



Agricultural Land Commission
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December 21, 2016

ALC File: 54571

Paul Tataryn
Bird's Eye Cove Farm
5881 Genoa Bay Road
Duncan, BC V9L 5Y5

Dear Mr. Tataryn:

Re: Application to Conduct a Non-Farm Use in the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Island Panel (Resolution #440/2016) as it relates to the above noted application. As agent, it is your responsibility to notify the Applicants accordingly.

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.

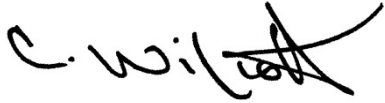
- 33(1) On the written request of a person affected or on the commission's own initiative, the commission may reconsider a decision of the commission under this Act and may confirm, reverse or vary it if the commission determines that:
- (a) evidence not available at the time of the original decision 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 Christopher Wilcott at (Christopher.Wilcott@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to read "C. Wilcott", with a stylized flourish at the end.

Christopher Wilcott, RPP, MCIP
Land Use Planner

Enclosures: Reasons for Decision (Resolution #440/2016)
Sketch Map

cc: District of North Cowichan (File: 3025-20 16.01)

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AGRICULTURAL LAND COMMISSION FILE 54571

REASONS FOR DECISION OF THE ISLAND PANEL

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

Applicant:

**Heather Skoretz
(the “Applicant”)**

Agent:

**Paul Tataryn, Bird’s Eye Cove
Farm
(the “Agent”)**

Application before the Island Regional Panel:

**Jennifer Dyson, Panel Chair
Honey Forbes
Clarke Gourlay**



THE APPLICATION

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

Parcel Identifier: 000-110-507

Section 19, Range 6, Cowichan District, Except that part on Plan 599 BL and Part in Plan 43096

(the "Property")

[2] The Property is 34.2 ha in area (31.3 ha ALR).

[3] The Property has the civic address 5881 Genoa Bay Road, Duncan.

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

[5] The Property is located within Zone 1 as defined in s. 4.2 of the *ALCA*.

[6] Pursuant to s. 20(3) of the *ALCA*, the Applicant is proposing to conduct the following non-farm uses:

1. Holding commercial assembly events for 10 to 150 people on the Property including:
 - Long table events
 - Weddings
 - Celebrations of life
 - Anniversaries
 - Women's Day
 - School tours
 - Pizza nights
 - Vintage/Craft fairs
 - Easter Family Farm Day
 - Other similar uses

2. Use of the “Barn” as a permanent structure for commercial assembly events; and,
3. Use of two farm-stay accommodations.

The aggregate of the proposed non-farm uses constitute the proposal (the “Proposal”). The Proposal along with supporting documentation is collectively the application (the “Application”).

RELEVANT STATUTORY PROVISIONS

[7] The Application was made pursuant to s. 20(3) of the *ALCA*:

20(3) An owner of agricultural land or a person with a right of entry to agricultural land granted by any of the following may apply to the commission for permission for a non-farm use of agricultural land.

[8] The Panel considered the Application within the context of s. 6 of the *ALCA*:

- 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.

EVIDENTIARY RECORD BEFORE THE PANEL

[9] The Panel considered the following evidence:

1. The Application
2. Local government documents
3. Evidence from any third parties of which disclosure was made to the Applicant



4. Agricultural capability map, ALR context map and satellite imagery

[10] All documentation noted above was disclosed to the Agent in advance of this decision.

[11] On April 20, 2016, the District of North Cowichan (the “DNC”) Council resolved to forward the Application to the Agricultural Land Commission (the “Commission”) for a decision.

SITE VISIT

[12] On May 27, 2016, the Panel conducted a walk-around site visit in accordance with the *Policy Regarding Site Visits in Applications* (the “Site Visit”).

[13] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications*. The site visit report was certified as accurately reflecting the observations and discussions of the Site Visit by the Agent on June 24, 2016 (the “Site Visit Report”).

