Trenchuk*, NRCB 2015-02), board is satisfied that the margin of error is only a couple of metres. *Spruit Farms Ltd.*, RFR 2018-13, p. 4.

RFRs of approval for new sheep CFO. Board declines to hold a review on RFR concern the CFO facilities won't meet property line setbacks and MDS. AO adequately addressed this concern by including a condition in the approval requiring applicant to provide written confirmation from a surveyor that constructed facilities meet all setbacks. *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, pp. 4-5.

4. Future residences

RFRs of approval for new dairy CFO. Board notes that MDP's reverse MDS policy is inapplicable. In this context, board states: "AOPA establishes that minimum separation distance is calculated to residences that exist at the time a proponent files his initial application with the NRCB." *500016 Alberta Ltd.*, RFR 2018-11, p. 12.

5. MDS Waivers

CFO operator's RFR of approval for beef CFO expansion. RFR requested removal of condition requiring survey to neighbouring residence to confirm MDS compliance. Applicant argued survey was no longer necessary because neighbour provided an MDS waiver. Board declined to hold a review on this issue, "as it is a matter that is more appropriately managed by the approval officer and field services." *Stonks Feedlot Ltd.*, RFR 2019-02, p. 2.

D. Standards Regulation

1. Earthen liquid manure storage facilities (EMSs)

RFR of amended authorization to modify the dimensions of an existing EMS. Board declines to consider RFR issues that relate to the original authorization. *Lone Pine Hutterian Brethren*, RFR 2021-01, pp. 2-3. AO also correctly concluded that, under AOPA s. 22(2.2), he lacked jurisdiction to reconsider water quality-related risks associated with the originally-approved EMS and that the new dimensions didn't affect or change those risks. *Ibid*, p. 3. AO was not required to ensure EMS posed zero risk, which is "not a realistic target" because "any activity inherently includes intrinsic risks" and the modified EMS meets AOPA's technical requirements. *Ibid*, pp. 5-6.

RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. Board rejects RFR applicants' proposed condition requiring oversight of cement pouring of manure storage liners. Permit requirements are adequate for both construction and post-construction. *Ibid*, p. 6.

RFRs of AO's approval of new beef CFO. *P&H Wessels Farms Ltd.*, RFR 2020-05. AO adequately considered RFR concerns about nitrate loading in groundwater. AO's reliance on low risk finding from the ERST risk screening tool didn't preclude consideration of AHS' letter noting nitrate risks in the area from either human or livestock sources. RFR applicants failed to provide evidence linking these nitrate

levels to the proposed CFO. ERST and AOPA requirements provide protection to surface and groundwater. *Ibid*, pp. 4-5. Board declines RFR applicants' request for condition requiring groundwater testing. *Ibid*, p. 5. Board rejects claim that CFO applicant's engineer conducted faulty sub-soil testing. Testing occurred before protocol referenced by RFR applicants was published. Testing results were approved by a professional engineer using standardized procedures. *Ibid*, pp. 5-6.

Dairy CFO's RFR of condition in authorization for dairy barn addition. Contested condition required CFO owner to develop a plan to address the environmental risks posed by the existing EMS and to implement the plan once it's approved by the NRCB. EMS scored low on ERST but an engineering report said underlying sand/sandstone layers could allow aquifer contamination. Board granted the RFR, concluding that there was insufficient information to conclude that the EMS posed a "risk to groundwater." *Kramer Dairy Ltd.*, RFR 2019-07, p. 2. Board decides to hold a written hearing and sets out questions for the parties. Questions to AO include: why the AO thought the ERST didn't "perform well" in scoring the EMS' risk; how an EMS can score low risk with underlying sand & sandstone layers; what info was provided by the "monitoring review team" and who was on the team. *Ibid*, p. 3. Following a written hearing, Board denies Kramer Dairy's request to remove the contested condition. Current EMS poses a potential groundwater risk, given uncontested evidence the sand/sandstone layer below the EMS is a potential water resource, and no evidence of a protective layer between the EMS bottom and the sand/sandstone below. *Kramer Dairy Ltd.*, Decision 2020-02, p. 3. AO hasn't predetermined that the only solution is to build a new EMS. *Ibid*, p. 2.

RFRs of approval for pig CFO expansion. RFR concerns about water quality were adequately addressed by the AO. However, the AO should revise the approval to include the condition, referenced in the decision summary, requiring NRCB's post-construction inspection of the secondary containment system for the EMS. *Spruit Farms Ltd.*, RFR 2018-13, p. 6.

2. Catch basins

Following review of AO's denial of permit to convert (and expand) a swine CFO to beef, the board directed the AO to issue the permit (with conditions). *Muilwijk*, Decision 2021-03. One hearing issue was whether to approve a condition proposed by the AO requiring monitoring of leakage from the catch basin and a condition requiring a liner in the channel linking the MSFs to the catch basin. Board noted that it lacked sufficient information on the need for leak detection monitoring (and possibly other catch basin-related conditions) "as the information received was not clear and there was no significant reason to believe one source of information rather than another." So the board directed Field Services to further assess the evidence, with help from the Monitoring Review Team, to decide what conditions were needed. Same for the channel liner. *Ibid*, pp. 14-15.

CFO operator's RFR of approval for beef CFO expansion with a natural catchment area. RFR requested removal of several conditions, including one requiring operator to conduct annual soil sampling for nitrogen and salinity in the catchment area. Board declines to hold review of this issue, stating that the soil sampling requirement is "necessary to reliably track catchment area performance" vis the Standards Regulation which "clearly states" that a manure collection area relying on biological methods must provide equal or greater protection than that provided by a constructed liner. *Stronks Feedlot Ltd.*, RFR

2019-02, pp. 3-4. RFR also challenged a condition requiring operator to depopulate the CFO (and remove all manure), or to obtain a permit for an alternate runoff control system, by December 1, 2024, if the soil sampling showed continued nitrogen or electrical conductivity exceedances by October 1, 2024. Board grants the RFR on this condition, based on AO's lack of explanation for the December 1, 2024 compliance date. Board requires operator to submit a new nutrient management plan, and sets several parameters for the plan's contents, after which the board will hold an oral hearing. *Ibid*, p. 4. Following its review hearing, board directs AO to amend the condition to specify additional soil testing parameters; and essentially provide a more flexible approach to setting compliance deadlines if soil testing shows continued exceedances. *Stronks Feedlot Ltd.*, Decision 2019-03, pp. 2-3.

RFRs of approval for new sheep CFO. *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02. Board grants RFR on concern that AO found the application complete without a filed surface water control system design. Board requires applicant to submit an engineer-stamped surface water control plan and board sets out required plan components. AO should provide a copy to the board once AO approves the plan. DAPs will then be able to comment on the plan, and applicant can respond to comments, before the board reviews the plan. *Ibid*, p. 8. Board approves the submitted and approved plan, following several revisions, and the CFO in general. New plan and AO's revised calculations now show catch basin meets volume requirements of section 19 of the Standards Regulation. Board revises condition regarding covered/uncovered pen space and adds condition requiring secondary containment, based on engineer's revised design. *Norlin Investments (Norman & Linda Wever)*, Decision 2018-06, pp. 3-4.

3. Manure storage facilities – construction specifications

RFR of AO's denial of permit to convert (and expand) a swine CFO to beef. *Muilwijk*, RFR 2021-02. Board declines to review issue of whether the AO's treatment of the proposed roller compacted liner for the MSF was inconsistent with another AO's apparent approval of that technology in a previous permit. Board notes that it is "important to the work of the Board that it have the ability to assess each case on its own merits and make a decision that is based on the specific circumstances presented by each applicant. ... [T]he Board confirms that it does not have the jurisdiction to review past decisions.... The Board notes there is no statutory obligation to follow precedence in either approval officer decisions or board reviews. Having said that, the Board acknowledges and supports stakeholder expectations that the consistent application of AOPA legislation and associated regulations is an important pillar for a respected regulator to uphold. The NRCB strives for and supports transparency, fairness, and consistency in its decision making, and recognizes these principles as foundational in its role as a regulator. The Board applies all of these principles in its commitment to ensure that the statutory requirements of AOPA are met." *Ibid*, pp. 4-5. Following review, board directs the AO to issue the permit (with conditions). *Muilwijk*, Decision 2021-03. Board concluded that a properly installed roller compacted concrete (RCC) could meet hydraulic conductivity requirements for MSF liners, in section 9(6) of the Standards Regulation. In two previous permit proceedings, AOs concluded that RCC met s. 9(6)(c) of the Standards Regulation (RCC was installed in one, but not in the other). Board notes that, while "each application must be reviewed against AOPA's legislative requirements on its own merit, a balance must be achieved between reliance on precedent and the regulatory pillar of consistency in decision-making." Must consider the "conditions of a related application" in light of the "particular

application” at issue. “Toward this end, as the Board noted in *Sunterra Farms Ltd.* (Decision 2013-02), with any new issue, ‘care must be taken as the results of the decision will provide some level of guidance for others parties considering or responding to a similar application.’” *Ibid*, p. 4. Initial AO led applicant to believe that RCC would be approved if it met common conditions for RCC in two prior permits. *Ibid*, pp. 4-7. Applicant provided sufficient evidence that the RCC was constructed (before the permit was issued) according to the conditions in the prior two permits allowing RCC, especially the *Stronks* permit. *Ibid*, pp. 8-10 and 13. Risk of cracking in the RCC is normal for concrete liners. “[T]he Board accepts that cracking is normal and a certain amount of cracking is anticipated. The Board has reached the conclusion, on the balance of probabilities, that if the RCC liner demonstrates a reasonable amount and width of cracking, that cracking can be addressed through periodic inspections and remediation....” *Ibid*, pp. 10-12. Board directs AO to include conditions providing for monitoring for cracking and a condition requiring testing of compressive strength of the concrete. *Ibid*, pp. 13-14.

RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. Board rejects RFR applicants’ proposed condition requiring oversight of cement pouring of manure storage liners. Permit requirements are adequate for both construction and post-construction. *Ibid*, p. 6.

4. Setbacks from common bodies of water

CFO owner’s RFR of conditions in an approval for a new beef CFO. *Tateson Ranching Ltd.*, RFR 2022-13. One of the challenged conditions requires the CFO owner to decommission parts of already constructed feedlot pens that are within 30 m of the irrigation drain. RFR claimed this condition is unwarranted because the drainage is away from the irrigation drain and there’s a berm between the facilities and the drain. Board rejects this claim, based on AO’s position the 30 m setback requirement in section 7(1)(c) of the Standards Regulation has an exception, in s. 7(3), but the exception applies only if its conditions are met before the offending facilities are constructed. *Ibid*, pp. 2-3. Board also refers to AO’s view that it wasn’t clear a variance would provide the “same or greater degree of protection” as a 30 m setback. *Ibid*, p. 3.

5. Water well setbacks from CFO facilities

Following review of AO’s denial of permit to convert (and expand) a swine CFO to beef, the board directed the AO to issue the permit (with conditions). *Muilwijk*, Decision 2021-03. One hearing issue related to the AO’s determination of risks of MSFs to a nearby water well. However, while the hearing evidence suggested no or little risk, the issue wasn’t thoroughly addressed in the hearing so the board directed Field Services to further assess the risk of MSFs to the water well and to consider whether a variance under AOPA s. 17(1) was warranted. *Ibid*, p. 15.

RFRs of approval for pig CFO expansion. Board refers to AO’s issuance of a well setback exemption as an example of how groundwater is protected. “The Board finds that the approval officer’s methodology was thorough and well-documented in granting the water well setback exemption, including the site specific considerations and the use of the risk assessment tool.” *Spruit Farms Ltd.*, RFR 2018-13, p. 6.

RFR of approval for dairy CFO expansion. AO adequately justified granting setback exemption, with annual monitoring requirement, for two wells within the water well setback. *Faberdale Dairies Ltd.*, RFR 2018-12, p. 4.

6. Surface water control systems

RFR of AO decision deleting a condition of a CFO registration for a goat dairy CFO. *Jos and Dorthy Peters*, RFR 2022-15. Board rejects RFR concern that a 2016 NRCB assessment incorrectly determined slopes away from the CFO. The AO adequately considered the complexity of the local topography. *Ibid*, p. 3.

CFO owner's RFR of conditions in an approval for a new beef CFO. *Tateson Ranching Ltd.*, RFR 2022-13. One of the challenged conditions requires a manure control/management plan for manure runoff from the cow-calf site. RFR claimed this was an inappropriate linkage of a SFBS with the CFO and the SFBS meets the applicable regulations. Board rejects this claim because of the close proximity of the SFBS to the CFO, the likelihood that SFBS runoff will affect the feedlot pens, the proximity of all facilities to the irrigation drain and Scott's Lake, and AOs' runoff control authority under s. 6 of the Standards Regulation, with respect to CFO runoff. *Ibid*, pp. 4-5.

RFRs re application for a CFO expansion, Board dismisses neighbour-DAP concerns about surface water drainage. "AEP is the appropriate authority to address this concern and [the Board] recognizes that it is being managed by AEP through its ongoing compliance investigation. Therefore, the Board will not address this matter further." *Double H Feeders Ltd.*, Decision 2022-02, p. 15.

RFR of registration for a new dairy CFO in Leduc County. *Alieda Farms Ltd.*, RFR 2021-06, p. 3. AO adequately considered uphill neighbour's concern that construction of CFO facilities would cause back flooding of neighbour's land during spring flooding season when water normally drains from neighbour's land through the CFO property. AEP didn't express any drainage concerns. AO noted that water will drain into a draw between the properties. RFR applicant didn't provide evidence to refute this finding.

RFRs of approval for a new beef finisher CFO. Board dismisses RFR concerns about stormwater management. Referral municipalities did not object to the application. CFO isn't within any restricted areas in the muny plans. CFO's run-on, runoff systems meet AOPA requirements. *Corner's Pride Farms Ltd.*, RFR 2020-10, pp. 8-9.

RFRs of approval for new sheep CFO. Board declines to hold a review on accuracy of the "low risk" determination of AO's environmental risk screening. The ERST determination assumes the CFO's implementation of the surface water control system required by a condition of the approval. (AO should have made this clearer.) *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 5. However, board grants RFR on concern that AO found the application complete without a filed surface water control system design. AOPA requires that DAPs have a chance to review and comment on "information relevant to the application" and the control system is a "key design element" of the CFO. AO's failure to require that design as part of the completed application "falls short of the approval officer obligations under Section 20(1)(b)(iii) of AOPA." *Ibid*, pp. 5-6. Board requires applicant to submit an engineer-stamped surface water control plan and board sets out required plan components. Plan should include

secondary containment if applicant decides to adopt that component. AO should provide a copy to the board once AO approves the plan. DAPs will then be able to comment on the plan, and applicant can respond to comments, before the board reviews the plan. *Ibid*, p. 8. Board approves the submitted and approved plan, following several revisions, and the CFO in general. New plan and AO's revised calculations now show catch basin meets volume requirements of section 19 of the Standards Regulation. Board revises condition regarding covered/uncovered pen space and adds condition requiring secondary containment, based on engineer's revised design. *Norlin Investments (Norman & Linda Wever)*, Decision 2018-06, pp. 3-4. "In the future, the Board expects approval officers to ensure that surface water run off plans are properly developed and assessed before approval of an application, so that directly affected parties can transparently understand the proposed system." *Ibid*, p. 3.

7. Short term manure storage

RFR of AO decision deleting a condition of a CFO registration for a goat dairy CFO. *Jos and Dorthy Peters*, RFR 2022-15. Board rejects RFR concern about ongoing manure stockpile. The stockpile is a short-term manure storage which does not require a permit but reiterates the AO's caution that the stockpile must still meet relevant AOPA standards. *Ibid*, p. 2.

In review of AO's denial of permit for a CFO expansion, Board directs AO to issue the permit. Board includes condition setting limit on total number of permitted chicken broilers that can be housed at old and new locations, and duration of solid manure storage at old site, while the old location is being decommissioned. *Double H Feeders Ltd.*, Decision 2022-02, p. 19.

RFRs of registration for a new broiler chicken CFO. One RFR requests specific provisions addressing on-site short-term storage, as weather and seasonal road bans may limit manure transport to spreading lands. AO adequately addressed this issue by including a condition prohibiting short term solid manure storage on-site, "particularly given that short-term storage is also already defined under section 5 of the Standards and Administration Regulation." *Brad Towle*, RFR 2017-09, p. 3.

