



Agricultural Land Commission
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Burnaby, British Columbia V5G 4K6
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www.alc.gov.bc.ca

October 31, 2016

ALC File: 53982

Luminary Holding Corp.
Box 1101
Ferne, BC V0B 1M0

Dear Mr. Dunn:

Re: Reconsideration of original application to Conduct a Non-Farm Use in the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution #361/2016) as it relates to the above noted application. As agent, it is your responsibility to notify your client accordingly. A sketch plan depicting the decision has been attached.

Reconsideration of a Decision as Directed by the ALC Chair

Please note that pursuant to [s. 33.1 of the *Agricultural Land Commission Act*](#), the Chair may direct the executive committee to reconsider any panel decision if, within 60 days from the date of this decision, he considers that the decision may not fulfill the purposes of the commission as set out in s. 6, or does not adequately take into consideration s. 4.3.

You will be notified in writing if the Executive Committee is directed to reconsider your decision. The Commission advises you to take this 60 day period into consideration prior to proceeding with any actions upon this decision.

Reconsideration of a Decision by an Affected Person

We draw your attention to [s. 33\(1\) of the *Agricultural Land Commission Act*](#) which provides a person affected the opportunity to submit a request for reconsideration.

- 33(1) On the written request of a person affected or on the commission's own initiative, the commission may reconsider a decision of the commission under this Act and may confirm, reverse or vary it if the commission determines that:
- (a) evidence not available at the time of the original decision has become available,
 - (b) all or part of the original decision was based on evidence that was in error or was false.

For further clarity, s. 33.1 and s. 33(1) are separate and independent sections of the *Agricultural Land Commission Act*.

Further correspondence with respect to this application is to be directed to Riccardo Peggi at Riccardo.Peggi@gov.bc.ca.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read 'Riccardo Peggi', written in a cursive style.

Riccardo Peggi, Land Use Planner

Enclosures: Reasons for Decision (Resolution #361/2016)
Sketch plan

cc: Regional District of East Kootenay (File: P714 114)
Richard Haworth (Haworth Development Consulting)

53982d3



AGRICULTURAL LAND COMMISSION FILE 53982

RECONSIDERATION OF PANEL DECISION REASONS FOR DECISION OF THE KOOTENAY PANEL

Application was submitted pursuant to s. 20(3) of the *Agricultural Land Commission Act*

Request for Reconsideration submitted pursuant to s. 33(1) of the *Agricultural Land Commission Act*

Applicant: Luminary Holding Corporation

**Agent: Kevin Dunn,
President of Luminary Holding
Corporation**

**Application before the Kootenay Regional Panel: Sharon Mielnichuk, Panel Chair
Harvey Bombardier**

THE APPLICATION

[1] The legal description of the property involved in the application is:

Parcel Identifier: 007-679-343

Lot 1, District Lot 363, Kootenay District, Plan 4042

(the "Property")

[2] The Property is 56.3 ha in area.

[3] The Property is generally located on Lladner Creek Forest Service Road near Hosmer.

[4] The Property is located within a designated agricultural land reserve ("ALR") as defined in section 1 of the *Agricultural Land Commission Act* (the "ALCA").

[5] The Property is located within Zone 2 as defined in subsection 4.2 of the ALCA.

[6] Pursuant to s. 20(3) of the ALCA, the Applicant is applying to construct a retreat centre. The proposed retreat centre is intended to be two storeys tall with an approximate footprint of 675 – 745 m². The retreat centre would also include space for communal dining, meetings, and other recreational activities. A second structure is proposed in close proximity to the principal building for the purpose of storing equipment and house back-up power systems. In addition, the Applicant intends to construct an access driveway, small parking lot and septic fields. The Applicant also plans to fence off the structures from the remainder of the property which will continue to be leased for seasonal cattle grazing, as well as to have growing areas for fruit and vegetable production to subsidize food supply for guests in the lodge (the "Proposal"). The Proposal along with supporting documentation is collectively the application (the "Application").

[7] By Resolution #460/2015, dated December 15, 2015, the Kootenay Panel refused the Proposal (the "Original Decision"). In reaching its decision, the Kootenay Panel concluded:

The Panel finds that the property has agricultural capability ratings consistent with surrounding areas also in the ALR, and due to its size and circumstances, has

agricultural suitability and potential. Placing an expensive, non-agricultural building on the Property will only hinder its potential agricultural use in the future. Thus, the Panel believes that the proposed non-farm use would have an adverse impact on the agricultural future of the property.