BACKGROUND

[14] The impetus of the Application resulted in part from the DNC becoming aware that some of the uses of the buildings and activities taking place on the Property were not consistent with local bylaws or BC Regulation 171/2002 (ALR Use, Subdivision and Procedure Regulation) (the “Regulation”). The DNC Staff Report outlines the history of events which lead to the Application being submitted. More specifically:

- *July 20, 2010 A Building Permit was issued for the construction of an ‘agricultural building /barn’ (i.e. the multi-purpose building shown in the site photos).*
- *January 31, 2012 The ‘agricultural building / barn’ was granted occupancy by the Municipality.*

- *June 24, 2013 The Municipality sent a letter to the property owner indicating that an ALC Non-Farm Use application is required (i.e. for commercial weddings, pizza nights and other special events). The letter also noted concerns that had been raised by the public.*
- *September 13, 2013 The Municipality sent a second letter to the owner to reiterate that an ALC Non-Farm Use application is required.*
- *July 29, 2015 The Municipality sent a letter to the owner to advise that the multi-purpose building that was supposed to be an 'agricultural building / barn' was being used for assembly uses which have different requirements under the B.C. Building Code. The letter also noted that two other buildings on the property had been constructed without Building Permits (cooking shelter and farm stay accommodation). The letter detailed the steps necessary to achieve compliance with Municipal bylaws.*
- *September 2, 2015 Since the issues noted in the July 29, 2015 letter had not been resolved, Council directed Staff to file a Notice on Title for the non-compliance issues with respect to the Building Bylaw and the B.C. Building Code.*
- *September 8, 2015 A letter was sent from the ALC to the owner stating that an ALC Non-Farm Use application is required.*
- *January 15, 2016 A complete ALC Non-Farm Use application was received and opened.*

AGRI-TOURISM AND GATHERING FOR AN EVENT REGULATION

[15] Subsequent to the Application being submitted to the DNC and the Commission, on July 29, 2016 BC Order-in-Council No. 602/2016 (the "OIC") amended the Regulation to define *agri-tourism* and *gathering for an event*.

Agri-tourism Definition

s. 1 (1) *In this regulation:*

"agri-tourism" means

- (a) an activity referred to in subsection (4)
 - (i) that is carried out on land that is classified as a farm under the Assessment Act,*
 - (ii) to which members of the public are ordinarily invited, with or without a fee, and*
 - (iii) in connection with which permanent facilities are not constructed or erected, and**
- (b) services that are ancillary to activities referred to in paragraph (a);*

s. 1 (4) *Agri-tourism on a farm means the following:*

- (a) an agricultural heritage exhibit displayed on the farm;*
- (b) a tour of the farm, an educational activity or demonstration in respect of all or part of the farming operations that take place on the farm, and activities ancillary to any of these;*
- (c) cart, sleigh and tractor rides on the land comprising the farm;*
- (d) subject to section 2 (2) (h), activities that promote or market livestock from the farm, whether or not the activity also involves livestock from other farms, including shows, cattle driving and petting zoos;*
- (e) dog trials held at the farm;*
- (f) harvest festivals and other seasonal events held at the farm for the purpose of promoting or marketing farm products produced on the farm;*
- (g) corn mazes prepared using corn planted on the farm.*

Gathering for an Event Definition

s. 1 (1) *In this regulation:*

"gathering for an event" means a gathering of people on a farm for the purpose of attending

- (a) a wedding, unless paragraph (c) (ii) applies,*
- (b) a music festival, or*
- (c) an event, other than*
 - (i) an event held for the purpose of agri-tourism, or*
 - (ii) the celebration, by residents of the farm and those persons whom they invite, of a family event for which no fee or other charge is payable in connection with the event by invitees.*

[16] In addition to the definitions, the Regulation now clearly places *agri-tourism* in s. 2 of the Regulation which establishes activities designated as farm use, while *gathering for an event* is in s. 3 of the Regulation which establishes permitted uses for land in the ALR.