8. Manure spreading – incorporation; types of land where application is allowed

RFR of AO decision deleting a condition of a CFO registration for a goat dairy CFO. *Jos and Dorthy Peters*, RFR 2022-15. Board rejects RFR concern that the AO overcounted available manure spreading lands by failing to discount the yard area and peat lowlands. The CFO has another quarter section where it can apply manure, even though the AO didn't specifically discount the lands of concern. Board "encourages" the AO to require the CFO to submit soil analyses annually for two named fields. *Ibid*, p. 3. Another RFR concern related to condition #4 which apparently precluded manure spreading on two named fields. The Board affirms the AO's deletion of this condition. The condition was stricter than AOPA requirements and NRCB policy (part 9.4) allows AOs to delete more stringent conditions. The CFO operators have gained knowledge over the years about manure management; there's a 60 m setback to the lake; and the RFR applicants haven't shown how they'll be directly affected by removal of the condition. *Ibid*, pp. 4-5.

CFO owner's RFR of conditions in an approval for a new beef CFO. *Tateson Ranching Ltd.*, RFR 2022-13. One of the challenged conditions allows the CFO to apply manure only to cultivated land. RFR claimed that s. 24(1) of the Standards Regulation requires manure application on "arable" land, but not necessarily only "cultivated" arable land. Board rejects this claim based on CFO's location in an environmentally sensitive area. "While the risks were not specifically quantified, the approval officer took a conservative approach in imposing a condition that lowers the potential risk to amphibians and to Scots Lake." *Ibid*, p. 6. Board notes a discrepancy in the time requirement for manure incorporation between the decision summary (24 hours) and the approval (48 hours). Board notes that "[t]his matter requires resolution" but board does not issue any remedial order to correct the discrepancy. *Ibid*, p. 7.

Review of AO's denial of permit for a CFO expansion. Board retains municipal condition requiring incorporation within 48 hours (even though the applicant wishes to apply manure without incorporation to direct seeded crops), because the applicant didn't ask for that condition to be removed in its permit application. *Double H Feeders Ltd.*, Decision 2022-02, pp. 15-17. Double H may apply for a permit amendment to remove this condition, but the board concludes that it should continue to apply on the quarter section where the old CFO is located because of its proximity to the Town of Coaldale. *Ibid*, p. 19.

RFRs of approval for pig CFO expansion. AO adequately dealt with concerns about odours from manure spreading and about AO's removal of deemed county permit condition requiring manure spreading once per year with incorporation within 72 hours. Board notes AO's conclusion that applicant adequately justified removing the condition and that AOPA's manure spreading requirements provided equivalent nuisance abatement. Board also notes that, since 2002, more crop land has been direct seeded which has reduced amount of crop land available for manure incorporation. "The Board understands that direct seeding is used to better manage moisture, erosion and nutrient uptake, and is considered as a more sustainable cropping system." In this approval, and consistent with AOPA regulations, manure must be incorporated within 48 hours when applied to conventionally tilled land. *Spruit Farms Ltd.*, RFR 2018-13, p. 7.

9. Manure spreading - water well and water body setbacks

RFR of AO decision deleting a condition of a CFO registration for a goat dairy CFO. *Jos and Dorthy Peters*, RFR 2022-15. One condition requires a 60 m setback for manure spreading from "Lake A". Board rejects RFR claim that this setback should be measured from the lake's high water mark rather than from the wetland boundaries on a 2015 map. 60 m is larger than the setback required under AOPA. *Ibid*, p. 4.

RFR of approval for dairy CFO expansion. RFR raised concern about contamination of old water wells on manure spreading lands. AOs generally don't determine whether any old water wells exist on manure spreading lands, especially if they were not brought to the AO's attention in a statement of concern. However, s. 24(9)(c) of Standards Regulation requires a 30 m setback from manure spreading and CFO must comply with this setback. "The intent of this requirement is to protect the aquifer that a well is drilled into." While concluding that this issue does not warrant review, board directs the AO to refer the

concern to NRCB compliance for follow up to make sure CFO's manure spreading complies with required manure spreading setback from water wells. *Faberdale Dairies Ltd.*, RFR 2018-12, p. 5.

RFRs of registration for new beef CFO. AO adequately considered runoff risks to nearby intermittent stream, neighbouring lands, and Wolf Creek/Battle River drainage. *H.E. Livestock Inc.*, RFR 2018-03, pp. 3-4. CFO must comply with manure spreading setbacks to common bodies of water, in the Standards Regulation. The "sole purpose the province established these setbacks to common bodies of water was to provide reasonable and adequate protection for the water resource." *Ibid*, p. 4.

10. Manure spreading – land acreage and soil types

RFR of AO decision deleting a condition of a CFO registration for a goat dairy CFO. *Jos and Dorothy Peters*, RFR 2022-15. Board rejects RFR concern that the AO overcounted available manure spreading lands by failing to discount the yard area and peat lowlands. The CFO has another quarter section where it can apply manure, even though the AO didn't specifically discount the lands of concern. Board "encourages" the AO to require the CFO to submit soil analyses annually for two named fields. *Ibid*, p. 3.

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. AO adequately determined that the proposed CFO meets AOPA's manure spreading requirements by determining that the CFO applicant identified sufficient acreage of manure spreading lands in the first year of operation. *Ibid*, p. 7.

RFRs re a CFO expansion. Board dismisses neighbour-DAP concerns about lack of sufficient land for manure application. AO adequately addressed this issue by accepting the applicant's proposed nutrient management plan, which was verified by a certified crop advisor. *Double H Feeders Ltd.*, Decision 2022-02, p. 15.

RFRs of AO's approval of new beef CFO. *P&H Wessels Farms Ltd.*, RFR 2020-05. Board dismisses RFRs' concern that the CFO's manure spreading would cause unacceptable manure loading, because the AO misidentified manure spreading land as black soil. AO's analysis focuses on adequacy of volume of available manure spreading lands. Record shows the CFO applicant had access to sufficient spreading land, regardless of the soil type of those lands. *Ibid*, p. 7.

RFRs of approval for new beef CFO. AO sufficiently determined that application met acreage and soil type requirements for manure spreading lands. *Beekman Farms Ltd. & Wessels Farms Ltd.*, RFR 2019-05, p. 4.

RFRs of approval for pig CFO expansion. AO adequately considered adequacy of proposed manure spreading lands. Land spreading agreements were sufficiently clear – signature lines identify Spruit Farms as the manure producer and specify minimum one-year duration (and board reads "5" as meaning five-year max term). AO's Land Base for Manure table "did not reconcile" but calculations in AO's background documents provided the necessary support for the AO's final area and soil calculations. *Spruit Farms Ltd.*, RFR 2018-13, p. 5.

RFRs of registration for new beef CFO. AO adequately considered runoff risks to nearby intermittent stream, neighbouring lands, and Wolf Creek/Battle River drainage. *H.E. Livestock Inc.*, RFR 2018-03, pp. 3-4. AO properly determined that the CFO applicant met the manure spreading land base required by s. 25(2)(a) of the Standards Regulation. (After the RFRs were filed, the AO had to “recreate” his calculations to show how he made this determination. “Although the Board acknowledges that evidence acquired after the decision is not the preferred approach, the Board is satisfied that the notes, technical documents and decision summary indicate that the work added later was a recreation of earlier work.”) Available land base is well within margin of error using Google Earth Pro. *Ibid*, p. 4.

RFRs of approval for new sheep CFO. After filing of group’s RFR, the group submitted documents claiming inadequacy of manure spreading lands because spreading agreement for a corporation was not signed by the corporation’s director. Board declines to hold review on this issue, in part, because the DAP group did not raise this issue by the RFR deadline. Also, “signing authority within a corporate body is a matter of a corporate authority. The fact that a director does not sign a document is not compelling or conclusive evidence that the corporation is not bound by the document or that it did not authorize the document or transaction, as signing authority can be delegated to various individuals, as described under section 25(4) of the *Business Corporations Act*.” *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 7.

RFRs of approval for new feeder swine CFO. AO adequately considered nuisance impacts, including odours, noise and flies. “Section 24 of the *AOPA Standards and Administration Regulation* also sufficiently regulates the land spreading of manure for its nutrient value, and to minimize odour and control run-off. Impact to adjacent lands is regulated by the application of these regulations under the regulatory stewardship of NRCB inspectors.” *Pigs R Us Inc.*, RFR 2017-11, p. 4.

RFRs of registration for a new broiler chicken CFO. AO adequately considered runoff risks from selected manure spreading lands. The Standards Regulation “directly and adequately establishes manure spreading controls to protect surface and groundwater.” *Brad Towle*, RFR 2017-09, p. 3.

11. Manure spreading – soil testing

CFO owner’s request for review of conditions, and grandfathering determination, in an approval for a beef CFO expansion. *John Schooten and Sons Custom Feedyard Ltd.*, RFR 2022-04. Board grants review of condition, carried over from the county permit, requiring the CFO owner to submit soil testing records of manure spreading lands every October. Question is whether the date could be moved to December. *Ibid*, p. 3. In its review decision, the Board accepts the CFO owner’s request to change the reporting month because, although this change wasn’t part of the CFO owner’s permit application, no party opposed this requested change. *John Schooten and Sons Custom Feedyard Ltd.*, Decision 2022-07, pp. 5-6.

RFRs of registration for new beef CFO. AO adequately considered runoff risks to nearby intermittent stream, neighbouring lands, and Wolf Creek/Battle River drainage. *H.E. Livestock Inc.*, RFR 2018-03, pp. 3-4. Re soil testing requirement in section 25(1) of the Standards Regulation, the NRCB does not require soil testing of proposed manure spreading lands as part of an application to construct and operate a

new CFO. “While this does not immediately answer the question of what soil testing may indicate for the NE 7, the section does assure that manure cannot be spread on a parcel unless it meets the nutrient loading provisions of the regulation.” *Ibid*, p. 4.

12. Manure spreading on frozen ground

Review of AO’s denial of permit for a CFO expansion. Board also accepts AO’s position that municipal development permit conditions re land base and spreading on frozen ground are redundant of AOPA requirements, so those conditions can be removed. *Double H Feeders Ltd.*, Decision 2022-02, pp. 15-17.

13. Fly control

RFRs of approval for pig CFO expansion. AO adequately considered neighbours’ concerns about diseases to animals and humans from CFO’s flies. NRCB manages flies “as a compliance matter,” through AOPA regulations requiring CFOs to use reasonable fly control measures. *Spruit Farms Ltd.*, RFR 2018-13, pp. 5-6.

E. Environmental Risk Screening Tool (ERST)

RFR of AO decision deleting a condition of a CFO registration for a goat dairy CFO. *Jos and Dorothy Peters*, RFR 2022-15. Board rejects RFR concern that a 2016 NRCB assessment incorrectly determined slopes away from the CFO. The AO adequately considered the complexity of the local topography. *Ibid*, p. 3.

Dairy CFO’s RFR of condition in authorization for dairy barn addition. Contested condition required CFO owner to develop a plan to address the environmental risks posed by the existing EMS and to implement the plan once it’s approved by the NRCB. EMS scored low on ERST but an engineering report said underlying sand/sandstone layers could allow aquifer contamination. Board granted the RFR, concluding that there was insufficient information to conclude that the EMS posed a “risk to groundwater.” *Kramer Dairy Ltd.*, RFR 2019-07, p. 2. Board decides to hold a written hearing and sets out questions for the parties. Questions to AO include: why the AO thought the ERST didn’t “perform well” in scoring the EMS’ risk; how an EMS can score low risk with underlying sand & sandstone layers; what info was provided by the “monitoring review team” and who was on the team. *Ibid*, p. 3. Following a written hearing, Board denies Kramer Dairy’s request to remove the contested condition. Current EMS poses a potential groundwater risk, given uncontested evidence the sand/sandstone layer below the EMS is a potential water resource, and no evidence of a protective layer between the EMS bottom and the sand/sandstone below. *Kramer Dairy Ltd.*, Decision 2020-02, p. 3. AO hasn’t predetermined that the only solution is to build a new EMS. *Ibid*, p. 2.

Board review approval for beef CFO expansion with a natural catchment area. Approval condition requires CFO operator to depopulate the CFO (and remove all manure), or to obtain a permit for an alternate runoff control system, by December 1, 2024, if the soil sampling shows continued nitrogen or electrical conductivity exceedances by October 1, 2024. In the review, the operator claimed that the NRCB should have assessed the catchment area using the ERST, but AO responded that the ERST is for catch basins with liners, not for catchment areas using biological methods to control runoff. Board concludes that the ERST wouldn’t preclude need for catchment area to meet requirements in Standards

Regulation, but board notes that it does “not fully understand” why the ERST is inapplicable to catchment areas relying on biological runoff control. *Stronks Feedlot Ltd.*, Decision 2019-03, pp. 2-3.

RFRs of approval for pig CFO expansion. Board refers to AO’s issuance of a well setback exemption as an example of how groundwater is protected. “The Board finds that the approval officer’s methodology was thorough and well-documented in granting the water well setback exemption, including the site specific considerations and the use of the risk assessment tool.” *Spruit Farms Ltd.*, RFR 2018-13, p. 6.

RFRs of approval for new sheep CFO. Board declines to hold a review regarding accuracy of the “low risk” determination of AO’s environmental risk screening. The ERST determination assumes the CFO’s implementation of the surface water control system required by a condition of the approval. (AO should have made this clearer.) *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 5. However, board grants RFR on concern that AO found the application complete without a filed surface water control system design. *Ibid*, pp. 5-6.

F. Water quality (surface water and groundwater)

1. Water quality – misc.

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. AO adequately addressed RFR concerns regarding water contamination from CFO facilities and from manure spreading. *Ibid*, pp. 7-8.

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. Despite the challenges in identifying surface water features and flow patterns, the Board is confident that surface water quality will not be impacted by runoff from the feedlot or manure spreading areas because the operation will be required to meet AOPA surface water run on/runoff requirements and be required to follow manure application requirements. *Ibid*, p. 6. Conditions added by the AO will further help prevent risks to surface and ground water. *Ibid*, pp. 6-7.

RFR of amended authorization to modify the dimensions of an existing EMS. Board declines to consider RFR issues that relate to the original authorization. *Lone Pine Hutterian Brethren*, RFR 2021-01, pp. 2-3. AO was not required to ensure EMS posed zero risk, which is “not a realistic target” because “any activity inherently includes intrinsic risks” and the modified EMS meets AOPA’s technical requirements. *Ibid*, pp. 5-6.

RFRs of approval for a new beef finisher CFO. AO adequately considered water quality risks from surface water and groundwater. AO conducted an ERST assessment; all AOPA technical requirements have been met. *Corner’s Pride Farms Ltd.*, RFR 2020-10, p. 9.

RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. AO adequately considered concerns about surface water and groundwater contamination from CFO facilities and manure spreading. CFO meets all AOPA requirements and is new, so especially low risk and approval condition requires confirmation of proper construction. *Ibid*, p. 5. Risks from manure spreading are

addressed by AOPA requirements. “Manure from CFOs is a valued crop nutrient that is land applied to support and enhance crop growth.” *Ibid*, p. 5.

RFRs of AO’s approval of new beef CFO. *P&H Wessels Farms Ltd.*, RFR 2020-05. AO adequately considered RFR concerns about nitrate loading in groundwater. AO’s reliance on low risk finding from the ERST risk screening tool didn’t preclude consideration of AHS’ letter noting nitrate risks in the area from either human or livestock sources. RFR applicants failed to provide evidence linking these nitrate levels to the proposed CFO. ERST and AOPA requirements provide protection to surface and groundwater. *Ibid*, pp. 4-5. Board declines RFR applicants’ request for condition requiring groundwater testing. *Ibid*, p. 5. Board rejects claim that CFO applicant’s engineer conducted faulty sub-soil testing. Testing occurred before protocol referenced by RFR applicants was published. Testing results were approved by a professional engineer using standardized procedures. *Ibid*, pp. 5-6.

Following a review, board directs AO to approve the CFO notwithstanding inconsistency with Clear Hills County MDP setbacks to residences, roads, and waterbodies (including wetlands). *Hines Creek Farms*, Decision 2020-03, pp. 3-6. The AOPA waterbody/wetland setbacks provide “province-wide environmental protection to both surface and ground water.” *Ibid*, p. 6.

