

---

# ALBERTA PUBLIC LANDS APPEAL BOARD

## Report and Recommendations

---

Date of Report and Recommendations – April 19, 2023

**IN THE MATTER OF** sections 121, 122, 124, of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 98, 211, and 235 of the *Public Lands Administration Regulation*, A.R. 187/2011;

**-and-**

**IN THE MATTER OF** appeals filed by North Country Aggregates Ltd. and Beverly Blish, with respect to access to Department Licence of Occupation DLO 160106 issued by Forestry, Parks and Tourism to 1617453 Alberta Ltd.

Cite as: *North Country Aggregates Ltd. and Blish v. 1617453 Alberta Ltd.* (19 April 2023), Appeal Nos. 22-0005 and 22-0007-R (A.P.L.A.B.), 2023 ABPLAB 5.

**BEFORE:**

Dr. Brenda Ballachey, Panel Chair and Board Member, and Ms. Angela Aalbers, Board Member.\*

**SUBMISSIONS BY:**

**Appellants:** North Country Aggregates Ltd., represented by The Lornel Group; and

Ms. Beverly Blish

**Respondent:** 1617453 Alberta Ltd., represented by Mr. Les Helm, Silver Sage Enterprises, Ltd.

\* Gordon McClure, Board Chair and Appeals Coordinator, withdrew from the Panel for personal reasons. Dr. Ballachey was appointed Panel Chair.

## EXECUTIVE SUMMARY

1617453 Alberta Ltd. (the DLO Holder) was issued Department Licence of Occupation 160106 (the DLO) by Alberta Environment and Parks, predecessor to Forestry Parks and Tourism (FTP),\* to enable the DLO Holder access to its Surface Material Lease (SML), located on public lands south of the Urban Service Area of Fort McMurray. The DLO Holder built a road on the DLO (the Road).

North Country Aggregates Ltd. (North Country) and Ms. Beverly Blish (Blish) sought to use the Road to access their individual SMLs. After failing to reach an agreement with the DLO Holder, North Country and Blish appealed to the Public Lands Appeal Board for a Road Use Order from the Minister of Forestry, Parks and Tourism (the Minister).

The Board held a hearing by written submissions and received submissions from North Country, Blish, and the DLO Holder. The Board considered the following principles in determining its recommendation to the Minister:

- (a) public lands are owned by the people of Alberta and should be used for their benefit;
- (b) it is inappropriate for a holder of a DLO to receive an unjust profit from providing access to a DLO to another party;
- (c) the holder of a DLO who has invested money in constructing a road should be compensated fairly by other commercial users benefiting from that road.

As part of its determinations, the Board considered the length of the road needed by the parties, the tonnage of aggregate material estimated by the Parties to be in their individual SMLs, the tonnage that will be hauled on the road by the Parties, the estimated costs of annual maintenance, and the estimated cost of building the road.

After considering the above information, the record provided by FTP, the parties' submissions, relevant case law, and the *Public Lands Act*, and the *Public Lands Administration Regulation*,

---

\* Responsibility for public lands dispositions was transferred to Alberta Forestry, Parks and Tourism from Alberta Environment and Parks, in October 2022.

the Board recommended the Minister order the DLO Holder to grant access based on the terms and conditions listed in Appendix A to this Report and Recommendations. Specifically, as the tonnage hauled on the Road and the length of the Road used by North Country and Blish differed, the Board recommended North Country pay \$0.20 per tonne hauled on the Road and Blish pay \$0.73 per tonne hauled on the Road to compensate the DLO Holder for Road construction costs and annual maintenance costs.