Activities designated as farm use

2(2) The following activities are designated as farm use for the purposes of the Act:

- (e) agri-tourism, other than accommodation;*

Permitted uses for land in an agricultural land reserve

3(4) The following non-farm uses are permitted in an agricultural land reserve and must not be prohibited by a local government bylaw or, for lands located in an agricultural land reserve that are treaty settlement lands, by a law of the applicable treaty first nation government:

- (k) gathering for an event, if all of the following conditions are met:*
 - (i) the farm must be located on land classified as a farm under the Assessment Act;*
 - (ii) permanent facilities must not be constructed or erected in connection with the event;*
 - (iii) parking for those attending the event must be available on the farm, but must not be permanent nor interfere with the farm's agricultural productivity;*
 - (iv) no more than 150 people, excluding residents and employees of the farm, may be gathered on the farm at one time for the purpose of attending the event;*

- (v) *the event must be of no more than 24 hours duration;*
- (vi) *no more than 10 gatherings for an event of any type may occur on the farm within a single calendar year.*

While both sections of the Regulation outline permitted uses within the ALR, the imperative difference being that *gathering for an event* is not considered a farm use, but rather is a non-farm use that a farm may undertake subject to specific conditions.

FINDINGS

[17] Prior to the OIC which amended the Regulation, the Commission has consistently informed local governments, land owners and stakeholders that commercial event businesses and/or purpose-built event facilities are not consistent with s. 2(2)(e) of the Regulation. Consequently these uses must either be consistent with s. 3(4)(k) of the Regulation or require approval from the Commission by way of a non-farm use application pursuant to s. 20(3) of the *ALCA*. Although the Application was received prior to July 29, 2016 (date of effect of the OIC), the Panel gave consideration to the Application under the Regulation in effect at the time of decision which now includes definitions for *agri-tourism* and *gathering for an event*. In light of the Regulation change, the Panel put its mind to those activities in the Proposal that exceed the uses permitted by the Regulation.

[18] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system. The improved agricultural capability ratings identified on BCLI map sheet 92B.073 for the mapping units encompassing the ALR portions of the Property are 6:2TP – 4:5R, 2WD, 2TD, 8:7R – 2:5T and 3T.

Class 2 - land is capable of producing a wide range of crops. Minor restrictions of soil or climate may reduce capability but pose no major difficulties in management.



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 5 - land is capable of production of cultivated perennial forage crops and specially adapted crops. Soil and/or climate conditions severely limit capability.

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

The limiting subclasses associated with this parcel of land are D (undesirable soil structure), M (moisture deficiency), P (stoniness), R (bedrock near the surface), T (topographic limitations), and W (excess water).

In this regard, the Panel finds that the ALR portion of the Property has agricultural capability and can support a range of agriculture.

[19] The Applicant is the operator of Bird's Eye Cove Farm which is comprised of 8 parcels of land (4 parcels are within, or partially within the ALR). These parcels constitute a *farm* as defined in s. 1 of the Regulation as the occupation or use, for farm purposes, of one or several parcels of land or tenured areas of Crown land (the "Farm"). When deliberating, the Panel considered the Proposal within the context of the agricultural activities taking place on the Farm, and not solely on the Property. To narrow the consideration of the Proposal to only the Property would exclude the agricultural business of the Farm on which the Panel is evaluating the merits of the non-farm uses. The Applicant provides the following description of the agricultural activities taking place on the Farm:

Our farm includes land of over 300 acres. In total, we have 65 acres in hay, 35 in improved pasture and the remaining 200+ acres in rough pasture, forested pasture, riparian, steep areas and rock. We have a registered herd of 60 Highland Cattle, of which we have or are expecting this year to put 12 or 15 animals to market through our barn as primary and value-added products. We have five sows in our breeding herd of Berkshire Pigs, of which we have or expect to market 60 to 100 weaners at \$150 apiece. Some we will raise for roasters and pork for our value-added products, events and retail