RFRs of approval for expansion of beef CFO. AO adequately considered water quality risks from manure. ERST tool showed low risk. All CFO facilities, and manure spreading, satisfied AOPA technical requirements. *Korova Feeders Ltd.*, RFR 2019-06, p. 2.

RFRs of approval for new beef CFO. AO adequately addressed concerns re surface and ground water quality. *Beekman Farms Ltd. & Wessels Farms Ltd.*, RFR 2019-05, p. 3.

RFR of approval for beef CFO expansion. AO adequately addressed surface water quality concerns. Specific discussion of: facility location within floodplain; facility distances to common bodies of water; catch basin design; decommissioning; surface water control systems; risk screening (ERST). *Sundown Feeders Ltd.*, RFR 2019-04, pp. 3-5. See also *Ibid*, pp. 5-6 (regarding loss of grandfathered status for the catchment area due to unauthorized excavation of the area’s liner).

RFRs of approval for pig CFO expansion. “AOPA, its associated regulations, and the NRCB Approvals Operational Policy include multiple provisions that have the objective of protecting surface and groundwater quality. These provisions allow the approval officer to include conditions such as annual well monitoring in an approval, as is required in this case.” *Spruit Farms Ltd.*, RFR 2018-13, p. 6. Board refers to AO’s issuance of a well setback exemption as an example of how groundwater is protected. “The Board finds that the approval officer’s methodology was thorough and well-documented in granting the water well setback exemption, including the site specific considerations and the use of the risk assessment tool.” RFR concerns about water quality matters were adequately addressed by the AO. However, the AO should revise the approval to include the condition, referenced in the decision summary, requiring NRCB’s post-construction inspection of the secondary containment system for the EMS. *Ibid*.

RFR of approval for dairy CFO expansion. AO adequately addressed concern about toxins in substances used to clean dairy equipment and in feed mixes that will be “spread” on lands near Gadsby Lake and may run off into the lake. AF staff said there are unlikely to be toxins in dairy tank wash water because tank holds liquid for human consumption. (But it was appropriate for AO to alert AF to this concern.) Canadian Food Inspection Agency is responsible for regulating the animal feed industry and the NRCB “relies on CFIA’s knowledge and regulatory mandate, as AOPA does not directly address feed ingredients and their impact on the environment.” *Faberdale Dairies Ltd.*, RFR 2018-12, pp. 2-3.

RFRs of approval for new dairy CFO. AO adequately considered nuisance issues, and issues relating to water quality and quantity. *500016 Alberta Ltd.*, RFR 2018-11, p. 2.

RFRs of AO’s denial of permit for dairy CFO expansion. CFO expansion will pose a “negligible environmental risk” to lake 1.8 miles away “given the statutory provisions in AOPA that provide for the protection of surface water and groundwater quality.” *Vermeer Dairy*, RFR 2018-10, pp. 4-5. No evidence the proposed expansion will pose a material risk to the lake’s water quality. *Ibid*, p. 5.

CFO applicant’s RFR of AO’s denial of a registration for a new dairy CFO. Board grants RFR to consider MDP issues but denies requests by neighbours to also consider their concerns regarding surface water quality, livestock health, ground water quantity, and property values. *Milk & Honey Dairy Inc.*, RFR 2018-01. These issues do not merit review, based on AO’s consideration of them, the parties’ burden of proof and their rebuttal submissions. *Ibid*, p. 3.

RFR of registration for dairy CFO expansion. AO adequately addressed runoff risks and risks of seepage to groundwater. “The RFR raises generic issues related to groundwater risk, odour, and risk from flooding; however, the RFR does not assert any shortcomings in the technical components of the approval officer’s decision.” *Fuhrhop Farms Ltd.*, RFR 2017-10, p. 5. AO determined that all AOPA technical requirements were met; risk assessment showed low risk; Alberta Health had no concerns. EMS has more than the required nine-month storage capacity. Registration includes condition requiring monitoring of water well. *Ibid*, pp. 5-6.

2. Seepage and runoff from CFO facilities

Colony’s RFR of AO denial of colony’s approval application for a new beef CFO (including previously constructed facilities). *Hutterian Brethren Church of Cleardale*, RFR 2022-14. Board grants RFR to consider ambiguities about relation between the setbacks and the CFO exclusion zone in the county’s MDP. *Ibid*, pp. 2-3. AO’s decision adequately dealt with DAP’s concern about surface water contamination of DAP’s dugout. Decision 2022-16, p. 2.

RFRs re application for a CFO expansion, Board dismisses neighbour-DAP concerns about surface water drainage. “AEP is the appropriate authority to address this concern and [the Board] recognizes that it is being managed by AEP through its ongoing compliance investigation. Therefore, the Board will not address this matter further.” *Double H Feeders Ltd.*, Decision 2022-02, p. 15.

RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. AO adequately considered concerns about surface water and groundwater contamination from CFO facilities and manure spreading. CFO meets all AOPA requirements and is new, so especially low risk and approval condition requires confirmation of proper construction. *Ibid*, p. 5. Board rejects RFR applicants' proposed condition requiring oversight of cement pouring of manure storage liners. Permit requirements are adequate for both construction and post-construction. *Ibid*, p. 6.

RFRs of registration for a new poultry CFO. *Hutterian Brethren Church of Granum*, RFR 2020-06. AO adequately considered and addressed risks of manure contamination from flooding vis the CO barn and manure storage areas. *Ibid*, p. 5. AHS comment, that drinking water sources should be protected and monitored, is "nonspecific in nature" and just a "general comment relating to generally accepted best practices for the management of potable water sources." *Ibid*, p. 6.

Dairy CFO's RFR of condition in authorization for dairy barn addition. Contested condition required CFO owner to develop a plan to address the environmental risks posed by the existing EMS and to implement the plan once it's approved by the NRCB. EMS scored low on ERST but an engineering report said underlying sand/sandstone layers could allow aquifer contamination. Board granted the RFR, concluding that there was insufficient information to conclude that the EMS posed a "risk to groundwater." *Kramer Dairy Ltd.*, RFR 2019-07, p. 2. Board decides to hold a written hearing and sets out questions for the parties. Questions to AO include: why the AO thought the ERST didn't "perform well" in scoring the EMS' risk; how an EMS can score low risk with underlying sand & sandstone layers; what info was provided by the "monitoring review team" and who was on the team. *Ibid*, p. 3. Following a written hearing, Board denies Kramer Dairy's request to remove the contested condition. Current EMS poses a potential groundwater risk, given uncontested evidence the sand/sandstone layer below the EMS is a potential water resource, and no evidence of a protective layer between the EMS bottom and the sand/sandstone below. *Kramer Dairy Ltd.*, Decision 2020-02, p. 3. AO hasn't predetermined that the only solution is to build a new EMS. *Ibid*, p. 2.

CFO operator's RFR of approval for beef CFO expansion. RFR requested removal of several conditions, including two requiring post-construction report for runoff pump out system and precluding operator from allowing runoff to enter the system until it had been approved by the NRCB. RFR argued that the conditions weren't necessary because operator had already proposed an alternative to the pump out system. Board declined to hold a review on this issue. Operator's proposal arose after the AO issued the approval. *Stronks Feedlot Ltd.*, RFR 2019-02, p. 3. RFR also challenged condition requiring operator to conduct annual soil sampling for nitrogen and salinity in the catchment area. Board declines to hold review of this issue, stating that the soil sampling requirement is "necessary to reliably track catchment area performance" vis the Standards Regulation which "clearly states" that a manure collection area relying on biological methods must provide equal or greater protection than that provided by a constructed liner. *Ibid*, pp. 3-4. RFR also challenged a condition requiring operator to depopulate the CFO (and remove all manure), or to obtain a permit for an alternate runoff control system, by December 1, 2024, if the soil sampling showed continued nitrogen or electrical conductivity exceedances by October 1, 2024. Board grants the RFR on this condition, based on AO's lack of explanation for the

December 1, 2024 compliance date. Board requires operator to submit a new nutrient management plan, and sets several parameters for the plan's contents, after which the board will hold an oral hearing. *Ibid*, p. 4. Following its review hearing, board directs AO to amend the condition to specify additional soil testing parameters; and provide a more flexible approach to setting compliance deadlines if soil testing shows continued exceedances. *Stronks Feedlot Ltd.*, Decision 2019-03, pp. 2-3.

RFRs of approval for new multi-species CFO. One neighbour raised concern that MSFs would displace surface water and thereby increase size of wetland on the neighbour's property. Neighbour did not raise this concern in his statement of concern to the AO. At any rate, the CFO's engineering report showed that the vegetative filter strip will adequately address runoff from the pen and calf shelter. *Hutterian Brethren of Summerland*, RFR 2018-05, p. 9.

RFRs of registration for new beef CFO. AO adequately considered risks of runoff from barn and manure storage pad, via nearby intermittent creek, to neighbour's land. AO adequately concluded that the CFO did not need a catchment pond to collect this runoff. AO considered gradients, barn containment, applied ERST to determine low risk, and protections provided by AOPA technical requirements. *H.E. Livestock Inc.*, RFR 2018-03, pp. 2-3.

RFRs of approval for new sheep CFO. Board declines to hold a review on RFR concern regarding accuracy of the "low risk" determination of AO's environmental risk screening. The ERST determination assumes the CFO's implementation of the surface water control system required by a condition of the approval. (AO should have made this clearer.) *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 5. However, board grants RFR on concern that AO found the application complete without a filed surface water control system design. AOPA requires that directly affected parties have a chance to review and comment on "information relevant to the application" and the control system is a "key design element" of the CFO. AO's failure to require that design as part of the completed application "falls short of the approval officer obligations under Section 20(1)(b)(iii) of AOPA." *Ibid*, pp. 5-6.

RFRs of approval for new feeder swine CFO. AO adequately considered and addressed groundwater risks from the proposed manure storage facilities (hog barn and EMS). ERST assessment showed low risk to surface and ground water. "AOPA requires new CFO manure storage facilities to be constructed to specified standards so that there is low risk to ground and surface water.... The process and requirements to meet these AOPA standards are straightforward and well understood." *Pigs R Us Inc.*, RFR 2017-11, p. 5.

RFRs of registration for a new broiler chicken CFO. AO adequately considered surface water and groundwater risks from CFO wash water, because "once the dry manure has been cleaned from the barn, the volume of residual manure included in the wash water is inconsequential and will not pose a risk from a manure management perspective." *Brad Towle*, RFR 2017-09, p. 3.

3. Runoff from manure spreading

RFRs of approval for a new beef finisher CFO. AO adequately addressed concerns re water contamination from manure spreading lands. AO included condition, based on operator's voluntary

commitment, to forego spreading on certain flood-prone lands from March to June. Under Standards Regulation, applicants are only required to provide sufficient land base and aren't bound to use the identified lands. CFOs must have regard for nutrient management requirements in the regulations. *Corner's Pride Farms Ltd.*, RFR 2020-10, pp. 9-10.

RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. Board affirms AO's denial of standing to two RFR applicants who live within 500 m of manure spreading lands. AOPA requirements will effectively manage risks of surface water and groundwater contamination from manure spreading. *Ibid*, pp. 3-4.

AO adequately considered concerns about surface water and groundwater contamination from CFO facilities and manure spreading. Risks from manure spreading are addressed by AOPA requirements. "Manure from CFOs is a valued crop nutrient that is land applied to support and enhance crop growth." *Ibid*, p. 5.

RFRs of registration for a new poultry CFO. *Hutterian Brethren Church of Granum*, RFR 2020-06. AO adequately considered and addressed risks of manure contamination from flooding on manure spreading lands. CFO applicant met all AOPA requirements re spreading and AO's condition limiting time period for spreading on specific land subject to flooding, was not typical but reasonable and practical solution. *Ibid*, p. 6.

RFR of approval for new mixed-species CFO. AO adequately addressed whether manure applied to certain lands would run off through drainage course into Lake McGregor, without needing to accept neighbour's invite to visit the drainage course in person. Board accepts that the "identified manure spreading lands ... would be on land that would drain into" the lake "under conditions where sufficient rainfall or snow melt caused surface water to leave the property." However, at the application stage, AOs limit their consideration of identified manure spreading lands to assessing whether there is sufficient land base in first year; operator isn't committing to using any such lands. "The NRCB does not generally issue permits for manure to be spread on specific lands unless the operator is seeking relief from certain provisions of the regulations. For this application, such relief is not being sought." *Silver Winds Hutterian Brethren*, RFR 2018-08, pp. 2-3. Board also notes role of NRCB inspectors in ensuring that ongoing CFOs comply with regulatory requirements, including manure spreading restrictions including those relating to slope. *Ibid*, p. 3. AO and inspector should still offer to meet with the RFR applicant to discuss these regulatory requirements. *Ibid*

RFRs of registration for new beef CFO. AO adequately considered runoff risks to nearby intermittent stream, neighbouring lands, and Wolf Creek/Battle River drainage. *H.E. Livestock Inc.*, RFR 2018-03, pp. 3-4. AO properly determined that the CFO applicant met the manure spreading land base required by s. 25(2)(a) of the Standards Regulation. CFO must comply with manure spreading setbacks to common bodies of water, in the Standards Regulation. The "sole purpose the province established these setbacks to common bodies of water was to provide reasonable and adequate protection for the water resource." AO conducted a site visit and used regional top maps to consider gradients. *Ibid*. Re soil testing requirement in section 25(1) of the Standards Regulation, the NRCB does not require soil testing

of proposed manure spreading lands as part of an application to construct and operate a new CFO. “While this does not immediately answer the question of what soil testing may indicate for the NE 7, the section does assure that manure cannot be spread on a parcel unless it meets the nutrient loading provisions of the regulation.” *Ibid*, p. 4.

RFRs of approval for new feeder swine CFO. AO adequately considered risks that manure spreading will run offsite and spreading risks to groundwater. Board lists factors AO considered, including nature of spreading lands with drainage tiles. The Standards Regulation “directly and adequately establishes manure spreading controls to protect surface and groundwater.” *Pigs R Us Inc.*, RFR 2017-11, p. 4.

RFRs of registration for a new broiler chicken CFO. AO adequately considered runoff risks from selected manure spreading lands. The Standards Regulation “directly and adequately establishes manure spreading controls to protect surface and groundwater.” *Brad Towle*, RFR 2017-09, p. 3.

G. Consistency with ALSA regional plans

RFRs of approval for a new beef finisher CFO. AO adequately addressed environmental concerns relating to CO₂ and ammonia emissions. Board notes AO’s conclusion that effects are presumed to be acceptable if CFO meets technical requirements and CFO presumed to be an appropriate use of land if meets MDP/LUB. Cumulative effects “fall within the *Alberta Land Stewardship Act* and thus are matters beyond AOPA’s statutory scheme.” *Corner’s Pride Farms Ltd.*, RFR 2020-10, pp. 11-12.

RFRs of approval for new dairy CFO. Board declines to conduct review of concerns about cumulative nuisance and environmental effects of multiple CFOs. The board has “consistently stated that cumulative effects are not within its regulatory mandate.” *500016 Alberta Ltd.*, RFR 2018-11, p. 2. However, AOs are required to consider consistency with ALSA regional plans and, under ALSA, cumulative effects “are considered and provide for protection to surface water, groundwater and air quality” but not explicitly for nuisance impacts. ALSA regional plans deal with cumulative effects from all sources, not any particular industry. Regional plan for this area is still in development. *Ibid*.

H. CFO owner’s past practices and non-compliance record and future non-compliance risks

RFR of AO decision deleting a condition of a CFO registration for a goat dairy CFO. Jos and Dorothy Peters, RFR 2022-15. Board rejects RFR concern that the NRCB has relied on the complaint line to address alleged instances of non-compliance at the CFO. Board reviews non-compliance record and concludes that the instances have all been adequately dealt with by NRCB’s inspectors. “Responding to complaints about an operation is a priority for the NRCB to ensure that operators comply with terms of their permits and AOPA requirements. The Board finds that compliance action taken at the Peters’ operation was appropriate and timely. The Board does expect that the Peters will work diligently to follow all conditions imposed within the permit and respect all AOPA requirements.” *Ibid*, pp. 5-6.