The Panel also considers it important to stress that while the Property possesses a lower agricultural capability rating, it nonetheless possesses agricultural utility. For instance, the Property could be used for a variety of agricultural activities such as a hobby farm, a smaller commercial based farming operation and for non-soil bound agricultural pursuits. The Panel believes the latter is often lost in the discussion of what constitutes legitimate agriculture.

[8] On April 12, 2016, the Agricultural Land Commission (the “Commission”) received the Applicant’s *Request for Reconsideration* of Resolution #460/2015.

RELEVANT STATUTORY PROVISIONS

[9] The reconsideration request was submitted pursuant to s. 33 of the *ALCA* which states:

33(1) On the written request of a person affected or on the commission's own initiative, the commission may reconsider a decision of the commission under this Act and may confirm, reverse or vary it if the commission determines that:

- (a) evidence not available at the time of the original decision has become available,
- (b) all or part of the original decision was based on evidence that was in error or was false.

[10] The purposes of the commission set out in s. 6 of the *ALCA* are as follows:

6 The following are the purposes of the commission:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest; and

- (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

DELEGATION TO EXECUTIVE COMMITTEE

[11] On October 29, 2014, the Agricultural Land Commission met and by Resolution #029N/2014 decided to delegate certain reconsideration requests to the Executive Committee. The following is an excerpt from the resolution:

- A. The Agricultural Land Commission (the Commission) may, pursuant to s. 10(3) of the *Agricultural Land Commission Act*, S.B.C. 2002, c. 36, as amended (*ALCA*), delegate any of the Commission's functions to the Executive Committee.
- B. The Executive Committee is a standing committee of the Commission established under s. 10(1) of the *ALCA*, consisting of the Commission Chair and Vice Chairs.
- C. The Commission considers that it is necessary, cost effective and desirable to delegate to the Executive Committee the Commission's power to decide under s. 33 whether to reconsider an application decision made by a regional panel (following which, if the decision is to reconsider, the Commission Chair must under s. 11.1(3) of the *ALCA* refer the matter to the regional panel who made the decision).
- D. The Commission considers that it is necessary, cost effective and desirable to delegate to the Executive Committee the Commission's power to:
 - (a) decide under s. 33 whether to reconsider a decision made prior to September 5, 2014 (transitional application); and
 - (b) if the decision is to reconsider, decide under s. 33 to confirm, reverse or vary a decision with respect to a transitional application, on the grounds that such reconsiderations are not subject to referral to a regional panel under s. 11.1(3) of the *ALCA*.

[12] A meeting of the Executive Committee (the “Executive Committee”) of the Commission was held on May 24, 2016 as it relates to the *Request for Reconsideration* of Application #53982. All members of the Executive Committee were in attendance.

[13] As per paragraph 11(c) above, the Executive Committee considered the *Request for Reconsideration* pursuant to s. 33(1) of the *ALCA* and determined that the submission contains evidence that was not available at the time of the Original Decision, and the information would have been germane to the review of the Application by the Kootenay Panel.

[14] The Executive Committee concluded that the *Request for Reconsideration* meets the requirements for reconsideration pursuant to s. 33(1) of the *ALCA* and the request is therefore granted.

[15] In accordance with s. 11.1(3) of the *ALCA*, the Chair of the Commission referred the *Request for Reconsideration* of the Original Decision to the Kootenay Panel.

EVIDENTIARY RECORD BEFORE THE PANEL

[16] The Panel considered the following evidence:

1. All the documents contained in the Application file from January 19, 2015, being the date the Application was received by the Commission, to the date of Resolution #460/2015;
2. The Commission’s decision recorded as Resolution #460/2015 and dated December 16, 2015;
3. The Applicant’s request for reconsideration dated April 12, 2016, received by the Commission on April 12, 2016; and
4. Additional information requested by the Panel on August 9, 2016 and August 18, 2016 and subsequent provided by the Agent on August 11, 2016 and August 22, 2016, respectively.

All documentation noted herein has been disclosed to the agent in advance of this decision.

FINDINGS

[17] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the Canada Land Inventory (CLI), 'Soil Capability Classification for Agriculture' system. The improved agricultural capability ratings identified on CLI map sheet 82G/10 for the mapping units encompassing the Property are Class 3 and Class 7; more specifically the north eastern portion of the property is improvable to 3T, while the remainder is not improvable from 7TC.

Class 3 - land is capable of producing a fairly wide range of crops under good management practices. Soil and/or climate limitations are somewhat restrictive.

Class 7 - land has no capability for soil bound agriculture.

The limiting subclasses associated with this parcel of land are C (adverse climate) and T (topographic limitations).

