CONFINED FEEDING OPERATIONS AND MUNICIPAL PLANNING

PURPOSE

Confined feeding operation legislation and planning is of critical interest to most municipal districts, specialized municipalities and special areas. It is also of importance to urban municipalities which may be impacted by agricultural development in an adjacent rural municipality or which have agricultural land within their boundaries.

On January 2, 2002, the Natural Resources Conservation Board (NRCB) assumed responsibility for the approval of new confined feeding operations and expansions of existing confined feeding operations, the monitoring of new and existing operations, and the enforcement of provincial standards. Municipalities became referral agents in the NRCB decision process and were given intervener status.

This bulletin has been prepared in response to a number of queries that Municipal Affairs has received. It provides information in support of effective municipal participation in the NRCB decision process with the goal of ensuring that municipal practices compliment those of the NRCB. Specifically, the bulletin:

- Stresses the importance of having a current municipal development plan.
- Encourages considering the review and revision of municipal development plans.
- Makes suggestions relating to the approach to and nature of agricultural development policies within a municipal development plan.
- Encourages considering a review and update of municipal land use bylaws.
- Discusses the nature of municipal recommendations to the NRCB, and
- Briefly addresses enforcement issues.

This bulletin complements Information Bulletin 04/02 (May 2002), which outlines related consequential amendments to the Municipal Government Act.
BACKGROUND

Planning in Alberta’s municipalities seeks to ensure a compatible mix of land uses, to contribute to the wise use and conservation of resources, and to mitigate land use conflicts. In particular, rural and agricultural planning seeks to preserve flexibility over a wide range of land use options, thereby allowing agriculture to respond to changing economic and management conditions.

Municipalities have, over many years, addressed confined feeding issues pursuant to the land use planning powers provided in the Municipal Government Act (MGA); municipal policies have been stated in municipal development plans and land use bylaws. Operators have been required to obtain development permits and comply with related conditions in a number of municipalities.

Amendments to the Agricultural Operation Practices Act (AOPA), the three new regulations passed pursuant to that act, and the consequential amendments to the MGA have created a new jurisdictional framework:

- The NRCB assumed responsibility for the approval of new and expanding confined feeding operations. Proponents/operators are required to submit applications to the NRCB for either “approval” or “registration” if the proposed operation is above the minimum size threshold established in the regulation. In addition, “authorizations” are required for certain manure storage facilities.
- The NRCB notifies the “host” municipality and any affected neighboring municipalities of any application for approval or registration as soon as the application is disclosed. The NRCB encourages these municipalities to submit recommendations and to participate in the decision making process.
- The NRCB monitors confined feeding operations to ensure that operators adhere to the standards contained in the regulations and addresses any concerns raised by other parties.

THE IMPORTANCE OF THE MUNICIPAL DEVELOPMENT PLAN

The MGA requires that all municipalities with a population of 3,500 adopt a municipal development plan, and encourages other municipalities to adopt such a plan as well. The content of a municipal development plan is a critical component of the new NRCB confined feeding decision process. A proposal that complies with the provisions of the municipal development plan may be approved by an NRCB approval officer; it will therefore likely benefit from a relatively timely approval. However, a proposal that is contrary to the municipal development plan must be denied by an approval officer. The proponent may then request the Board to review the decision. In such a case, the Board must have regard for, but is not bound by, the provisions of a municipal development plan. The same holds true if a directly affected neighbour opposed to a proposed development seeks a Board review of an approval. In these situations the comprehensiveness and clarity of the municipal planning policies and the municipal recommendations will be a key factor in the Board’s conclusions.
THE MUNICIPAL DEVELOPMENT PLAN AND AGRICULTURE

The municipal development plan is an excellent tool for a municipality to use to set out its agricultural land use and planning policies. The MGA requires that a municipal development plan address, among other matters:

- The future land use within the municipality, and
- The manner of and the proposals for future development.

These mandatory contents provide the basis for a municipality to prepare a municipal development plan section on agricultural land use, including specific reference to confined feeding operations. The need for an agricultural planning policy is further supported by the Land Use Policies, enacted by the Lieutenant Governor in Council in 1996 as a direction to municipalities, which include the following statement:

Municipalities are encouraged to identify...areas where agricultural activities, including extensive and intensive agricultural and associated activities, should be a primary land use.

PREPARING AND REVIEWING MUNICIPAL DEVELOPMENT PLANS

Municipalities that may be faced with confined feeding operation applications may wish to review the current municipal development plan and make any changes necessary to ensure that the agricultural development policies provide a sound basis for recommendations to the NRCB. The preparation and regular updating of a municipal development plan provides an opportunity for a municipality to think about its future in relation to current trends, to identify goals and objectives, and to develop and/or revise policy and implementation strategies. Municipalities likely to be the subject of confined feeding operation applications, but without a municipal development plan, may wish to consider the adoption of such a statutory plan.