RFR by the Samson Cree First Nation (SCFN) of an approval to expand a beef CFO. *McKelvie*, RFR 2022-12. The NRCB adequately addressed the CFO applicants’ unauthorized construction by requiring them to apply for an approval. Under NRCB policy, the AO was not required to deal with the applicants’ non-compliance any further for permitting purposes. *Ibid*, pp. 7-8.

RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. Board adopts AO's finding that there is no causality between the new CFO and the colony's past farming practices which allegedly altered flow patterns to detriment of neighbours. *Ibid*, p. 6.

RFRs of registration for a new poultry CFO. *Hutterian Brethren Church of Granum*, RFR 2020-06. AO adequately considered concerns about future non-compliance. Concerns are speculative at this time; people can contact NRCB enforcement if problems arise in the future. *Ibid*, p. 10.

RFRs of approval for expansion of beef CFO. Board denies request for "surprise visits to ensure strict compliance, suggesting large fines and serious consequences for infractions." AO adequately addressed this concern by noting that future non-compliance is a matter for the NRCB's compliance division. *Korova Feeders Ltd.*, RFR 2019-06, pp. 4-5.

RFR of approval for beef feedlot expansion. AO adequately addressed operator's alleged past non-compliance related to manure storage locations and dead animal disposal. AO did not carry forward deemed permit conditions re manure stockpiles and dead animal disposal. Operator's evidence showed that it corrected the one instance of an incorrectly located manure stockpile. The NRCB has a separate process for handling non-compliance. *Sundown Feeders Ltd.*, RFR 2019-04, pp. 7-8.

RFRs of approval for new multi-species CFO. Board affirms AO determination that one couple and a nearby village are not directly affected by the application. NRCB's enforcement record vis another CFO does not establish that the couple is directly affected. *Hutterian Brethren of Summerland*, RFR 2018-05, pp. 3-4.

RFRs of approval for new feeder swine CFO. Permit holder's failure to "proceed with construction" does not show such a "history of non-compliance" as to warrant denying the application. "Permit holders often need to source financing and time construction to meet commodity market fluctuations or personal circumstances. In any event, the history presented does not raise compliance related issues that would suggest an operator will not conform to current standards, or that there is any elevated operational risk potential." Permit includes a construction deadline. *Pigs R Us Inc.*, RFR 2017-11, p. 5.

I. Misc. permitting factors

1. Risks of existing facilities (when permitting new facilities/additions)

RFR of amended authorization to modify the dimensions of an existing EMS. Board declines to consider RFR issues that relate to the original authorization. *Lone Pine Hutterian Brethren*, RFR 2021-01, pp. 2-3. AO also correctly concluded that, under AOPA s. 22(2.2), he lacked jurisdiction to reconsider water quality-related risks associated with the originally approved EMS and that the new dimensions didn't affect or change those risks. *Ibid*, p. 3.

Board review of permit condition requiring dairy CFO to assess environmental risks posed by its existing EMS. Permit allowed CFO to construct a barn addition and calf lean-to. Board acknowledges dairy's likely surprise at the EMS-related condition in a permit for a barn addition/calf lean-to, but Board notes that

under AOPA an AO can include terms and conditions “in any permit” if the AO finds that “any of the existing facilities may cause a risk to the environment.” *Kramer Dairy Ltd.*, Decision 2020-02, p. 3.

2. Effects on the environment

RFR by the Samson Cree First Nation (SCFN) of an approval to expand a beef CFO. *McKelvie*, RFR 2022-12. SCFN’s RFR claims the CFO expansion will cause several adverse environmental effects, but the RFR claims are “made at too general a level to have any merit.” Claims are “too general to satisfy SCN’s burden of showing that a review is warranted, especially given that the AO found that the application met all of AOPA’s technical requirements. *Ibid*, pp. 6 and 7.

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. Board dismisses general concerns about environmental effects because proposed CFO will meet all of AOPA’s technical requirements. *Ibid*, pp. 5-6.

In review of AO’s denial of permit for a CFO expansion, Board dismisses neighbour-DAPs’ calls for a full-blown environmental impact assessment (EIA). *NRCB Act* has EIA provisions, but not AOPA. “While AOPA does not require an EIA, the regulations effectively manage environmental risks and nuisance impacts that would be duplicative in an EIA.” *Double H Feeders Ltd.*, Decision 2022-02, p. 18.

RFRs of approval for a new beef finisher CFO. AO adequately addressed environmental concerns relating to CO2 and ammonia emissions. Board notes AO’s conclusion that effects are presumed to be acceptable if CFO meets technical requirements and CFO presumed to be an appropriate use of land if meets MDP/LUB. Cumulative effects “fall within the *Alberta Land Stewardship Act* and thus are matters beyond AOPA’s statutory scheme.” *Corner’s Pride Farms Ltd.*, RFR 2020-10, pp. 11-12.

RFRs of registration for a new poultry CFO. *Hutterian Brethren Church of Granum*, RFR 2020-06. Under AOPA, AO’s considerations for registration applications—compliance with the Standards regulation, notice, and MDP consistency—are narrower than considerations for approval applications. *Ibid*, p. 4. AO correctly did not consider broad effects of the CFO on the environment, community or economy. *Ibid*, pp. 8-9.

RFR of approval for beef CFO expansion. AO adequately addressed general environmental concerns based on presumption, in NRCB policy, that environmental effects are acceptable if proposed development meets all of AOPA’s technical requirements. *Sundown Feeders Ltd.*, RFR 2019-04, p. 6.

RFRs of approval for new sheep CFO. Board declines to hold a review on RFR concern about effects of ticks on endangered species, human health, and domestic animals. RFR provides no “actual evidence studying and documenting a tick population issue”. *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 4. AOPA MDS “may assist” in reducing tick impacts, but MDS receptor is residences and the receptor for ticks may be livestock and outside domestic animals, so MDS may be “less effective” for those receptors. *Ibid*.

3. Effects on the community (incl. general nuisance concerns)

Colony's RFR of AO denial of colony's approval application for a new beef CFO (including previously constructed facilities). *Hutterian Brethren Church of Cleardale*, RFR 2022-14. Board grants RFR to consider ambiguities about relation between the setbacks and the CFO exclusion zone in the county's MDP. *Ibid*, pp. 2-3. Board declines to review DAP's concerns, in their rebuttals, re the colony's unauthorized construction, and about odours, traffic, property values, and public notice. AO adequately addressed these concerns. *Ibid*, p. 3.

RFRs regarding AO's denial of approval for a new beef cattle CFO. *G&S Cattle Ltd.*, RFR 2022-11. Board finds that the AO adequately based the denial on AOPA s. 21(b)(ix) and concluded that the proposed CFO would pose "materially negative and long-lasting effects on the community, and would not be an appropriate use of land." AO's rarely deny an approval on basis of factors in s. 21(b)(ix), especially if the application is consistent with the applicable MDP and land use bylaw and meets AOPA standards. *Ibid*, p. 5. However, s. 21(b)(ix) is an independent test; it isn't limited to whether an application meets AOPA standards and the municipal planning items. *Ibid*, p. 6 and 8. That said, there's a high bar for denial based on s. 21(b)(ix) if all other AOPA requirements have been met. *Ibid*, pp. 8 and 11-12. AO reasonably based community effects decision on the Pigeon Lake Watershed Management Plan, including its "CFO Adverse Effects Background Report". *Ibid*, pp. 7-8. "In the Board's view, the nature in which the watershed Plans were developed and the commitment to those Plans as represented by the signatories represent a solid example of best practice in formalizing community interests." *Ibid*, p. 8. The watershed plan is still relevant even though it's not a "statutory plan" under the MGA and though it doesn't trump an MDP for purposes of the MDP consistency requirement in AOPA. *Ibid*, p. 10.

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. AO adequately addressed nuisance concerns in the RFRs (odour, noise, and insects) by determining that the proposed CFO meets the AOPA MDS requirements. *Ibid*, p. 8.

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. AO adequately dealt with general concerns about nuisance impacts by determining that the proposed CFO meets AOPA's MDS requirements. *Ibid*, p. 7.

In considering DAPs' concerns about nuisance impacts, the Board "accepts the operator's request for neighbours to 'let [him] know' if they have concerns and that 'if there's something that [Double H Feeders] can do to mitigate [the concern] . . . [it] will definitely do it'". *Double H Feeders Ltd.*, Decision 2022-02, p. 13.

RFRs of approval for a new beef finisher CFO. AOPA doesn't require CFOs to justify their site selection, provided they follow municipal zoning requirements. AO adequately addressed concerns re miscellaneous nuisance impacts, including odours, road dust/noise, flies, and pests and increased road maintenance costs causing property tax increases. AO cited relevant regulations addressing ongoing nuisance impacts; MDS is a proxy for managing nuisance impacts. *Corner's Pride Farms Ltd.*, RFR 2020-10, pp. 11-12.

RFRs of registration for a new poultry CFO. *Hutterian Brethren Church of Granum*, RFR 2020-06. Under AOPA, AO's considerations for registration applications—compliance with the Standards regulation, notice, and MDP consistency—are narrower than considerations for approval applications. *Ibid*, p. 4. AO correctly did not consider broad effects of the CFO on the environment, community or economy. *Ibid*, pp. 8-9.

RFRs of approval for expansion of beef CFO. AO adequately addressed odour concerns by noting that MDS is a means for mitigating odour and the proposed expansion meets the MDS. Board notes CFO applicant's submission that rolled compact concrete will help reduce odours, but board does not list this as a factor for its conclusion that AO adequately addressed odour concerns. *Korova Feeders Ltd.*, RFR 2019-06, p. 3. RFR also claimed that the expansion will "increase the number of transient workers, increasing theft and vandalism." This claim does not merit review. Board views "community safety and security as an issue that, in its experience, has not been associated with the agricultural workforce." *Ibid*, p. 4. AO adequately addressed RFR concerns regarding quality of life, by referring the application to Alberta Health and Kneehill County, neither of which raised concerns. "The Board finds that the primary jurisdiction for matters related to family health[and] quality of life ... rests with these authorities, and they raised no issues that merit Board review." *Ibid*, p. 4.

RFR of approval for beef CFO expansion. AO adequately addressed general community effects (and effects on RFR applicant and his property), based on application's compliance with all AOPA technical requirements and consistency with the county's MDP and LUB, and with the South Sask. Regional Plan. *Sundown Feeders Ltd.*, RFR 2019-04, pp. 6-7.

RFRs of approval for pig CFO expansion. Board declines to grant RFRs based simply on the large number of RFRs from residents within the affected party radius who, under NRCB policy, are presumed to be DAPs. Board also notes that effects on community are presumed to be acceptable based on AO's conclusion that the proposed CFO expansion was consistent with the county's MDP and LUB. Board affirms as "reasonable" the AO's decision that one couple who submitted an RFR are not directly affected parties. *Spruit Farms Ltd.*, RFR 2018-13, p. 4.

RFRs of approval for new dairy CFO. AO adequately considered nuisance issues, and issues relating to water quality and quantity. *500016 Alberta Ltd.*, RFR 2018-11, p. 2.

RFRs of approval for new mixed-species CFO. Village's RFR failed to support Village's claim that the AO incorrectly considered wind direction data. Village is well beyond the MDS. *Hutterian Brethren of Summerland*, RFR 2018-05, p. 9.

RFRs of approval for new sheep CFO. Board declines to hold review re concern about noise from CFO. AO adequately addressed noise concern by noting MDS as providing adequate mitigation for noise and odour and by noting neighbours' opportunity to call NRCB's complaint line to deal with unacceptable nuisances. *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 6. Board also declines review of RFR concern regarding odour, dust, light pollution and flies and attendant effects on future land use and land value. "The regulation of development, including confined feeding operations, is in part a planning matter governed by municipal planning." Proposed CFO is consistent with MDP land use provisions and

property line setbacks. Road maintenance concerns are solely within county's jurisdiction under the *Municipal Government Act*. NRCB can address ongoing nuisance concerns through the NRCB's complaint line and inspections and enforcement action. *Ibid*, p. 6.

RFRs of approval for new feeder swine CFO. AO adequately considered nuisance impacts, including odours, noise and flies. Board refers to AO's determination that the DAPs all reside beyond the MDS. The MDS and other AOPA technical requirements "mitigate the potential nuisance effects of air quality, noise, and flies associated with the proposed CFO. Section 24 of the *AOPA Standards and Administration Regulation* also sufficiently regulates the land spreading of manure for its nutrient value, and to minimize odour and control run-off. Impact to adjacent lands is regulated by the application of these regulations under the regulatory stewardship of NRCB inspectors." *Pigs R Us Inc.*, RFR 2017-11, p. 4.

4. Property values and compensation for damages

Colony's RFR of AO denial of colony's approval application for a new beef CFO (including previously constructed facilities). *Hutterian Brethren Church of Cleardale*, RFR 2022-14. Board grants RFR to consider ambiguities about relation between the setbacks and the CFO exclusion zone in the county's MDP. *Ibid*, pp. 2-3. Board declines to review DAP's concerns, in their rebuttals, re the colony's unauthorized construction, and about odours, traffic, property values, and public notice. AO adequately addressed these concerns. *Ibid*, p. 3.

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. Board rejects RFR concerns about impacts on land values, quality of life, and impact on the Twin Valley Reservoir Recreation Area. "The approval officer determined that the use of this land parcel for a CFO is compliant with the MD's municipal development plan and land use bylaw. Therefore, development of a CFO in this location is an appropriate use of land. The Board has consistently stated that concerns about property values are a land use issue that is best addressed by municipalities through land use provisions in municipal development plans and land use bylaws. The issue of property values has no merit within the context of a review under AOPA." *Ibid*, p. 8.

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. RFRs raised concerns about the effect of the proposed CFO on neighbouring land values. Board finds that these concerns have "no merit." "The Board and approval officers have consistently stated that impact on property values is an issue that resides outside of AOPA legislation. Specifically, the Board agrees that impacts on property values are a land use issue, best dealt with by municipalities through land use provisions applied in municipal development plans and land use bylaws." *Ibid*, p. 8.

In review of AO's denial of permit for a CFO expansion, Board dismisses neighbour-DAP concerns about impact of proposed expansion on land values. "The Board has consistently stated that impact on property values is an issue that resides outside of AOPA legislation." *Double H Feeders Ltd.*, Decision 2022-02, p. 17.

RFR of approval for new beef finisher CFO in the MD of Taber. JBC Cattle Inc., RFR 2021-07. “The Board and approval officers have consistently stated that impact on property values is an issue that resides outside of AOPA legislation.” Concerns about property values are a “land use issue, best dealt with by municipalities through land use provisions applied in municipal development plans and land use bylaws.” The issue “has no merit within the context of a review under AOPA.” *Ibid*, p. 3.

RFRs of AO’s approval of new beef CFO. *P&H Wessels Farms Ltd.*, RFR 2020-05. Board dismisses RFR applicants claim they should be compensated for costs from water quality deterioration caused by the CFO. SOCs didn’t raise this issue. Effect on property values “is not a matter for the Board to consider.” CFO application meets all AOPA requirements. *Ibid*, p. 5.

RFR of approval for beef CFO expansion. AO adequately considered neighbours’ concerns re property values based on AO’s conclusion that application was consistent with county’s MDP, as confirmed by the county. “The Board and approval officers have consistently stated that effects on land values are not a subject for the NRCB’s review under AOPA. Impacts on property values are a land use issue which is a planning matter dealt with by a municipality in its municipal development plan and land use bylaws.” *Korova Feeders Ltd.*, RFR 2019-06, p. 4; *Beekman Farms Ltd. & Wessels Farms Ltd.*, RFR 2019-05, pp. 4-5 (same).

RFRs of approval for pig CFO expansion. “Approval officers commonly receive statements of concern, and the Board commonly receives RFRs, that ask the NRCB to deny an application because the construction or expansion of a CFO may adversely affect neighbouring land values. The Board and approval officers have consistently stated that effects on land values are not a subject for the NRCB under AOPA. Impacts on property values are a land use issue which is a planning matter dealt with by a municipality in its municipal development plan.” *Spruit Farms Ltd.*, RFR 2018-13, p. 6.