[18] In the *Request for Reconsideration* the Agent pointed out that the CLI ratings used in consideration of the Original Decision were incorrect. The Panel reviewed CLI map sheet 82G/10 and confirmed that the CLI ratings referred to in the Original Decision were incorrectly identified. The Original Decision stated that "*the mapping units encompassing the Property are Class 3, Class 4 and Class 5; more specifically the north eastern portion of the property is improvable to 3T, while the remainder is unimprovable from (6:5TP- 4:4TP)*". The correct CLI ratings are described in paragraph 17 above.

[19] In light of the reviewing the correct CLI ratings applicable to the Property, the Panel notes that the Applicant intends to locate the non-farm use on the Class 7 portion of the Property.

[20] In the August 11, 2016 letter to the Commission, it is stated that:

Luminary are committed to the development of a retreat centre with strong ties to agriculture. To this end, Luminary has commenced improvement of the agricultural land with the following actions:

- *Luminary has consulted with an ‘adverse condition’ farming expert, specializing in the use of ‘hard to farm’ areas, leading to the development of a mulch and compost program that Luminary is currently working into an actionable plan.*
- *Luminary has arranged for the delivery of 1000 cubic meters of topsoil to the site. This soil has come from a local site that is being developed for non-agricultural uses and will ensure that valuable topsoil is reused for agricultural purposes.*
- *Luminary has obtained quotes for fencing of the lands, including fencing of the vegetable beds from wildlife. The plans for fencing are being developed based on sun exposure and soil quality.*
- *New cattle guards have been delivered to the site for use when fencing the non-farm area of the property.*

[21] With respect to the proposed compost program and the placement of topsoil, the Panel notes that these activities do not form part of the Application, but rather are a separate proposed land use. The Panel finds that the agricultural improvements proposed for the Class 3T portion of the Property will benefit the overall agricultural use of the Property provided that they are undertaken in compliance with the ALCA and Regulation. The Panel encourages the Applicant to liaise with Commission staff in this regard.

Section 4.3(b) of the ALCA: Second priority to economic, cultural and social values

[22] In the *Request for Reconsideration* the Applicant argued that “*the non-farm use as proposed would employ numerous local residents and would increase tourism to the Fernie area. Further, the proposed improvements to the agricultural component of the*



property (ie. the Class 4 lands) would require the employment of a farmhand on the property”.

[23] The Panel gave consideration to economic, social and cultural values as required by s. 4.3. In this case, the Panel finds that these considerations are not contributory to the decision given the Panel's finding following its review of the agricultural considerations.

Section 4.3(c) of the ALCA: third priority to regional and community planning objectives

[24] The Panel notes that no new information regarding regional and community planning objectives was submitted in the *Request for Reconsideration*.

Weighing the factors in priority

[25] Based on the CLI information available, the Panel finds that the Proposal would utilize the Class 7 portion of the Property.

[26] The Panel finds that the Proposal includes agricultural improvements to the Class 4 lands on the Property.

[27] The Panel finds that the Proposal would provide economic benefit to the local community in the form of employment.

DECISION

[28] For the reasons given above, the Panel approves the Proposal to construct a retreat centre on the Property.

[29] The Proposal is approved subject to the following conditions:

- a. the non-farm use be limited to the area delineated on the attached sketch plan;

- b. the access driveway and septic field may be located outside the delineated area on the attached sketch plan;
- c. the structures be in substantial compliance with the plan submitted with the Application;
- d. the food preparation area be utilized only for guests staying at the retreat centre and not for the public in the form of a restaurant; and
- e. photographic evidence of the fencing and a cattle guard proposed in the Applicant's August 11, 2016 letter to the Commission prior to the issuance of a building permit for construction of the retreat centre.

[30] This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

[31] These are the unanimous reasons of the Kootenay Panel of the Agricultural Land Commission.

[32] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(5) of the *Agricultural Land Commission Act*.

[33] This decision is recorded as Resolution #361/2016 and is released on October 31, 2016.