sales. From our 90 laying hens, we expect over 2000 dozen eggs this year, which we retail for \$5 and \$6/dozen and also add to our value-added products. Our meat bird production for this summer will be dependant [sic] on demand. We have capacity for over 200 birds and we market them for \$20 to \$30. In the summer we grow vegetables for our value-added products, retail and events. We have a small orchard with apples, pears, plums, walnuts and cherries. This past season our bee hives produced about 300 pounds of honey, which we are able to retail for \$10/lb. In our barn we have a processing and packaging kitchen for farm value added products. There is also an area for retail where we sell all of our farm products. On our hayfields, we produced over 3500 square bales which have been selling for as much as \$11/bale. We produced over 300 wrapped haylage bales which retail for \$65 or more per bale. We also undertake various agri-tourism activities.

The Panel is of the opinion that the non-farm uses on the Property should be commensurate, yet ancillary (i.e. is directly related), with the agricultural activities taking place on the Farm. In this regard, the Panel believes the current level of agricultural activity on the Farm is insufficient to justify the suite of proposed non-farm uses. The Panel is also of the opinion that had an application been submitted prior to the establishment of the existing infrastructure and the Applicant undertaking the non-farm uses, the Applicant would have been so advised. As this opportunity did not present itself, the Panel now finds itself having to address the situation after the fact.

[20] Weddings and Special Events

With respect to hosting weddings and special events, the Panel evaluated the Proposal against the definition of *gathering for an event* defined in s. 1(1) and the criteria in s. 3(4)(k) of the Regulation. While some of the activities meet the definition of *gathering for an event*, the proposed activities exceed some of the criteria in s. 3(4)(k). The Panel will speak to the Proposal's compliance with each criteria of s. 3(4)(k) of the Regulation below.

i. “Farm” Classification

The Applicant states that the Property is currently classified as “farm” under the *Assessment Act*. The Panel finds that in order to continue hosting special events, the Farm must maintain its farm status.

ii. Use of Permanent Facilities

On July 20, 2010 the DNC issued a building permit for the construction of an “agricultural building”. On January 21, 2012, the “agricultural building”, which is named “The Barn”, was granted occupancy by the DNC. In the Application, the Applicant states:

We have a barn that was intentionally built for storing equipment as well as preparing, processing and packaging of our farm products. We have a Health inspected kitchen where we do our processing. The barn also is used for retailing our farm products. It also has washrooms and showers for farm workers, a lunchroom and an office for administration. This barn is used and will continue to be used year-round for these purposes. It was some time after the barn was built that we began to consider agri-tourism activities as a way of marketing our farm.

Having had the opportunity to tour The Barn, the Panel’s impression was that building was not solely intended for farm use at the time of construction. Regardless of the intent at the time of application for the building permit, conversion of an existing permanent building for the purpose of *gathering for an event* constitutes the construction of a permanent building for commercial use. The Panel does not sanction continued use of The Barn in the absence of the proper building permits and codes required by other agencies. If the appropriate permits are obtained to the satisfaction of the DNC, the Panel would allow use of The Barn for *gatherings for an event* in accordance with all stipulations outlined in paragraph 18 (i)-(vi).

iii. Parking

The Panel is not aware that parking has been deleterious to the Farm under current operation. The Panel finds that parking for events should remain consistent with s. 3(4)(k)(iii) of the Regulation.

iv. Maximum 150 People per Event

The Application states that events currently host 10 to 150 people. The Panel finds that the size of event should remain consistent with s. 3(4)(k)(iv) of the Regulation.

v. Maximum 24 Hour Duration

The Panel is not aware that any of the events have exceeded a 24 hour duration. The Panel finds that the duration of event should remain consistent with s. 3(4)(k)(v) of the Regulation.

vi. Maximum 10 Gatherings Per Year

For clarification, 10 events refers to the total of all event types held per year. It does not imply 10 events from each category per year (i.e. 10 weddings, 10 pizza nights, 10 craft fairs, etc.). With respect to the number of events, the Applicant has not provided a specific number requested per year, and the Panel is unwilling to provide a *carte blanche* approval for unlimited events. The Panel considered the level of agriculture taking place on the Farm and would be amenable to a maximum of 30 events per year on the Property (regardless of being held outside or inside the Barn), including weddings, pizza nights, craft fairs, etc if permitted by the DNC. For any increase beyond 30 events per year, the Panel advises the Applicant that a new application will be required and that the Applicant will need to demonstrate that the level of agricultural activity on the Farm has increased.