RFRs of approval for new multi-species CFO. “The Board accepts that landowners are concerned about the value of their lands. However, as the Board has consistently stated in previous decisions, land value effects related to community land use is a planning matter dealt with by municipalities through land use provisions in both MDPs and land use bylaws. Effects on neighbouring land values are not a relevant Board consideration when the development is consistent with the MDP’s land use provisions.” *Hutterian Brethren of Summerland*, RFR 2018-05, pp. 3-4 and 9; *Pigs R Us Inc.*, RFR 2017-11, p. 6 (same); *Brad Towle*, RFR 2017-09, p. 3 (similar).

RFRs of approval for new sheep CFO. Board declines review of RFR concern regarding odour, dust, light pollution and flies and attendant effects on future land use and land value. “The regulation of development, including confined feeding operations, is in part a planning matter governed by municipal planning.” Proposed CFO is consistent with MDP land use provisions and property line setbacks. Road maintenance concerns are solely within county’s jurisdiction under the *Municipal Government Act*. NRCB can address ongoing nuisance concerns through the NRCB’s complaint line and inspections and enforcement action. *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 6.

RFR of AO’s denial of a registration for a new dairy CFO. Board grants registration applicant’s RFR to consider MDP issues but denies requests by neighbours to also consider their concerns regarding

surface water quality, livestock health, ground water quantity, and property values. *Milk & Honey Dairy Inc.*, RFR 2018-01. These issues do not merit review, based on AO's consideration of them, the parties' burden of proof and their rebuttal submissions. *Ibid*, p. 3.

5. Effects on human health

RFRs of approval for a new beef finisher CFO. AO adequately addressed concerns re miscellaneous nuisance and health impacts. AHS didn't object to the application. *Corner's Pride Farms Ltd.*, RFR 2020-10, pp. 11-12.

RFRs of registration for a new poultry CFO. *Hutterian Brethren Church of Granum*, RFR 2020-06. AO adequately considered concerns about various health impacts from CFO and manure hauling. AO referred concerns to AHS who didn't provide a specific response. Concerns weren't sufficiently specific to show a "plausible link" to health impacts. CFO won't materially increase exposure to health risks relative to other activities in the area. *Ibid*, p. 8.

RFRs of approval for expansion of beef CFO. AO adequately addressed RFR concerns regarding family health, quality of life, and traffic safety, by referring the application to Alberta Health, Alberta Transportation, and Kneehill County and none of them raised concerns. "The Board finds that the primary jurisdiction for matters related to family health, quality of life, and traffic safety rests with these authorities, and they raised no issues that merit Board review." *Korova Feeders Ltd.*, RFR 2019-06, p. 4.

RFRs of new mixed-species CFO. Residents' concerns about CFO effects on their elevated health risks to agricultural activities are insufficient to warrant granting RFRs. Residents already live in an agricultural region and their doctors' notes have not shown that the CFO materially increases their health risks. Residents are beyond the MDS. AHS does not claim heightened health risks. *Hutterian Brethren of Summerland*, RFR 2018-05, pp. 5-8. Board notes its uncertainty as to whether AOPA requirement to consider effects on environment, economy and community require NRCB to consider effects on individuals with elevated health risks versus simply considering the "broad effects on the community". *Hutterian Brethren of Summerland*, RFR 2018-05, p. 8.

RFRs of approval for new sheep CFO. Board declines to hold a review on RFR concern about effects of ticks on human health. RFR provides no "actual evidence studying and documenting a tick population issue". *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 4. AO forwarded application to AHS and relied on AHS to identify health concerns. AOPA MDS "may assist" in reducing tick impacts, but MDS receptor is residences and the receptor for ticks may be livestock and outside domestic animals, so MDS may be "less effective" for those receptors. *Ibid*.

6. MDS as proxy for considering odours and other nuisance impacts from CFO facilities

See also decisions relating to MDS as proxy for determining directly affected party status.

Review of AO's denial of approval for a new beef CFO. *A&D Cattle Ltd.*, Decision 2022-09. After affirming the AO's IDP inconsistency determination, the board considers whether to approve the permit notwithstanding the inconsistency. Board affirms relevant factors referenced in *R&T Penner Farms Ltd.*,

Decision 2022-05. *Ibid*, p. 8. The IDP exclusion zone reasonably reflected MD & Town planning objective to locate CFOs away from the town (and *future urban growth*), to minimize conflicts between urban and rural land uses, and factoring in local knowledge of prevailing wind directions. *Ibid*, p. 9. Board recognizes that inter-municipal negotiations on IDP provisions require a “political process” and reasonably consider future land use objectives. *Ibid*. Board won’t rely solely on MDS compliance because that doesn’t address the IDP’s future land use objectives and prevailing winds. *Ibid*. Board “appreciates that establishing CFO exclusion zones are one of the few opportunities that municipalities have to provide input to the NRCB regarding suitable locations for CFOs and their potential impacts on municipal planning... [E]xclusion zones is a reasonable planning tool for municipalities and has been supported by the Board in previous decision[s].” *Ibid*, pp. 9-10.

“AOPA’s consideration of [ammonia emissions or other nuisance] impacts is met through the application of required setbacks, as established by minimum separation requirements.” *Double H Feeders Ltd.*, Decision 2022-02, p. 13. However, the Board understands that residents living outside the MDS may “intermittently experience odour impacts from the CFO, and that each individual has their own degree of tolerance for certain hours.” Thus, the Board considers whether potential odour (and related health) impacts are typical of land uses for the area, as they are here. *Ibid*, p. 17.

RFRs of approval for a new beef finisher CFO. AO adequately addressed concerns re miscellaneous nuisance impacts, including odours, road dust/noise, flies, and pests. MDS is a proxy for managing nuisance impacts. *Corner’s Pride Farms Ltd.*, RFR 2020-10, pp. 11-12.

RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. AO adequately considered concerns about odours and noise. RFR applicant’s residence is 1048 m from the CFO and the Category 1 MDS is 349 m. “MDS is the primary means by which AOPA addresses nuisance odour mitigation from CFO sites to neighbouring residences.” *Ibid*, p. 5.

RFRs of approval for expansion of beef CFO. AO adequately addressed odour concerns by noting that MDS is a means for mitigating odour and the proposed expansion meets the MDS. Board notes CFO applicant’s submission that rolled compact concrete will help reduce odours, but board does not list this as a factor for its conclusion that AO adequately addressed odour concerns. *Korova Feeders Ltd.*, RFR 2019-06, p. 3.

RFRs of approval for pig CFO expansion. AO adequately dealt with concerns about CFO odours. DS shows that the proposed expansion meets the MDS to neighbouring residences, so the “anticipated intensity of odours” to those residences “is determined to be acceptable.” MDS requirements in AOPA and Standards Regulation provide a “province-wide standard”. *Spruit Farms Ltd.*, RFR 2018-13, p. 7.

RFR of approval for dairy CFO expansion. RFR applicant did not raise concerns about CFO odours in his statement of concern to the AO. AO nevertheless adequately addressed this concern by concluding that the proposed expansion met the 465 m MDS to all category 1 neighbours (except one, who provided an MDS waiver, and RFR applicant resided 1650 m from the CFO. MDS is means by which “AOPA addresses nuisance odour mitigation from CFO sites”; MDS is the “primary method that AOPA uses to deal with nuisance odour mitigation from CFO sites”. Also, the “proposed construction and operating practices for

this CFO are within typical industry practices and as such, the Board finds that MDS is an appropriate mitigation measure for general odour nuisance concerns.” *Faberdale Dairies Ltd.*, RFR 2018-12, p. 3.

RFRs of AO’s denial of permit application to expand a dairy CFO. Proposed CFO expansion is unlikely to pose nuisance effects of any “material significance” to recreational and residential use of lake, because CFO is beyond the MDS category 4 distance (as measured to the lakeshore). *Vermeer Dairy Ltd.*, RFR 2018-10, p. 5.

RFRs of approval for new multi-species CFO. Board affirms AO determination that one couple and a nearby village are not directly affected by the application, in part, because both parties’ residences are beyond the MDS and well outside the MDP exclusion zone. *Hutterian Brethren of Summerland*, RFR 2018-05, pp. 3-4 and 9.

RFRs of approval for new sheep CFO. Board declines to hold a review on RFR concern about effects of ticks on endangered species, human health, and domestic animals. RFR provides no “actual evidence studying and documenting a tick population issue”. *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 4. AOPA MDS “may assist” in reducing tick impacts, but MDS receptor is residences and the receptor for ticks may be livestock and outside domestic animals, so MDS may be “less effective” for those receptors. *Ibid.* AO adequately addressed noise concern in part by noting MDS as providing adequate mitigation for noise and odour. *Ibid.*, p. 6.

Ermineskin First Nation RFR of registration for dairy CFO expansion. EFN reserve boundary is more than three times the MDS. “Nuisance odour is an issue that AOPA manages by establishing a minimum distance separation (MDS) between manure storage facilities and neighbouring residences.” *Fuhrhop Farms Ltd.*, RFR 2017-10, p. 6.

RFRs of registration for new broiler chicken CFO. AO adequately considered odour-related nuisance impacts from CFO facilities/practices by noting that MDS is a nuisance mitigation tool and that MDS is met. *Brad Towle*, RFR 2017-09, p. 2.

7. Cumulative effects

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. Board “makes no determination” on cumulative effects concerns raised in RFRs, on the basis of the board’s prior explanation in *Zealand Farms*, that the issue 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.” *Ibid.*, p. 9.

In review of AO’s denial of permit for a CFO expansion, Board directs AO to issue the permit. Board includes condition setting limit on total number of permitted chicken broilers that can be housed at old and new locations, and duration of solid manure storage at old site, while the old location is being decommissioned. *Double H Feeders Ltd.*, Decision 2022-02, p. 19. Approval of new location is also conditioned on applicant abandoning and cancelling municipal permit for the old location. *Ibid.*

RFRs of approval for a new beef finisher CFO. AO adequately addressed environmental concerns relating to CO₂ and ammonia emissions. Board notes AO's conclusion that effects are presumed to be acceptable if CFO meets technical requirements and CFO presumed to be an appropriate use of land if meets MDP/LUB. Cumulative effects "fall within the *Alberta Land Stewardship Act* and thus are matters beyond AOPA's statutory scheme." *Corner's Pride Farms Ltd.*, RFR 2020-10, pp. 11-12.

RFRs of approval for new dairy CFO. Board declines to conduct review of concerns about cumulative nuisance and environmental effects of multiple CFOs. The board has "consistently stated that cumulative effects are not within its regulatory mandate." *500016 Alberta Ltd.*, RFR 2018-11, p. 2. "Cumulative effects associated with the number or concentration of confined feeding operations within any given area are not a relevant consideration under AOPA, and as such this issue is not under consideration by the Board and does not merit review." *Ibid*, p. 3. However, AOs are required to consider consistency with ALSA regional plans and, under ALSA, cumulative effects "are considered and provide for protection to surface water, groundwater and air quality" but not explicitly for nuisance impacts. ALSA regional plans deal with cumulative effects from all sources, not any particular industry. Regional plan for this area is still in development. *Ibid*.

8. Odours from CFO facilities

"AOPA's consideration of [ammonia emissions or other nuisance] impacts is met through the application of required setbacks, as established by minimum separation requirements." *Double H Feeders Ltd.*, Decision 2022-02, p. 13. However, the Board understands that residents living outside the MDS may "intermittently experience odour impacts from the CFO, and that each individual has their own degree of tolerance for certain hours." Thus, the Board considers whether potential odour (and related health) impacts are typical of land uses for the area, as they are here. *Ibid*, p. 17.

9. Odours from manure spreading

RFR of approval for new beef finisher CFO in the MD of Taber. *JBC Cattle Inc.*, RFR 2021-07. AO adequately addressed concerns about nuisance impacts from dust, odour, and flies. CFO is more than three times the MDS from the RFR applicant's residence and MDS is used to manage nuisance impacts. RFR doesn't show that nuisance impacts would be greater than "what would reasonably be expected on agriculturally-zoned land..." *Ibid*, p. 3.

RFRs of approval for a new beef finisher CFO. Board affirms AO's denial of standing to couple who lived 300 m from a manure application site. The parties may experience "some odours" during spreading, but the "infrequency and short duration of manure spreading reduces impacts to a level the Board finds trivial." *Corner's Pride Farms Ltd.*, RFR 2020-10, p. 3.

RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. Board affirms AO's denial of standing to two RFR applicants who live within 500 m of manure spreading lands. Those residents "may experience odour and other nuisance issues associated with manure spreading events, but those impacts would be both infrequent and of short duration." Spreading will likely occur only

twice per year and CFO has ample land base. Because spreading lands may vary, “it is not possible to identify parties that may own or reside adjacent to spreading lands with certainty.” *Ibid*, p. 3.

AO adequately considered concerns about odours and noise. RFR applicant’s residence is 1048 m from the CFO and the Category 1 MDS is 349 m. “MDS is the primary means by which AOPA addresses nuisance odour mitigation from CFO sites to neighbouring residences.” *Ibid*, p. 5.

In review of AO’s denial of approval for multi-species CFO, Board affirms AO’s denial of standing to two people. *Hines Creek Farms*, Decision 2020-03, p. 2. With a residence 800 m from designated manure spreading lands, one of these people “may experience nuisance effects” during spreading, but board has “no general control” over where CFO spreads manure and board doesn’t consider spreading effects beyond knowing that the operator has sufficient spreading lands. All operators must adhere to the spreading requirements in the Standards regulation. *Ibid*, p. 3.

RFRs of approval for pig CFO expansion. AO adequately dealt with concerns about odours from manure spreading and about AO’s removal of deemed county permit condition requiring manure spreading once per year with incorporation within 72 hours. Board notes AO’s conclusion that applicant adequately justified removing the condition and that AOPA’s manure spreading requirements provided equivalent nuisance abatement. Odour from manure spreading “may linger for many days” and board “acknowledges that incorporation or injection manure spreading methods may mitigate, but not eliminate, manure spreading odours.” Board also notes that, since 2002, more crop land has been direct seeding which has reduced amount of crop land available for manure incorporation. “The Board understands that direct seeding is used to better manage moisture, erosion and nutrient uptake, and is considered as a more sustainable cropping system.” In this approval, and consistent with AOPA regulations, manure must be incorporated within 48 hours when applied to conventionally tilled land. *Spruit Farms Ltd.*, RFR 2018-13, p. 7.

RFR of approval for dairy CFO expansion. AO adequately dealt with concern about odours from manure spreading. AO’s Decision Summary discusses AOPA requirements to reduce odour from manure spreading. If those requirements aren’t being followed, someone can call the NRCB’s hotline. *Faberdale Dairies Ltd.*, RFR 2018-12, p. 3.

RFRs of approval for new feeder pig CFO. Board affirms AO’s decision that several people living beyond one mile from the CFO (the affected party radius) are not directly affected. *Pigs R Us Inc.*, RFR 2017-11, pp. 2-3. Parties living next to manure spreading lands “will experience odour,” but the NRCB has “no general control” over where an operator applies manure, so the board “does not consider effects from spreading beyond knowing that the operator has secured the right to sufficient spreading acreage.” *Ibid*, p. 3. AO adequately considered RFR concerns (from DAPs) about nuisance impacts, including odours, noise and flies. “Section 24 of the *AOPA Standards and Administration Regulation* also sufficiently regulates the land spreading of manure for its nutrient value, and to minimize odour and control run-off. Impact to adjacent lands is regulated by the application of these regulations under the regulatory stewardship of NRCB inspectors.” *Ibid*, p. 4.

10. Dust (from the CFO site)

RFR of approval for new beef finisher CFO in the MD of Taber. *JBC Cattle Inc.*, RFR 2021-07. AO adequately addressed concerns about nuisance impacts from dust, odour, and flies. CFO is more than three times the MDS from the RFR applicant's residence and MDS is used to manage nuisance impacts. RFR doesn't show that nuisance impacts would be greater than "what would reasonably be expected on agriculturally-zoned land..." *Ibid*, p. 3.

RFR of AO amendment for beef CFO. AO amendment included a condition requiring CFO operator to maintain an NRCB-approved dust control plan, which the NRCB could amend from time to time. "The Board finds this issue does not warrant review by the Board, as ongoing compliance with the dust control plan is a matter for the NRCB's Compliance Division." *Nelson Family Ranches Ltd.*, RFR 2019-01, p. 3.