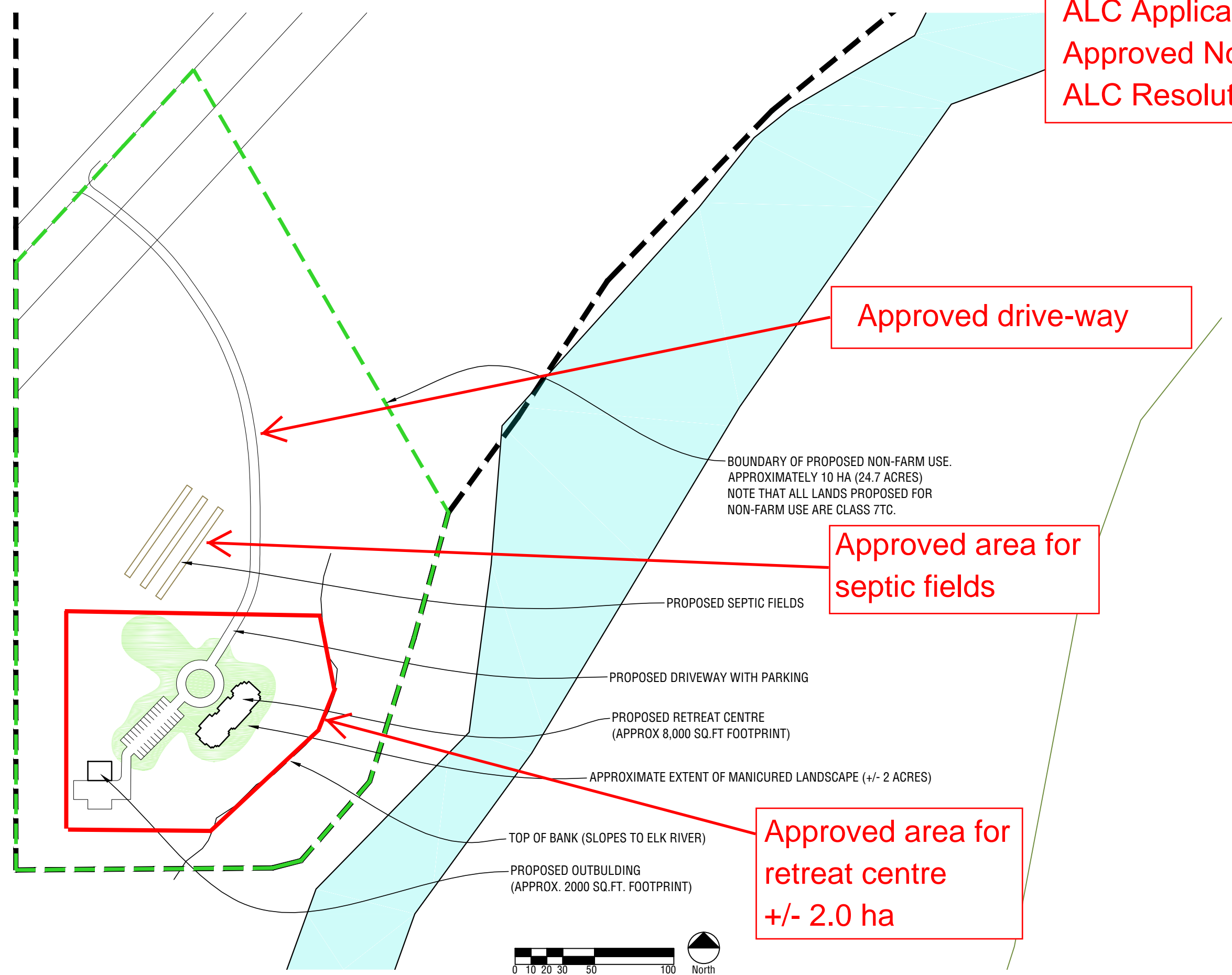
CERTIFICATION OF DECISION



Sharon Mielnichuk, Vice Chair, on behalf of the Kootenay Panel

END OF DOCUMENT

**ALC Application 53982
Approved Non-farm Use
ALC Resolution #361/2016**



Approved drive-way

BOUNDARY OF PROPOSED NON-FARM USE.
APPROXIMATELY 10 HA (24.7 ACRES)
NOTE THAT ALL LANDS PROPOSED FOR
NON-FARM USE ARE CLASS 7TC.

**Approved area for
septic fields**

PROPOSED SEPTIC FIELDS

PROPOSED DRIVEWAY WITH PARKING

PROPOSED RETREAT CENTRE
(APPROX 8,000 SQ.FT FOOTPRINT)

APPROXIMATE EXTENT OF MANICURED LANDSCAPE (+/- 2 ACRES)

**Approved area for
retreat centre
+/- 2.0 ha**

TOP OF BANK (SLOPES TO ELK RIVER)

PROPOSED OUTBUILDING
(APPROX. 2000 SQ.FT. FOOTPRINT)



All dimensions in metres.

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REVISIONS		
REV#	DATE	DESCRIPTION

**ELK VALLEY
RETREAT CENTRE**

FERNIE, BRITISH COLUMBIA
LUMINARY HOLDING CORP.

SCALE	AS NOTED
DATE	11 AUGUST 2016
ISSUED FOR	ALR NON-FARM USE APPROVAL
PROJECT NUMBER	12081
DESIGN BY	RH
DRAWN BY	RH

**SKETCH PLAN
PRELIMINARY SITE
LAYOUT**

DRAWING NUMBER