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	BACKGROUND .....	1
III.	ISSUES .....	3
IV.	SUBMISSIONS .....	3
	(a) North Country .....	4
	(b) Beverly Blish .....	5
	(c) DLO Holder .....	6
V.	ANALYSIS.....	7
VI.	RECOMMENDATION .....	14
VII.	APPENDIX A.....	15
VIII.	APPENDIX B.....	30

## **I. INTRODUCTION**

[1] This is the Public Lands Appeal Board's (the "Board") Report and Recommendations to the Minister of Forestry, Parks and Tourism (the "Minister") regarding appeals by North Country Aggregates Ltd. ("North Country") and Ms. Beverly Blish ("Blish") (collectively, the "Appellants"). The Appellants seek access to Department Licence of Occupation 160106 (the "DLO"), issued by Alberta Environment and Parks ("AEP"), predecessor to Forestry Parks and Tourism ("FTP"),<sup>1</sup> to 1617453 Alberta Ltd. (the "DLO Holder").

[2] The Board recommends access be granted to the Appellants on the terms and conditions listed in Appendix "A" to this Report and Recommendations.

## **II. BACKGROUND**

[3] The DLO was issued to the DLO Holder on June 7, 2018, for construction and use of a road (the "Road") located southwest of the Hamlet of Anzac and south of the Urban Service Area of Fort McMurray in the Regional Municipality of Wood Buffalo.<sup>2</sup> The purpose of the Road was to access Surface Material Lease 160053 ("SML 53"), held by the DLO Holder.

[4] Surface Material Lease 160052 ("Blish SML") was issued to Blish on May 4, 2018. North Country applied for Surface Material Lease 160058 ("North Country SML") on July 27, 2016, but approval was delayed until April 19, 2021.<sup>3</sup>

[5] The Road runs 3,500 meters from its start at Stoney Mountain Road to SML 53. It passes the access to the North Country SML at approximately 350 meters from Stoney Mountain Road and passes the access to the Blish SML at approximately 3,000 meters from the Road's start. The Road ends at approximately 3,500 meters at SML 53. The Appellants and the

---

<sup>1</sup> Responsibility for public lands dispositions was transferred to Alberta Forestry, Parks and Tourism from Alberta Environment and Parks, in October 2022.

<sup>2</sup> The DLO is located at W ½, N ½, SW 31-85-8-W4M and NE 25, E ½ 36-85-9-W4M, E ½, SW 6-86-9-W4M.

<sup>3</sup> North Country stated in its Initial Submission, January 13, 2023, at page 1: "A condition of the SML approval for North Country was the ability to obtain access through a negotiated road use approval on DL0160106."

DLO Holder have held separate negotiations to obtain access to the Road but have not reached an agreement.

[6] On May 3, 2022, North Country filed a Notice of Appeal with the Board, and a revised Notice of Appeal on May 4, 2022, requesting they be granted access to the Road. On May 10, 2022, the Board acknowledged receipt of the Notices of Appeal and requested AEP records related to the DLO and the North Country SML. On May 10, 2022, AEP provided the DLO and North Country SML agreements, which the Board forwarded to North Country and the DLO Holder on May 12, 2022.

[7] The Board scheduled a mediation meeting for June 6, 2022, by videoconference. However, the DLO Holder did not attend, therefore, the mediation meeting was cancelled.

[8] On July 13, 2022, the Board received a Notice of Appeal from Blish requesting the Board recommend she be granted access to the DLO from the Blish SML. On July 25, 2022, the Board acknowledged receipt of the Notice of Appeal and requested AEP's record related to the DLO and the Blish SML.

[9] On July 26, 2022, FTP provided the Board with copies of the DLO and the Blish SML, which the Board provided to North Country, Blish, and the DLO Holder (collectively, the "Parties") on July 28, 2022.

[10] On August 11, 2022, the Board combined the notices of appeals to provide the most effective and efficient outcome to resolving the road use disputes for each Party.

[11] The Board held a mediation meeting with the Parties on October 18, 2022; however, the Parties were unable to reach a resolution to the appeals.

[12] The Board advised the Parties it would hold a hearing by written submissions and set a schedule for the Parties to provide their written submissions on what the appropriate terms and conditions of use of the Road should be and what the appropriate compensation to the DLO Holder should be. The Board provided the Parties with examples of road use agreements and

road use orders so they could see the information the Board required. The Board received written submissions from the Parties between January 13 and February 17, 2023.