11. Flies (and associated diseases)

RFR of approval for new beef finisher CFO in the MD of Taber. *JBC Cattle Inc.*, RFR 2021-07. AO adequately addressed concerns about nuisance impacts from dust, odour, and flies. CFO is more than three times the MDS from the RFR applicant's residence and MDS is used to manage nuisance impacts. RFR doesn't show that nuisance impacts would be greater than "what would reasonably be expected on agriculturally-zoned land..." *Ibid*, p. 3.

Following review of AO's denial of permit to convert (and expand) a swine CFO to beef, the board directed the AO to issue the permit (with conditions). *Muilwijk*, Decision 2021-03. Board accepts AO's recommended condition (if board overturned AO's denial) requiring CFO to adopt a fly control program. Applicant did not show that a fly control program isn't needed and the program doesn't appear to be "unduly onerous." If over time Applicant can show that the program isn't needed, applicant can apply for a permit amendment to remove the condition. *Ibid*, p. 15.

RFRs of approval for a new beef finisher CFO. AOPA doesn't require CFOs to justify their site selection, provided they follow municipal zoning requirements. AO adequately addressed concerns re miscellaneous nuisance impacts, including odours, road dust/noise, flies, and pests. AO cited relevant regulations addressing ongoing nuisance impacts; MDS is a proxy for managing nuisance impacts. *Corner's Pride Farms Ltd.*, RFR 2020-10, pp. 11-12.

RFRs of approval for pig CFO expansion. AO adequately considered neighbours' concerns about disease risks to animals and humans from CFO's flies. Only specific disease mentioned to AO (and in RFRs) was pink eye in cattle. AO followed up on this risk by consulting AF staff who provided evidence showing a low risk. Also, AOPA doesn't restrict proximity of CFOs to each other or restrict multi-species at a single CFO. NRCB manages flies "as a compliance matter," through AOPA regulations requiring CFOs to use reasonable fly control measures. RFRs didn't provide any additional, new evidence. *Spruit Farms Ltd.*, RFR 2018-13, pp. 5-6.

RFRs of approval for new sheep CFO. Board declines review of RFR concern regarding odour, dust, light pollution and flies and attendant effects on future land use and land value. "The regulation of

development, including confined feeding operations, is in part a planning matter governed by municipal planning.” Proposed CFO is consistent with MDP land use provisions and property line setbacks. Road maintenance concerns are solely within county’s jurisdiction under the *Municipal Government Act*. NRCB can address ongoing nuisance concerns through the NRCB’s complaint line and inspections and enforcement action. *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 6.

RFRs of approval for new feeder swine CFO. AO adequately considered nuisance impacts, including odours, noise and flies. Board refers to AO’s determination that the DAPs all reside beyond the MDS. The MDS and other AOPA technical requirements “mitigate the potential nuisance effects of air quality, noise, and flies associated with the proposed CFO.” *Pigs R Us Inc.*, RFR 2017-11, p. 4.

12. Water quantity

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. AO adequately addressed RFR concerns regarding water quantity—CFO applicant opted to separate the water licensing and AOPA permitting processes but signed the NRCB’s standard form declaring tha the applicant acknowledged the risks of proceeding on separate tracks. *Ibid*, p. 7.

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. Board “makes no determination” on water supply concerns raised in several of the RFRs. “Ensuring that adequate water is available for a CFO operation is a water licensing issue that is managed by Alberta Environment and Parks under the Water Act, and therefore lies outside of the jurisdiction of the NRCB.” *Ibid*, p. 8.

RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. AO adequately considered water supply concerns. CFO applicant chose to delink AOPA and Water Act approvals. Water supply issues are a “water licencing issue falling with the regulatory mandate of AEP.” *Ibid*, pp. 4-5. Board rejects RFR applicants’ proposed condition relating to water quantity and quality. *Ibid*, p. 6.

RFRs of registration for a new poultry CFO. *Hutterian Brethren Church of Granum*, RFR 2020-06. AO adequately considered risks to groundwater supply, which subject is “outside of AOPA’s mandate”. *Ibid*, p. 7.

RFRs of AO’s approval of new beef CFO. *P&H Wessels Farms Ltd.*, RFR 2020-05. AO adequately addressed water quantity concerns. Board “appreciates” that RFR applicants are often concerned about groundwater water quantity, but that issue is “outside of AOPA’s mandate.” Groundwater licensing and related compliance issues are managed by AEP under the Water Act. *Ibid*, pp. 6-7.

RFRs of approval for expansion of beef CFO. AO adequately addressed water quantity concerns, because they are “outside of AOPA’s mandate” and the board “agrees with the approval officer’s assertion that the signed water licence declaration in the Part 2, Technical Requirements document satisfies the NRCB’s requirements.” *Korova Feeders Ltd.*, RFR 2019-06, pp. 2-3.

In issuing approval for new beef CFO, AO adequately addressed concerns re ground water quantity. Water quantity is a “matter outside of AOPA’s mandate” and is a water licensing issue handled by

Alberta Environment & Parks under the *Water Act*. Applicant acknowledges need to obtain a water licence. Any CFO construction without a required water licence is at the operator's sole risk. *Beekman Farms Ltd. & Wessels Farms Ltd.*, RFR 2019-05, p. 5.

RFRs of approval for pig CFO expansion. Neighbours' concerns about traffic, water quantity and dead animal disposal do not merit the board's review. Environment and Parks manages water quantity through licencing under the *Water Act*. *Spruit Farms Ltd.*, RFR 2018-13, p. 6.

RFR of approval for dairy CFO expansion. RFR raised concern that the expansion would strain local water wells. Concern not raised in statement of concern. Alberta Environment has "ongoing jurisdiction on water licencing and as such the matter is not relevant for review" under AOPA. The CFO applicant signed a declaration stating that the expansion didn't require a new water licence, but Environment submitted a letter saying a new licence was needed. AO should notify the applicant and Environment about this discrepancy. *Faberdale Dairies Ltd.*, RFR 2018-12, p. 4.

RFRs of approval for new dairy CFO. AO adequately considered issues relating to water quantity. *500016 Alberta Ltd.*, RFR 2018-11, p. 2.

RFR of AO's denial of a registration for a new dairy CFO. Board grants registration applicant's RFR to consider MDP issues but denies requests by neighbours to also consider their concerns regarding surface water quality, livestock health, ground water quantity, and property values. *Milk & Honey Dairy Inc.*, RFR 2018-01. These issues do not merit review, based on AO's consideration of them, the parties' burden of proof and their rebuttal submissions. *Ibid*, p. 3.

RFRs of approval for new feeder swine CFO. Applicant de-linked AOPA permit and *Water Act* licence applications. Once that occurs, the NRCB has "no statutory authority in relation to water quantity issues." Water licence concerns may be brought to Environment & Parks "but do not have relevance to the CFO application" under AOPA. By signing the water licence declaration, the applicant "assumes the risk of compliance with the *Water Act*." *Pigs R Us Inc.*, RFR 2017-11, p. 6; *Brad Towle*, RFR 2017-09, p. 3 (same; RFRs of registration for new broiler chicken CFO).

13. Fire risks

RFR of approval for new beef CFO. AO adequately addressed concerns re fire hazard. No AOPA provisions relate directly to this risk, but AOPA permit holders must abide by other applicable legislation including the *Forest Prairie Protection Act* and applicable county bylaws. *Beekman Farms Ltd. & Wessels Farms Ltd.*, RFR 2019-05, p. 5.

14. Animal containment

RFR of approval for new beef CFO. AO adequately addressed concerns re animal containment. Containment is regulated by Alberta Agriculture and Forestry under the *Stray Animals Act* and therefore is not within AOPA jurisdiction. *Beekman Farms Ltd. & Wessels Farms Ltd.*, RFR 2019-05, p. 5.

15. Dead animal disposal

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. The board “makes no determination” on the RFR concerns regarding dead animal disposal. That activity is regulated directly by Alberta Agriculture “and therefore ... lies outside of the jurisdiction of the NRCB.” *Ibid*, p. 9.

RFRs of registration for a new poultry CFO. *Hutterian Brethren Church of Granum*, RFR 2020-06. RFR applicants’ concerns about dead animal disposal is “without merit”. Board refers to AO explanation that Alberta Ag & Forestry regulates that activity and concurrent regulation by NRCB would be inefficient. *Ibid*, p. 10.

RFR of approval for beef feedlot expansion. AO adequately addressed concerns regarding dead animal disposal. Board notes and implicitly accepts AO’s decision to forego carrying forward municipal condition regarding dead animal disposal. RFR applicant didn’t raise this concern in his statement of concern to the AO. *Sundown Feeders Ltd.*, RFR 2019-04, pp. 7-8.

RFRs of approval for pig CFO expansion. Neighbours’ concerns about dead animal disposal have no merit for the board’s review. Dead animal disposal is “beyond the AOPA mandate” because it is “directly regulated” by Alberta Agriculture and Forestry. *Spruit Farms Ltd.*, RFR 2018-13, p. 6.

RFRs of approval for new feeder swine CFO. RFR concerns regarding “dead animal disposal, potential increase of predators, and animal diseases are matters that fall outside the mandate set out for the Board under AOPA.... The approval officer stated that dead animal disposal and livestock diseases are managed under the *Animal Health Act*. Each of these issues is beyond AOPA’s legislative scope.” *Pigs R Us Inc.*, RFR 2017-11, p. 6.

16. Spread of animal diseases/livestock health

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. Board rejects RFR concerns about risks of avian influenza, because AOPA does not give the NRCB authority to address these risks. *Ibid*, p. 8.

RFR of AO’s denial of a registration for a new dairy CFO. Board grants registration applicant’s RFR to consider MDP issues but denies requests by neighbours to also consider their concerns regarding surface water quality, livestock health, ground water quantity, and property values. *Milk & Honey Dairy Inc.*, RFR 2018-01. These issues do not merit review, based on AO’s consideration of them, the parties’ burden of proof and their rebuttal submissions. *Ibid*, p. 3.

RFRs of approval for new feeder swine CFO. RFR concerns regarding “dead animal disposal, potential increase of predators, and animal diseases are matters that fall outside the mandate set out for the Board under AOPA.... The approval officer stated that dead animal disposal and livestock diseases are managed under the *Animal Health Act*. Each of these issues is beyond AOPA’s legislative scope.” *Pigs R Us Inc.*, RFR 2017-11, p. 6.

RFRs of registration for a new broiler chicken CFO. RFR concerns about road use and animal diseases “have no merit” as “both matters that fall outside the mandate set out for the Board under AOPA. Livestock diseases are managed under the *Animal Health Act*...” *Brad Towle*, RFR 2017-09, p. 4.

17. Traffic and road maintenance, road use agreements

Colony’s RFR of AO denial of colony’s approval application for a new beef CFO (including previously constructed facilities). *Hutterian Brethren Church of Cleardale*, RFR 2022-14. Board grants RFR to consider ambiguities about relation between the setbacks and the CFO exclusion zone in the county’s MDP. *Ibid*, pp. 2-3. Board declines to review DAP’s concerns, in their rebuttals, re the colony’s unauthorized construction, and about odours, traffic, property values, and public notice. AO adequately addressed these concerns. *Ibid*, p. 3.

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. Board rejects RFR concerns about increased road traffic and impact on MD roads. “AOPA does not require that the proponent have a road use agreement in place prior to the approval of a project. This is an issue for the municipality to negotiate with the proponent...” *Ibid*, p. 8.

RFRs of an approval for a CFO conversion (swine to cattle). *Double T Cattle Co. Ltd.*, RFR 2022-08. Board finds that the AO adequately dealt with RFR concerns about increased truck traffic and road deterioration from the proposed CFO. Traffic and municipal infrastructure impacts are addressed through municipal planning. *Ibid*, pp. 7-8.

CFO owner’s request for review of conditions, and grandfathering determination, in an approval for a beef CFO expansion. *John Schooten and Sons Custom Feedyard Ltd.*, RFR 2022-04. Board grants review of condition requiring CFO owner to conduct a “traffic impact assessment” (TIA) and delegating oversight of this process to Vulcan County. Question is whether the owner has already fulfilled the condition. *Ibid*, p. 2. In its review decision, the Board rejects the CFO owner’s request to remove the condition. The AO had authority to require a TIA under AOPA s. 20(1)(b)(i), because it would normally be considered by a municipality when it issued a development permit. *John Schooten and Sons Custom Feedyard Ltd.*, Decision 2022-07, pp. 3-4. And the Board accepts the AO’s position that the condition was warranted because, while not routine, it was requested by the county and Alberta Transportation. The condition also wouldn’t require the county to exceed its own jurisdiction. *Ibid*, pp. 4-5.

RFR of approval for new beef finisher CFO in the MD of Taber. *JBC Cattle Inc.*, RFR 2021-07. AO adequately addressed concerns about increased traffic and road deterioration from the new CFO, in combination with another nearby feedlot. As found by the AO, the CFO was consistent with the MD’s LUB and MDP (no exclusion zones applicable here); it’s awkward for the NRCB to manage road use under AOPA and MD can do so under the *Municipal Government Act*; considering road layout, board isn’t convinced CFO’s road-related impacts would be “beyond those reasonably expected in an agricultural area”; RFR did not provide a “direct link” between CFO-related traffic and impacts on the RFR applicant. *Ibid*, p. 2.

RFRs of approval for a new beef finisher CFO. AOPA doesn't require CFOs to justify their site selection, provided they follow municipal zoning requirements. AO adequately addressed concerns re miscellaneous nuisance impacts, including odours, road dust/noise, flies, and pests. AO cited relevant regulations addressing ongoing nuisance impacts; road is paved; CFO can enter into a road use agreement with MD. *Corner's Pride Farms Ltd.*, RFR 2020-10, pp. 11-12.

Cypress County's RFR of authorization to expand an animal shelter at a multi-species CFO. MDP section setting out road access requirements applies only to new CFOs, not to existing CFOs. *Hutterian Brethren of Murray Lake*, RFR 2020-09. The authorization won't increase animal numbers and therefore won't increase road use. For that reason, and because the MDP access requirement is inapplicable, the board dismisses county's request that the board require the CFO to enter into a road use agreement with the county or to upgrade its haul roads. *Ibid.* Board affirms section 8.9 of the NRCB's Approvals Policy which directs AOs to not include conditions requiring road use agreements. Municipalities have the expertise and jurisdiction to implement and enforce road use agreements. *Ibid.*, p. 4.

RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. "The NRCB has consistently stated that road use agreements are matters outside its regulatory mandate and are matters for Alberta Transportation and municipal government authorities." *Ibid.*, p. 6.

RFRs of approval for expansion of beef CFO. AO adequately addressed RFR concerns regarding family health, quality of life, and traffic safety, by referring the application to Alberta Health, Alberta Transportation, and Kneehill County, none of which raised concerns. "The Board finds that the primary jurisdiction for matters related to family health, quality of life, and traffic safety rests with these authorities, and they raised no issues that merit Board review." *Korova Feeders Ltd.*, RFR 2019-06, p. 4.

RFRs of approval for pig CFO expansion. Neighbours' call for road use agreement to manage traffic impacts lacks merit for review. County had no concerns about traffic or road maintenance, so road use agreement isn't necessary. *Spruit Farms Ltd.*, RFR 2018-13, p. 6.

RFR of approval for dairy CFO expansion. RFR raised concerns about local road use, including road dust. "Construction and maintenance of local roads is a municipal responsibility." Also, the county did not object to the expansion application and the board "generally defers road use issues to the municipality and/or Alberta Transportation." "In this case," the RFR's road use concerns "are not a relevant Board consideration under AOPA." *Faberdale Dairies Ltd.*, RFR 2018-12, p. 3.

RFRs of approval for new sheep CFO. Road maintenance concerns are solely within county's jurisdiction under the *Municipal Government Act*. NRCB can address ongoing nuisance concerns through the NRCB's complaint line and inspections and enforcement action. *Norlin Investments (Norman & Linda Wever)*, RFR 2018-02, p. 6.

RFRs of approval for new feeder swine CFO. "The approval officer applied the NRCB's standing policy not to require road use agreements at the request of municipalities, as such requests are outside of the scope of an AOPA application. The Board is satisfied that the reminder to Pigs R Us 'that it is responsible

under municipal law for complying with any county road use requirements' correctly states the operator's road use obligations." *Pigs R Us Inc.*, RFR 2017-11, p. 6.