In reviewing or preparing agricultural development policies a municipality may wish to address the task in two parts; the preparation of a policy background statement, followed by the establishment of the policies.

The Policy Background Statement might include:

- A vision statement regarding the role of agriculture in the municipality.
- An outline of the agricultural trends affecting the municipality, including an indication of the types of commodities that are being produced and any new production practices.
- A statement of the land use planning goals for agriculture.
- A description of the situation with regard to the potential growth of confined feeding operations and other agricultural development in the area, and an analysis of the possible impact of the expected growth.
- The valued aspects of life in the municipality that may be impacted by continued development of confined feeding operations.
A review of the existing agricultural planning policies and a description of any potential adjustments or additions.

Specifically, the Agricultural Development Policies might include:
- A description of the areas and locations where confined feeding operations are generally an acceptable land use, including any limits or restrictions that should be placed on the size of operations in various areas.
- A description of the areas and locations where the presence of confined feeding operations is likely to have negative impacts and therefore would not be a suitable land use.
- A description of any mitigation that the municipality would generally advise the NRCB to consider in conjunction with an approval of a confined feeding operation, including any related to nutrient management and manure storage.

The Agricultural Development Policies should be based on, among other matters:
- The settlement pattern, including the location of existing residences, institutional land uses, transportation routes, and existing confined feeding operations.
- The future land uses as identified in the municipal development plan with specific reference to the location of existing and future urban and country residential communities.
- The location of nearby towns, villages and summer villages and their existing development characteristics and growth patterns.
- The nature and characteristics of local watersheds, including lakes, streams, wetlands and groundwater.
- The nature of local air quality issues, if any.
- Local transportation planning needs.
- The development constraints identified in the municipal development plan.
- The availability of water for livestock and the availability of land for manure application; any relevant characteristics of manure storage and disposal.

All plan preparation and review should be carried out with a high level of local consultation and participation in keeping with the provisions of the MGA and the Land Use Policies.

Municipal development plan provisions are intended to be strategic in nature, and should not resemble the traditional regulatory contents of a land use bylaw or focus on specific development standards. Furthermore, policies should not conflict with matters now within NRCB jurisdiction. Any duplication or overlap could make it confusing when proponents prepare applications and when neighbours try to constructively raise concerns.
REVIEWING/REVISING LAND USE BYLAWS

Municipalities should consider reviewing their land use bylaws with a view to removing any provisions that overlap with or were made redundant by the amendments to the Agricultural Operations Practices Act (AOPA), if they have not already done so. If a confined feeding operation or a manure storage facility has received or is required to obtain an approval or registration or authorization from the NRCB, a municipality no longer has the authority to require development approval for the operation or facility (section 618.1 of the MGA). A detailed review of definitions and permitted and discretionary uses in all districts, as well as standards and provisions specifically related to confined feeding operations (intensive livestock), including any reference to the Code of Practice for the Safe and Economic Handling of Manure, will contribute to a land use bylaw which is consistent with AOPA as well as the MGA.

The AOPA does not, however, limit municipal jurisdiction regarding confined feeding operations that are not regulated by the NRCB; municipalities should therefore ensure that the land use bylaw addresses these smaller operations as locally appropriate.

The MGA does not limit municipal authority in the area of subdivision approval, even if a parcel is being proposed for subdivision in anticipation of or as an outcome of an NRCB approval or registration. The intention is that any subdivision decision involving a confined feeding operation would complement an NRCB decision. Municipal authority for subdivision approval allows for standard and appropriate subdivision conditions to be applied.

PRESENTING RECOMMENDATIONS TO THE NRCB

The NRCB refers all applications for approval or registration to the host municipality and to any nearby municipalities. In making a submission to the NRCB a municipality should provide the following:

- A statement as to whether the proposal is, or is not, consistent with the provisions of the municipal development plan and, if the proposal is not consistent, an explanation of the inconsistencies. The relevant municipal development plan policies should be identified and their rationale explained. Municipalities may wish to forward a copy of the entire municipal development plan or the relevant sections to the NRCB.
- If the application is inconsistent with the plan the possible consequences of an approval should be explained.
- Any approval conditions the host municipality believes would be appropriate, including those relating to municipal service provision, and an explanation of the reasons for the conditions, should be provided. Those conditions requiring municipal implementation may result in the NRCB requiring agreements between the proponent and the municipality.
A municipality that has not adopted a municipal development plan should still make its position on a confined feeding operation application known to the NRCB. Recommendations should be based on sound planning principles, on the current and expected land use pattern, and on site-specific local knowledge.

**EXISTING MUNICIPAL APPROVALS - CONDITIONS**

Enforcement of the conditions a municipality may have attached to a development permit for an intensive livestock or confined feeding operation prior to January 1, 2002, now falls within NRCB jurisdiction. The provisions contained in the AOPA were intended to transfer enforcement responsibilities to the NRCB, which has a wide variety of approaches, tools and remedies available. Any questions regarding responsibility in the enforcement area should be addressed with the NRCB.