[13] The Panel appointed by the Board to hear the appeal met on February 23, 2023, to consider the Parties' written submissions. The Board informed the Parties the hearing was adjourned while the DLO Holder answered the Panel's question on how much aggregate it was estimated the DLO Holder would haul on the Road from SML 53.

[14] On February 26, 2023, the DLO Holder advised the Board it estimated SML 53 contained 220,785 tonnes of Gross Gravel, 157,914 tonnes of Net Gravel, 46,856 tonnes in Manufactured Fines, and 54,485 tonnes of sand.<sup>4</sup>

[15] On March 8, 2023, North Country requested the DLO Holder provide further information to verify the response to the Board's question. The Board ruled that the DLO Holder was not obligated to provide any information unless requested by the Board.

[16] The Panel met on March 20, 2023, to make its Report and Recommendations to the Minister. In making its Report and Recommendations, the Panel considered the recent information provided by the DLO Holder, the submissions and evidence provided by Parties, and the relevant legislation and case law.

### **III. ISSUES**

[17] The issues before the Board are:

1. What are the appropriate terms and conditions for use of the road?
2. What is the appropriate compensation to be paid to the DLO Holder?

### **IV. SUBMISSIONS**

[18] The Board reviewed all the written submissions from the Parties and provides a summary below.

---

<sup>4</sup> DLO Holder's letter, February 23, 2023.



**(a) North Country**

[19] North Country submitted the following information to be used in the Board's determinations:

- (a) North Country requires use of 350 to 400 meters of the Road;
- (b) the DLO Holder has used the Road to transport crushing operation equipment and logging and clearing equipment into SML 53 and equipment, harvested logs, and aggregate material out of SML 53;
- (c) North Country alleged the DLO Holder, without permission or notice, used up to 10,000 tonnes of "high value material"<sup>5</sup> from the North Country SML to construct the Road;
- (d) North Country's vehicles that will use the Road "... include Pickups, Low Beds, Rock Trucks, Body Jobs, Tandem and Tri Drive Aggregate Units, Truck and Trailer configurations up to Super B units, and others";<sup>6</sup>
- (e) an estimated 800,000 to 1,000,000 tonnes of marketable material is available at the North Country SML;
- (f) daily tonnage of aggregate that will be hauled on the Road will vary from one load of 14 tonnes up to 5,000 tonnes per day, depending on client need;
- (g) North Country will seek to operate year-round in accordance with safe road conditions and restrictions;
- (h) the Draft Master Road Use Agreement from the Canadian Association of Petroleum Land Administration (the "CAPLA RUA") has terms and conditions that protect both parties to a road use agreement; and
- (i) a reasonable access fee or a fee of \$.05 per tonne would be appropriate compensation to the DLO Holder.

[20] North Country stated the DLO Holder's offer of \$1.00 per tonne was "... unprecedented, unwarranted, and unsupportable from any reasonable commercially equitable perspective, both in regional practice and under the [*Public Lands Act*]."<sup>7</sup>

---

<sup>5</sup> North Country's Initial Submissions, January 13, 2023, at page 1.

<sup>6</sup> North Country's Initial Submissions, January 13, 2023, at page 4.

<sup>7</sup> North Country's Rebuttal Submission, February 17, 2023, at page 3.

**(b) Beverly Blish**

[21] Blish provided the following information to be used in the Board's determinations:

- (a) there are an estimated 400,000 tonnes of aggregate in the Blish SML;
- (b) a road use agreement attached to Blish's submissions contained terms and conditions Blish submitted would be appropriate for an agreement with the DLO Holder;
- (c) Blish offered to pay a compensation rate of \$0.25 per tonne for use of the Road;
- (d) the Road is a year-round road;
- (e) the intention is to use the Road year-round to access the Blish SML;
- (f) There will be "pickups, gravel trucks, and mining equipment utilizing the [R]oad;"<sup>8</sup>
- (g) weight of the vehicles transporting aggregate would be approximately 30 to 35 tonnes;
- (h) depending on the orders for the aggregate, there could be 100 loads or more per day;
- (i) most of the Road use would be from April to November, depending on the Road conditions;
- (j) the Road was built approximately 4 years ago and should have settled by now;
- (k) \$0.05 per kilometer per tonne is the industry standard for road use and includes maintenance;
- (l) the per tonne/kilometer rate is intended to cover maintenance costs and not cover road building expenses;
- (m) there is no indication in the sample road use agreement provided by the DLO Holder of the kilometers being accessed, and the sample agreement is outdated, and has terms and conditions that would need to be addressed;
- (n) Blish would use 3 kilometers of the Road, bringing the amount to \$0.15 per tonne, but would be willing to agree to pay \$0.25, which she submits is "above and beyond industry standards."

[22] Blish stated: "I have used time, money and other resources trying to resolve this issue. There have been many, many lost opportunities because of the delay with access."<sup>9</sup>

**(c) DLO Holder**

[23] The DLO Holder submitted the following information would assist the Board in its deliberations:

- (a) the Road is still in the final stages of construction and needs a gravel cap, which is estimated to be completed this year;
- (b) the Road is in the beginning stages of settling and will need significant maintenance in its early years of use;
- (c) the amount of maintenance will lessen as the road becomes more stable and settled, which usually takes three to five years, depending on the amount of use;
- (d) the rate of \$1.00 per tonne will offset the increased maintenance costs, and is common in the aggregate industry and "... is comparable to other Road Use Agreements of a similar nature within Alberta;"<sup>10</sup>
- (e) the Appellants would only be charged the rate once they began to haul gravel;
- (f) the Road cost over \$500,000.00 to construct, but the DLO Holder only seeks to cover the extra maintenance costs that will result from increased use;
- (g) the offers made by the Appellants of \$0.05 and \$0.25 per tonne will not offset the maintenance costs;
- (h) a road use agreement between the Parties can be reviewed for adjustment in the rate as the Road settles and maintenance costs decrease; and
- (i) the DLO Holder submitted a sample road use agreement they stated was common in the industry.

[24] The DLO Holder stated "... their Road Use Agreement offer of \$1.00 per tonne is fair and equitable both for these specific circumstance, as well as in relation to the industry standards of road use agreements of this nature within the province of Alberta."<sup>11</sup>

---

<sup>8</sup> Blish's Initial Submission, January 13, 2023.

<sup>9</sup> Blish's Rebuttal Submission, February 15, 2023, at page 2.

<sup>10</sup> DLO Holder's Response Submission, February 3, 2023, at page 5.

<sup>11</sup> DLO Holder's Response Submission, February 3, 2023, at page 6.

## V. ANALYSIS

[25] Section 98 of the *Public Lands Administration Regulation*, A.R. 187/2011 (“PLAR”), states:

“A commercial user that requires use of a road in a licensed area for the purposes of the commercial user’s commercial or business undertaking may use the road only

- (a) by agreement with the holder of the licence, whether reached in mediation under Part 10 or otherwise, or
- (b) in the absence of an agreement with the holder of the licence, in accordance with an order under section 124(3) of the Act on an appeal under Part 10.”

An order under section 124(3) of the Act<sup>12</sup> refers to an order from the Minister.

[26] The Board requested the Parties provide written submissions addressing the appropriate terms and conditions for use of the Road and appropriate compensation to be paid to the DLO Holder. However, the Parties’ submissions lacked substantive information. Therefore, the Board had to draw on its past decisions and the Board’s experience to determine whether the Board should recommend the Minister issue a road use order and what terms and conditions would be appropriate. The Board also considered the relevant legislation, case law, the submissions of the Parties, as well as the following principles:

- (a) public lands are owned by the people of Alberta and should be used for their benefit;
- (b) it is inappropriate for a holder of a DLO to receive an unjust profit from providing access to a DLO to another party;
- (c) the holder of a DLO who has invested money in constructing a road should be compensated fairly by other commercial users benefiting from that road.<sup>13</sup>

---

<sup>12</sup> Section 124(3) of the Act states:

“On receiving the report of the appeal body, the Minister may, by order, confirm, reverse or vary the decision appealed and make any decision that the person whose decision was appealed could have made, and make any further order that the Minister considers necessary for the purpose of carrying out the decision.”