RFRs of registration for a new broiler chicken CFO. RFR concerns about road use and animal diseases "have no merit" as "both matters that fall outside the mandate set out for the Board under AOPA.... [R]oad use is a matter that falls under the direct authority of the County." *Brad Towle*, RFR 2017-09, p. 4.

18. Noise (not traffic related)

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. AO adequately addressed nuisance concerns in the RFRs (odour, noise, and insects) by determining that the proposed CFO meets the AOPA MDS requirements. *Ibid*, p. 8.

RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. RFRs of approval for new dairy CFO. *Hutterian Brethren Church of Starland*, RFR 2020-07. AO adequately considered concerns about odours and noise. RFR applicant's residence is 1048 m from the CFO and the Category 1 MDS is 349 m. "MDS is the primary means by which AOPA addresses nuisance odour mitigation from CFO sites to neighbouring residences." *Ibid*, p. 5. Board rejects RFR applicants' proposed condition requiring noise suppressers on dairy barn fans. Suppressors aren't needed given CFO's distance to nearest neighbours. *Ibid*, p. 6.

19. Taxation of CFOs

RFR of approval for dairy CFO expansion. Board declines RFR applicant's call for a land and income tax on the CFO. CFO taxation is not in AOPA or within the NRCB's jurisdiction. *Faberdale Dairies Ltd.*, RFR 2018-12, p. 5.

20. Risks of future expansion

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. Board affirms AO's decision not to consider the colony's future plans, including expanding the CFO and constructing facilities for the colony itself. The AO can only consider the livestock type and numbers, and CFO facilities, in the application, and the non-CFO colony facilities are outside the board's jurisdiction. *Ibid*, p. 7. Board also affirms the AO's decision to forego considering the relative merits of alternative CFO sites proposed by the directly affected parties. AOPA just requires the CFO applicant to show that their proposed site meets AOPA requirements; the applicant is not required to show that it's the best possible site. *Ibid*, p. 7.

RFRs of approval for expansion of beef CFO. RFR concern about future expansion is without merit, as "any future expansion of the Korova CFO would need to be evaluated and assessed against the legislative and regulatory framework in place at the time of the application." In addition, "opportunities to expand would be governed by whatever locational and siting limitations are in place at that time. The Board has no authority to evaluate the likelihood of the success of any future expansion applications." *Korova Feeders Ltd.*, RFR 2019-06, p. 4.

21. Availability of alternative sites

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. Board affirms AO's decision not to consider the colony's future plans, including expanding the CFO and constructing facilities for the colony itself. The AO can only consider the livestock type and numbers, and CFO facilities, in the application, and the non-CFO colony facilities are outside the board's jurisdiction. *Ibid*, p. 7. Board also affirms the AO's decision to forego considering the relative merits of alternative CFO sites proposed by the directly affected parties. AOPA just requires the CFO applicant to show that their proposed site meets AOPA requirements; the applicant is not required to show that it's the best possible site. *Ibid*, p. 7.

22. Miscellaneous factors

RFR of AO decision deleting a condition of a CFO registration for a goat dairy CFO. *Jos and Dorthy Peters*, RFR 2022-15. Board rejects RFR concerns about lack of weed control and validity of the CFO's organic certification. Both issues are beyond the NRCB's jurisdiction under AOPA. *Ibid*, p. 6.

RFRs regarding AO's denial of approval for a new beef cattle CFO. *G&S Cattle Ltd.*, RFR 2022-11. CFO applicant claimed that the AO made an improper "public interest" determination under section 2 of the *NRCB Act*. Board rejects this claim on the ground that s. 2 doesn't apply to AOPA decisions. *Ibid*, p. 9.

RFRs of approval for a new chicken CFO. *Hutterian Brethren of Parkland*, RFR 2022-10. Board rejects RFR concerns about impacts on land values, quality of life, and impact on the Twin Valley Reservoir Recreation Area. "The approval officer determined that the use of this land parcel for a CFO is compliant with the MD's municipal development plan and land use bylaw. Therefore, development of a CFO in this location is an appropriate use of land. The Board has consistently stated that concerns about property values are a land use issue that is best addressed by municipalities through land use provisions in municipal development plans and land use bylaws. The issue of property values has no merit within the context of a review under AOPA." *Ibid*, p. 8.

RFR of AO's denial of permit to convert (and expand) a swine CFO to beef. *Muilwijk*, RFR 2021-02. Board declines to review issue of whether the AO was impartial in rendering his permit decision. But board states: "While the Board takes these assertions seriously, it also notes that the Muilwijks' opportunity to dispute the approval officer's decision under AOPA is satisfied through the Muilwijks' submitted RFR to this Board.... While the Board does not see that a review of Field Services staff conduct will contribute to the Board's consideration of the hearing issues, parties have the opportunity to advance evidence and argument in their submissions that they believe will assist the Board in addressing the reviewable issues." *Ibid*, p. 4.

Board also declines to review issue of whether the AO's treatment of the proposed roller compacted liner for the MSF was inconsistent with another AO's apparent approval of that technology in a previous permit. Board notes that it is "important to the work of the Board that it have the ability to assess each case on its own merits and make a decision that is based on the specific circumstances presented by each applicant. ... [T]he Board confirms that it does not have the jurisdiction to review past decisions.... The Board notes there is no statutory obligation to follow precedence in either approval

officer decisions or board reviews. Having said that, the Board acknowledges and supports stakeholder expectations that the consistent application of AOPA legislation and associated regulations is an important pillar for a respected regulator to uphold. The NRCB strives for and supports transparency, fairness, and consistency in its decision making, and recognizes these principles as foundational in its role as a regulator. The Board applies all of these principles in its commitment to ensure that the statutory requirements of AOPA are met.” *Ibid*, pp. 4-5. [See below for further discussion of precedent issue in review decision.]

Board also declines to review issue of whether the board’s engineering staff followed AEPEGA’s ethics code. “It is not within this Board’s jurisdiction to adjudicate matters referable to and under the jurisdiction of APEGA.” However, the NRCB has a fact sheet addressing how NRCB staff should deal with external engineering consultants and board “expects” Field Services staff to follow this fact sheet. *Ibid*, p. 5.

Following review, board directs the AO to issue the permit (with conditions). *Muilwijk*, Decision 2021-03. Board concluded that a properly installed roller compacted concrete (RCC) could meet hydraulic conductivity requirements for MSF liners, in section 9(6) of the Standards Regulation. In two previous permit proceedings, AOs concluded that RCC met s. 9(6)(c) of the Standards Regulation (RCC was installed in one, but not in the other). Board notes that, while “each application must be reviewed against AOPA’s legislative requirements on its own merit, a balance must be achieved between reliance on precedent and the regulatory pillar of consistency in decision-making.” Must consider the “conditions of a related application” in light of the “particular application” at issue. “Toward this end, as the Board noted in *Sunterra Farms Ltd.* (Decision 2013-02), with any new issue, ‘*care must be taken as the results of the decision will provide some level of guidance for others parties considering or responding to a similar application.*’” *Ibid*, p. 4. Initial AO led applicant to believe that RCC would be approved if it met common conditions for RCC in two prior permits. *Ibid*, pp. 4-7. Applicant provided sufficient evidence that the RCC was constructed (before the permit was issued) according to the conditions in the prior two permits allowing RCC, especially the *Stronks* permit. *Ibid*, pp. 8-10 and 13.

AO correctly concluded that out-of-province residency of company owning and operating a proposed CFO was an irrelevant factor—a “matter outside of AOPA’s mandate.” *Corner’s Pride Farms Ltd.*, RFR 2020-10, p. 6.

RFRs of registration for a new poultry CFO. *Hutterian Brethren Church of Granum*, RFR 2020-06. AO adequately considered RFR applicant’s concerns about CFO’s impact on planes’ ingress/egress to and from a neighbouring air strip. Board cites lack of evidence of impacts in RFR; CFO orientation to air strip; no relevant setbacks in the MDP. *Ibid*, p. 7.

VII. PERMITS - MISC PERMITTING ISSUES

A. Consolidating permits

RFR of amended authorization to modify the dimensions of an existing EMS. Board declines to consider RFR issues that relate to the original authorization. *Lone Pine Hutterian Brethren*, RFR 2021-01, pp. 2-3. AO also correctly concluded that, under AOPA s. 22(2.2), he lacked jurisdiction to reconsider water

quality-related risks associated with the originally approved EMS and that the new dimensions didn't affect or change those risks. *Ibid*, p. 3. AO's consolidation of the original and amended authorizations doesn't change these conclusions. Permit consolidation is a "practical and sensible approach to document management" but "carries no significance beyond a functional convention to provide all parties with a single, comprehensive reference document." *Ibid*, p. 5.

B. Construction deadlines

RFRs of approval for new feeder swine CFO. Permit holder's failure to "proceed with construction" does not show such a "history of non-compliance" as to warrant denying the application. "Permit holders often need to source financing and time construction to meet commodity market fluctuations or personal circumstances. In any event, the history presented does not raise compliance related issues that would suggest an operator will not conform to current standards, or that there is any elevated operational risk potential." Permit includes a construction deadline. *Pigs R Us Inc.*, RFR 2017-11, p. 5.

C. Permit applicants' engineering reports

RFR of AO's denial of permit to convert (and expand) a swine CFO to beef. *Muilwijk*, RFR 2021-02. Board declines to review issue of whether the board's engineering staff followed AEPEGA's ethics code. "It is not within this Board's jurisdiction to adjudicate matters referable to and under the jurisdiction of APEGA." However, the NRCB has a fact sheet addressing how NRCB staff should deal with external engineering consultants and board "expects" Field Services staff to follow this fact sheet. *Ibid*, p. 5.

RFRs of AO's approval of new beef CFO. *P&H Wessels Farms Ltd.*, RFR 2020-05. AO adequately considered RFR concerns about nitrate loading in groundwater. Board rejects claim that CFO applicant's engineer conducted faulty sub-soil testing. Testing occurred before protocol referenced by RFR applicants was published. Testing results were approved by a professional engineer using standardized procedures. *Ibid*, pp. 5-6.

Dairy CFO's RFR of condition in authorization for dairy barn addition. Contested condition required CFO owner to develop a plan to address the environmental risks posed by the existing EMS and to implement the plan once it's approved by the NRCB. EMS scored low on ERST but an engineering report said underlying sand/sandstone layers could allow aquifer contamination. Board granted the RFR, concluding that there was insufficient information to conclude that the EMS posed a "risk to groundwater." *Kramer Dairy Ltd.*, RFR 2019-07, p. 2. Following a written hearing, Board denies Kramer Dairy's request to remove the contested condition. Current EMS poses a potential groundwater risk, given uncontested evidence the sand/sandstone layer below the EMS is a potential water resource, and no evidence of a protective layer between the EMS bottom and the sand/sandstone below. *Kramer Dairy Ltd.*, Decision 2020-02, p. 3. AO hasn't predetermined that the only solution is to build a new EMS. *Ibid*, p. 2.

RFRs of approval for new feeder swine CFO. AO adequately considered and addressed groundwater risks from the proposed manure storage facilities (hog barn and EMS). AO adequately addressed engineering material supplied with a previous application by requiring current engineering stamps for design and construction. *Pigs R Us Inc.*, RFR 2017-11, p. 5.

D. Conditions limiting animal numbers

In review of AO's denial of permit for a CFO expansion, Board directs AO to issue the permit. Board includes condition setting limit on total number of permitted chicken broilers that can be housed at old and new locations, and duration of solid manure storage at old site, while the old location is being decommissioned. *Double H Feeders Ltd.*, Decision 2022-02, p. 19. Approval of new location is also conditioned on applicant abandoning and cancelling municipal permit for the old location. *Ibid.*

RFRs of approval for expansion of beef CFO and deemed capacity determination. Board rejects RFR request for condition limiting CFO to existing animal numbers. AO adequately addressed "requirements related to an increase in the permitted number of livestock. The requirement for the Korova CFO to comply with the permitted occupancy of 20,600 head of beef finishers in the Approval is listed as a condition." *Korova Feeders Ltd.*, RFR 2019-06, pp. 4-5.

E. Location of CFO owner's residence

RFRs of approval for pig CFO expansion. Board dismisses neighbours' concern that CFO owner doesn't live on site. AOPA doesn't require a CFO owner to live on-site. However, the board notes that it "always encourages positive communication between CFO operators and those parties who may be affected by their operation. While such communication is not a regulatory requirement, there are obvious benefits to be had from ongoing positive communication." *Spruit Farms Ltd.*, RFR 2018-13, p. 7.

F. Depopulation/manure removal if compliance not achieved by date certain

CFO operator's RFR of approval for beef CFO expansion with a natural catchment area. RFR requested removal of several conditions, including one requiring operator to depopulate the CFO (and remove all manure), or to obtain a permit for an alternate runoff control system, by December 1, 2024, if the soil sampling showed continued nitrogen or electrical conductivity exceedances by October 1, 2024. Board grants the RFR on this condition, based on AO's lack of explanation for the December 1, 2024 compliance date. Board requires operator to submit a new nutrient management plan, and sets several parameters for the plan's contents, after which the board will hold an oral hearing. *Stronks Feedlot Ltd.*, RFR 2019-02, p. 4. Following its review hearing, board directs AO to amend the condition to specify additional soil testing parameters; and essentially provide a more flexible approach to setting compliance deadlines if soil testing shows continued exceedances. *Stronks Feedlot Ltd.*, Decision 2019-03, pp. 2-3.

G. Flexible conditions¹

RFR of AO amendment for beef CFO. AO amendment included a condition requiring CFO operator to maintain an NRCB-approved dust control plan, which the NRCB could amend from time to time. "The Board finds this issue does not warrant review by the Board, as ongoing compliance with the dust

¹ The term "flexible condition" refers to a permit condition with a requirement that is written so as to enable an approval officer to change the requirement without issuing a formal permit amendment. An example of a "flexible condition" is a condition setting a construction deadline but stating that an approval officer "may extend the deadline, in writing."

control plan is a matter for the NRCB's Compliance Division." *Nelson Family Ranches Ltd.*, RFR 2019-01, p. 3.

H. Municipalities' participation in AOPA permitting – general

CFO owner's request for review of conditions, and grandfathering determination, in an approval for a beef CFO expansion. *John Schooten and Sons Custom Feedyard Ltd.*, RFR 2022-04. Board grants review of condition requiring CFO owner to conduct a "traffic impact assessment" (TIA) and delegating oversight of this process to Vulcan County. Question is whether the owner has already fulfilled the condition. *Ibid*, p. 2. In its review decision, the Board rejects the CFO owner's request to remove the condition. The AO had authority to require a TIA under AOPA s. 20(1)(b)(i), because it would normally be considered by a municipality when it issued a development permit. *John Schooten and Sons Custom Feedyard Ltd.*, Decision 2022-07, pp. 3-4. And the Board accepts the AO's position that the condition was warranted because, while not routine, it was requested by the county and Alberta Transportation. The condition also wouldn't require the county to exceed its own jurisdiction. *Ibid*, pp. 4-5.

RFRs, including one from Lac Ste. Anne County, of approval for new feeder swine CFO. Before addressing county's specific RFR issues, board notes that the county was "relatively inactive" during the AO's process. County provided information but did not object until it submitted an RFR. *Pigs R Us Inc.*, RFR 2017-11, p. 5.

I. Deleting or amending municipal permit conditions

CFO owner's request for review of conditions, and grandfathering determination, in an approval for a beef CFO expansion. *John Schooten and Sons Custom Feedyard Ltd.*, RFR 2022-04. Board grants review of condition, carried over from the county permit, requiring the CFO owner to submit soil testing records of manure spreading lands every October. Question is whether the date could be moved to December. *Ibid*, p. 3. In its review decision, the Board accepts the CFO owner's request to change the reporting month because, although this change wasn't part of the CFO owner's permit application, no party opposed this requested change. *John Schooten and Sons Custom Feedyard Ltd.*, Decision 2022-07, pp. 5-6.