[21] The “Cookhouse”

The DNC Staff Report refers to the “pizza nights” prepared in the “Cookhouse” as a form of restaurant use. Bistros, cafes and restaurants are considered non-farm uses in the ALR. In addition, the Panel notes that restaurant use is not permitted in the DNC’s A1 zoning. The Panel does not approve of the permanent operation of a restaurant on the Property, but would allow for the use of the Cookhouse in conjunction with the maximum

30 or fewer permitted special events if permitted by the DNC. Again, the Panel finds that it would be more appropriate for the DNC to regulate the frequency and parameters of operation of the “Cookhouse”.

[22] **Additional Dwellings**

The DNC Staff Report states:

There are currently three dwelling units (principal residence, suite in multi-purpose building and farm stay accommodation). Since the property is in the ALR, the A1 zone permits additional dwelling units for farm labour subject to ALC approval. Should this application be supported by Council and the ALC, the owners would then need to apply for either a Temporary Use Permit or a Zoning Bylaw Amendment application to permit the proposed uses in the A1 zone.

The Panel is unclear how the dwellings were constructed on the Property if their use was contrary to the DNC zoning. With respect to the dwellings, the Panel does not approve the accommodations as permanent dwellings. However, the Panel is amenable to allowing short-term temporary use of the two accommodations for tourism purposes directly associated with the maximum 30 or fewer special event uses, in their current size and location if permitted by the DNC.

DECISION

[23] For the reasons given above, the Panel refuses the Application as proposed.

[24] The Panel approves the following non-farm uses on the Property:

- A maximum of 30 special events per year or a lower maximum as otherwise determined by the DNC. The DNC shall advise the Commission as to how many special events per year are ultimately approved;
- Operation of the Cookhouse if permitted and operated in accordance with parameters set out by the DNC; and

- Use of two short-term accommodations in relation to the approved special events

[25] The approval is subject to the following conditions:

- a. that the non-farm uses remain ancillary to and subordinate to the agricultural use of the Property;
- b. the ALR properties within the Farm must retain classification as farm under the *Assessment Act*;
- c. no additional structures (temporary or permanent) may be constructed, erected, or expanded for the non-farm use approval;
- d. parking must be available on the Farm, but must not be permanent (i.e. no hard surfacing) nor interfere with the farm's agricultural productivity;
- e. no more than 150 people, excluding residents and employees of the Farm, may be gathered on the Farm at one time for the purpose of attending an event;
- f. events must be of no more than 24 hours duration;
- g. the DNC approves any events in excess of 10 per year to a maximum of 30 per year by way of a Temporary Use Permit or a Zoning Bylaw Amendment; and
- h. Approval for non-farm use is granted for the sole benefit of Heather Skoretz as operator of Bird's Eye Cove Farm and is non-transferable. Should Heather Skoretz or Bird's Eye Cove Farm no longer own the ALR properties comprising the Farm, or should Heather cease to be the primary operator of Bird's Eye Cove Farm, the non-farm use approval will expire immediately.

[26] 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.

[27] These are the unanimous reasons of the Island Panel of the Agricultural Land Commission.

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



[29] This decision is recorded as Resolution #440/2016 and is released on December 21, 2016.

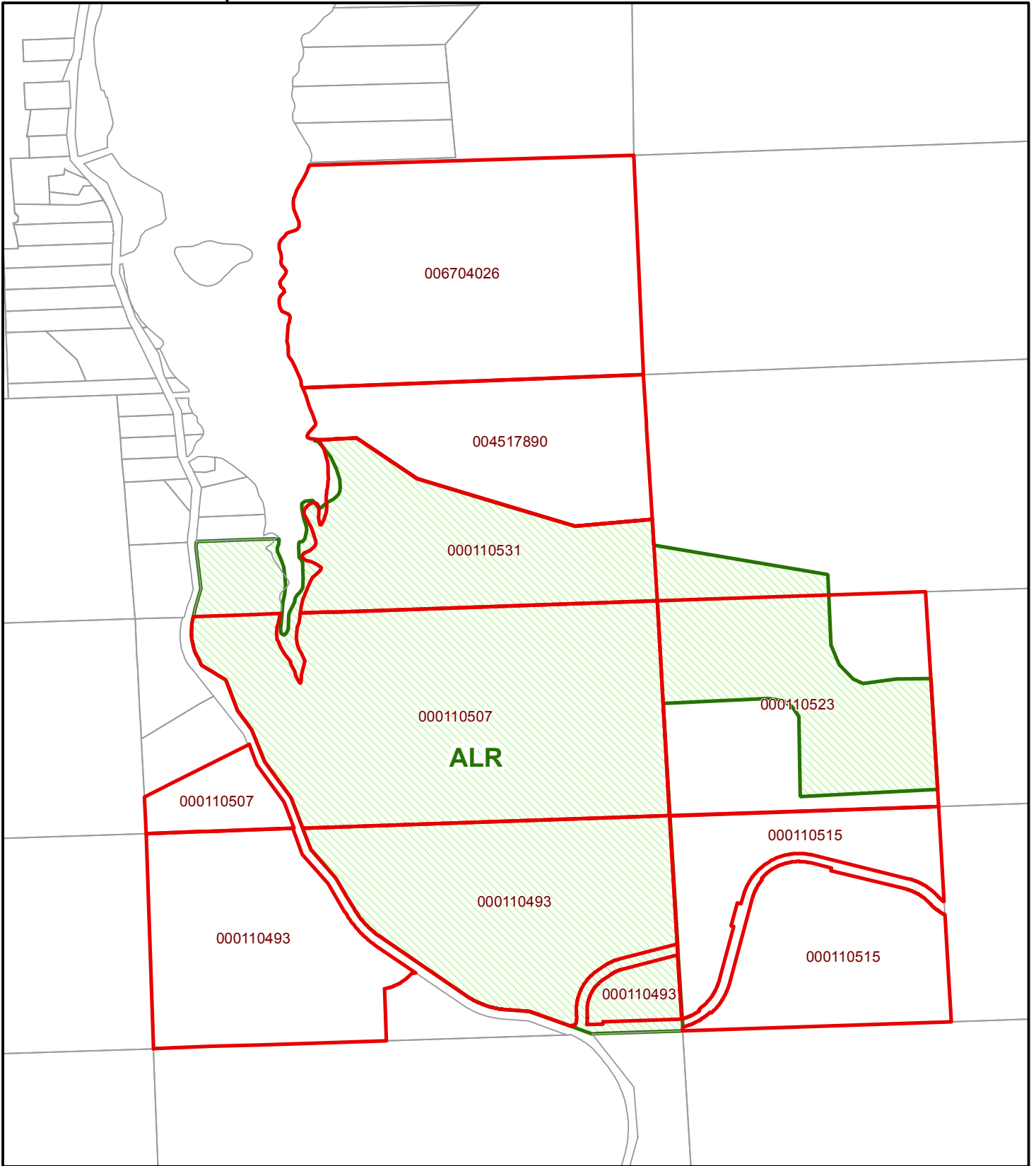
CERTIFICATION OF DECISION

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Jennifer Dyson, Panel Chair, on behalf of the Island Panel

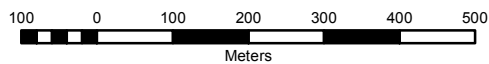
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ALC Context Map

Map Scale: 1:10,000



ALC File #: 54571
Mapsheet #: 92B.072 & 92B.073
Map Produced: December 13, 2016
Regional District: Cowichan Valley