Review of AO's denial of permit for a CFO expansion. Board accepts AO's position that municipal development permit conditions re land base and spreading on frozen ground are redundant of AOPA requirements, so those conditions can be removed. On the other hand, the Board retains municipal condition requiring incorporation within 48 hours (even though the applicant wishes to apply manure without incorporation to direct seeded crops), because the applicant didn't ask for that condition to be removed in its permit application. *Double H Feeders Ltd.*, Decision 2022-02, pp. 15-17. Double H may apply for a permit amendment to remove this condition, but the board concludes that it should continue to apply on the quarter section where the old CFO is located because of its proximity to the Town of Coaldale. *Ibid*, p. 19.

J. Deleting or amending conditions that are more stringent than AOPA requirements

RFR of AO decision deleting a condition of a CFO registration for a goat dairy CFO. *Jos and Dorothy Peters*, RFR 2022-15. Condition #4 apparently precluded manure spreading on two named fields. The Board affirms the AO's deletion of this condition. The condition was stricter than AOPA requirements and NRCB policy (part 9.4) allows AOs to delete more stringent conditions. The CFO operators have gained knowledge over the years about manure management; there's a 60 m setback to the lake; and the RFR applicants haven't shown how they'll be directly affected by removal of the condition. *Ibid*, pp. 4-5.

K. CFOs' and AO's relationships with concerned neighbours

In considering DAPs' concerns about nuisance impacts, the Board "accepts the operator's request for neighbours to 'let [him] know' if they have concerns and that 'if there's something that [Double H Feeders] can do to mitigate [the concern] . . . [it] will definitely do it'". *Double H Feeders Ltd.*, Decision 2022-02, p. 13.

RFRs of approval for pig CFO expansion. Board dismisses neighbours' concern that CFO owner doesn't live on site. AOPA doesn't require a CFO owner to live on-site. However, the board notes that it "always encourages positive communication between CFO operators and those parties who may be affected by their operation. While such communication is not a regulatory requirement, there are obvious benefits to be had from ongoing positive communication." *Spruit Farms Ltd.*, RFR 2018-13, p. 7.

RFR of approval for new mixed-species CFO. AO adequately addressed whether manure applied to certain lands would runoff through drainage course into Lake McGregor, without needing to accept neighbour's invite to visit the drainage course in person. *Silver Winds Hutterian Brethren*, RFR 2018-08, pp. 2-3. That said, the "review process would have benefited" from the AO accepting the neighbour's offer. "Had the approval officer met with Mr. McIntyre, he would have had the opportunity to have a candid discussion about the scope of his mandate as an approval officer, the regulatory provisions that exist to protect surface water from land spreading activities, and the role of the NRCB compliance group in investigating any concerns raised. The Board believes there is merit in the approval officer reaching out and offering to meet with Mr. McIntyre once Mr. McIntyre has had the opportunity to review this decision. Such a meeting could also include an NRCB inspector, who could discuss the compliance responsibilities of the NRCB in relation to land spreading." *Ibid*

L. Abandoned CFOs

RFR of Inspector decision that feedlot was grandfathered with 35,000 beef finishers. Board dismisses claim that CFO was abandoned due to disuse from April 2017 – Fall 2019. CFO operator was discussing purchase/sale of feedlot with another party during that time and had intended to start CFO back up again. *Rimrock Feeders Ltd.*, RFR 2020-08, p. 2.

In RFRs of grandfathering determination, board lacks authority to consider RFR applicants' claim that the CFO was abandoned after January 1, 2002. The applicants did not raise abandonment issue in their submissions to the inspector making the grandfathering decision and the inspector didn't address the

issue in his decision. Board nevertheless encourages Field Services to now address the issue. *Stant Enterprises Ltd.*, RFR 2020-04, p. 4.

M. Seasonal Feeding and Bedding Sites (SFBSs)

CFO owner's RFR of conditions in an approval for a new beef CFO. *Tateson Ranching Ltd.*, RFR 2022-13. One of the challenged conditions requires a manure control/management plan for manure runoff from the cow-calf site. RFR claimed this was an inappropriate linkage of a SFBS with the CFO and the SFBS meets the applicable regulations. Board rejects this claim because of the close proximity of the SFBS to the CFO, the likelihood that SFBS runoff will affect the feedlot pens, the proximity of all facilities to the irrigation drain and Scott's Lake, and AOs' runoff control authority under s. 6 of the Standards Regulation, with respect to CFO runoff. *Ibid*, pp. 4-5. Board notes that the cow-calf (SFBS) facilities could be considered "adjacent" to the CFO facilities, but there's no evidence in the Decision Summary that the SFBS "meets all of the required factors outlined in Table 1" of, or should be exempted from, the NRCB's SFBS Policy (2015-2: Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites". Board does not order any remedy on this issue. *Ibid*, p. 7.

N. Miscellaneous conditions

CFO owner's request for review of conditions, and grandfathering determination, in an approval for a beef CFO expansion. *John Schooten and Sons Custom Feedyard Ltd.*, RFR 2022-04. Board grants review of condition requiring CFO owner to conduct a "traffic impact assessment" (TIA) and delegating oversight of this process to Vulcan County. Question is whether the owner has already fulfilled the condition. *Ibid*, p. 2. In its review decision, the Board rejects the CFO owner's request to remove the condition. The AO had authority to require a TIA under AOPA s. 20(1)(b)(i), because it would normally be considered by a municipality when it issued a development permit. *John Schooten and Sons Custom Feedyard Ltd.*, Decision 2022-07, pp. 3-4. And the Board accepts the AO's position that the condition was warranted because, while not routine, it was requested by the county and Alberta Transportation. The condition also wouldn't require the county to exceed its own jurisdiction. *Ibid*, pp. 4-5.

In review of AO's denial of permit for a CFO expansion, Board directs AO to issue the permit. Board includes condition setting limit on total number of permitted chicken broilers that can be housed at old and new locations, and duration of solid manure storage at old site, while the old location is being decommissioned. *Double H Feeders Ltd.*, Decision 2022-02, p. 19. Approval of new location is also conditioned on applicant abandoning and cancelling municipal permit for the old location. *Ibid*.

RFRs of approval for a new beef finisher CFO. Board cautions that permit conditions can't contravene AOPA or associated regulations. *Corner's Pride Farms Ltd.*, RFR 2020-10, pp. 11-12.

VIII. ENFORCEMENT

A. Enforcement orders – misc.

RFR of enforcement order to owners of beef cattle CFO in Vulcan County. *John Schooten and Sons Custom Feedyard Ltd. et al.*, RFR 2021-08. Inspector's issuance of the enforcement order wasn't warranted. Unclear whether the Mossleigh feedlot was exceeding its municipal permitted capacity because of uncertainty whether that permit set a limit on number of feeders or finishers. *Ibid*, p. 6. The order's requirements could be achieved through other, less heavy-handed means. AOPA s. 30(2)(d) allows inspectors to ask for periodic reports of CFOs' livestock numbers. *Ibid*, p. 6. Inspectors can make presumptions about a CFO's grandfathered status and give the CFO owner a reasonable time to say whether they agree with the inspector's presumption. If the owner agrees, inspector may not need to make a formal grandfathering decision at that time. *Ibid*, p. 8. Field Services should make a grandfathering determination promptly. *Ibid*, pp. 8-9.

B. Unauthorized Construction

Review of AO's denial of permit to convert (and expand) a swine CFO to beef. *Muilwijk*, Decision 2021-03. Hearing addressed whether CFO's proposed use of roller compacted concrete as liner for several pens and a shelter met AOPA requirements. CFO had already installed the RCC liner. "While on-going compliance and enforcement issues relating to this file are not in front of the Board in this hearing, the Board cannot overstate the importance to operators, including the Muilwijks, of obtaining a permit prior to constructing facilities regulated under AOPA." *Ibid*, p. 3. "Mr. Muilwijk's decision to install the RCC liner without a permit was inappropriate. Unpermitted construction is not acceptable to the Board." But board notes applicant's expectation that he'd receive a permit if he complied with conditions in prior permits for the same roller compacted concrete liner technology. *Ibid*, p. 18.

Board review of permit condition requiring CFO to assess environmental risks posed by its existing EMS. Permit allowed CFO to construct a barn addition and calf lean-to. CFO's submission referred to EMS modifications done in 2003, but Board notes lack of any "filings related to this" modification. Board then "reminds" CFO that "modifications to an EMS are subject to approval and inspection under AOPA." *Kramer Dairy Ltd.*, Decision 2020-02, p. 2.

RFR of approval for beef feedlot expansion. AO reasonably concluded that the CFO lost grandfathered status for the county-permitted catchment area due to unauthorized post-2002 excavation of part of the area's liner. AO also reasonably concluded that the CFO should decommission the catchment area and construct a new catch basin that meets AOPA requirements. *Sundown Feeders Ltd.*, RFR 2019-04, pp. 5-6.

C. Fly control

RFRs of approval for pig CFO expansion. AO adequately considered neighbours' concerns about diseases to animals and humans from CFO's flies. NRCB manages flies "as a compliance matter," through AOPA regulations requiring CFOs to use reasonable fly control measures. *Spruit Farms Ltd.*, RFR 2018-13, pp. 5-6.

D. Compliance roles/responsibilities

RFR of AO decision deleting a condition of a CFO registration for a goat dairy CFO. Jos and Dorthy Peters, RFR 2022-15. Board rejects RFR concern that the NRCB has relied on the complaint line to address alleged instances of non-compliance at the CFO. Board reviews non-compliance record and concludes that the instances have all been adequately dealt with by NRCB's inspectors. "Responding to complaints about an operation is a priority for the NRCB to ensure that operators comply with terms of their permits and AOPA requirements. The Board finds that compliance action taken at the Peters' operation was appropriate and timely. The Board does expect that the Peters will work diligently to follow all conditions imposed within the permit and respect all AOPA requirements." *Ibid*, pp. 5-6.

RFR of approval for new mixed-species CFO. AO adequately addressed whether manure applied to certain lands would runoff through drainage course into Lake McGregor, without needing to accept neighbour's invite to visit the drainage course in person. *Silver Winds Hutterian Brethren*, RFR 2018-08, pp. 2-3. Board notes role of NRCB inspectors in ensuring that ongoing CFOs comply with regulatory requirements, including manure spreading restrictions including those relating to slope. *Ibid*, p. 3.

E. Authority to inspect and collect records

RFR of enforcement order to owners of beef cattle CFO in Vulcan County. *John Schooten and Sons Custom Feedyard Ltd. et al.*, RFR 2021-08. Inspector's issuance of the enforcement order wasn't warranted, in part, because the order's requirements could be achieved through other, less heavy-handed means. AOPA s. 30(2)(d) allows inspectors to ask for periodic reports of CFOs' livestock numbers. *Ibid*, p. 6.

Staff Decision #	CFO (MD)	RFR	RFR decision date	Merits	Merits decision date	MD/County
RA16006XB	Jos & Dorothy Peters	2022-15	6-Dec-22	N/A	N/A	Wetaskiwin Cty
FA21002	Hutterian Brethren of Cleardale	2022-14	15-Nov-22	2022-16	19-Dec-22	Clear Hills Cty
LA21057	Tateson Ranching Ltd.	2022-13	1-Nov-22	N/A	N/A	Newell Cty
RA21030	McKelvie	2022-12	26-Oct-22	N/A	N/A	Ponoka Cty
RA21045	G&S Cattle	2022-11	21-Oct-22	N/A	N/A	Wetaskiwin (No. 10)
LA22029	Hutterian Brethren of Parkland	2022-10	13-Oct-22	N/A	N/A	Willow Creek
LA21037	A&D Cattle Ltd.	2022-06	10-May-22	2022-09	27-Jul-22	Willow Creek
RA21043	Double T Cattle Co. Ltd.	2022-08	24-Jun-22	N/A	N/A	Ponoka Cty
LA21053	John Schooten and Sons Custom Feedyard Ltd.	2022-04	26-Apr-22	2022-07	6-Jun-22	Vulcan Cty
RA22002	R&T Penner Farms Ltd.	2022-03	4-Apr-22	2022-05	9-May-22	Camrose Cty
LA21033	Double H Feeders Ltd.	2022-01	7-Jan-22	2022-02	17-Mar-22	Lethbridge Cty
EO 21-01	John Schooten and Sons Custom Feedyard Ltd.	2021-08	3-Nov-21	N/A	N/A	Vulcan Cty
LA21018	JBC Cattle Inc.	2021-07	13-Oct-21	N/A	N/A	Taber MD
BA20002	Alieda Farms Ltd.	2021-06	12-Oct-21	N/A	N/A	Leduc County
LA21011	Little Bow Colony	2021-04	9-Jun-21	2021-05	20-Jul-21	Vulcan Cty
LA19036	Muilwijks	2021-02	24-Feb-21	2021-03	25-May-21	Willow Creek
RA20029A	Lone Pine Colony	2021-01	11-Feb-21	N/A	N/A	Stettler No. 6 Cty
RA20041	Manna Farms Ltd.	2020-11	17 Dec. 20	N/A	N/A	Camrose Cty
LA19032	Corner's Pride Farms Ltd.	2020-10	15-Dec-20	N/A	N/A	Lethbridge Cty
LA20035	Murray Lake Colony	2020-09	13-Nov-20	N/A	N/A	Cypress Cty
PL20001	Rimrock Feeders Ltd.	2020-08	13-Nov-20	N/A	N/A	Foothills MD
RA20032	Starland Colony	2020-07	27-Oct-20	N/A	N/A	Starland Cty
LA20014	Granum Colony	2020-06	9-Oct-20	N/A	N/A	Willow Creek
LA20001	P & H Wessels Farms Ltd.	2020-05	9-Jul-20	N/A	N/A	Willow Creek
PR19005	Stant Enterprises Ltd.	2020-04	2-Jun-20	N/A	N/A	Clearwater Cty
FA19003	1577912 (Hines Creek Farms)	2020-01	10-Mar-20	2020-03	23-Apr-20	Clear Hills Cty
RA19016	Kramer Dairy Ltd.	RFR 2019-07	17-Dec-19	2020-02	26-Mar-20	Ponoka Cty
RA19010	Korova Feeders Ltd.	RFR 2019-06	3-Oct-19	N/A	N/A	Kneehill Cty
LA19004	Beekman Farms/Wessells Farms	RFR 2019-05	3-Sep-19	N/A	N/A	Willow Creek
LA19017	Sundown Feeders	RFR 2019-04	13-Aug-19	N/A	N/A	Lethbridge Cty
LA18053	Stronks Feedlot Ltd.	RFR 2019-02	22-Feb-19	2019-03	10-May-19	Lethbridge Cty
LA18058A	Nelson Family Ranches	RFR 2019-01	18-Jan-19	RFR withdrawn before merits hearing		Lethbridge Cty
RA18037	Spruit Farms	RFR 2018-13	11-Dec-18	N/A	N/A	Stettler Cty (No. 6)
RA 18050	Faberdale Dairies	RFR 2018-12	4-Oct-18	N/A	N/A	Lacombe Cty
RA18016	500016 AB Ltd.	RFR 2018-11	21-Sep-18	N/A	N/A	Ponoka Cty
RA17058	Vermeer Dairy (Camrose Cty)	RFR 2018-10	12-Sep-18	RFR 2018-10	12-Sep-18	Camrose Cty
	Silver Winds Colony	RFR 2018-08	18-Jul-18	N/A	N/A	Vulcan Cty
LA16046	Summerland Colony	RFR 2018-05	21-Mar-18	N/A	N/A	Vulcan Cty
RA17047	HE Livestock Inc.	RFR 2018-03	31-Jan-18	N/A	N/A	Ponoka Cty
LA17041	Norlin Investments	RFR 2018-02	17-Jan-18	2018-06	24-Apr-18	Cypress Cty
RA17042	Milk & Honey Dairy	RFR 2018-01	11-Jan-18	2018-04	7-Mar-18	Ponoka Cty
BA17002	Pigs R Us Inc.	RFR 2017-11	6-Dec-17	N/A	N/A	Lac Ste. Anne Cty
RA16039	Fuhrhop Farms Ltd.	RFR 2017-10	7-Nov-17	N/A	N/A	Wetaskiwin Cty
RA17040	Brad Towle	RFR 2017-09	11-Oct-17	N/A	N/A	Red Deer Cty
FA17001	Danny Friesen/Tara Warkentin	RFR 2017-07	19-Jul-17	2017-08	14-Aug-17	Mackenzie Cty
RA16062	Northwest Poultry Farms Ltd.	RFR 2017-06	13-Jun-17	N/A	N/A	Ponoka Cty