<sup>13</sup> *Tim Kalinski v. Director, Provincial Approvals Section, Alberta Environment and Parks, re: Alvin Bancarz* (20 December 2018), Appeal No. 17-0028-R (A.P.L.A.B.), at paragraph 68.

[27] The Board recognizes the DLO Holder invested significantly in building the Road and that maintenance costs could be extensive. The Board also recognizes the Appellants have limited or no options in getting the gravel extracted from their SML's to market other than along the Road. The circumstances could have resulted in the Parties attempting to take advantage of each other, however, the Board believes the Parties acted in good faith throughout the appeal. Despite the Board's perception, it appears the competitive nature of the Parties' business operations may have resulted in the submissions from the Parties lacking the detail and information the Board was seeking.

[28] The Board recommends the Minister order the DLO Holder to provide access to the Road for North Country and Blish on the terms and conditions outlined in Appendix A to this Report and Recommendations. In making this recommendation, the Board considered the evidence in the following areas to be significant:

- (a) expiry of the Parties' dispositions;
- (b) costs incurred by the DLO holder in constructing the Road ("Capital Costs");
- (c) maintenance costs per year ("Annual Maintenance Costs" or "AMC");
- (d) total costs per tonne;
- (e) communications;
- (f) dispute resolution; and
- (g) other terms and conditions common in a road use agreement.

**(a) Expiry of the Parties' Dispositions**

[29] The Board notes the following expiration dates for the Parties' dispositions:

- North Country SML expires on April 18, 2031;
- Blish SML expires May 3, 2028; and
- the DLO expires on June 6, 2028.

[30] Although the Board is aware the dispositions may be renewed, there is no evidence before the Board that guarantees the Parties will apply for a renewal or FTP will

approve a potential renewal application. Therefore, the Board will assume it is in the best interests of the Parties to remove the aggregate from their SML's before their lease expires.

[31] In determining the compensation owed to the DLO Holder, the Board considered the DLO Holder's use of the Road as a factor in the calculations of Capital Costs and maintenance costs, although the DLO Holder will obviously not be paying for the use.

**(b) Capital Costs**

[32] The Board finds it appropriate for the Appellants to compensate the DLO Holder for the cost of building the Road. If not for the DLO Holder constructing the Road, North Country and Blish would have to incur that expense. The DLO Holder stated the cost to build the Road was approximately \$500,000.00. Although the Appellants questioned the accuracy of the amount, they did not provide any evidence to counter it. Therefore, the Board accepts the DLO Holder's estimate.

[33] Each Party's share of the Capital Costs is determined based on the length of the Road required by that Party. The Board divided the Road into three sections based on each Party's use:

- Road Section 1: 350 meters from the North Country SML to the end of the Road, required by North Country, Blish, and the DLO Holder.
- Road Section 2: 2,650 meters from the Blish SML to the North Country SML, required by Blish and the DLO Holder.
- Road Section 3: 500 meters from SML 53 to the Blish SML, used only by the DLO Holder.

[34] Capital Costs for each Road Section was calculated using the following method:

1. dividing the Road Section length by the number of users to obtain the share of the Road Section required by each Party ("Road Section Share");
2. dividing the length of the Road Section by the total length of the Road (3,500 meters) to get the percentage of the Road for each Road Section ("Road Section %"), and then multiplying the Road Section % by the Capital Cost (\$500,000.00) to obtain the Road Section Capital Cost; and
3. dividing the Road Section Capital Cost by the Road Section Share to obtain the Road Section Capital Cost per user for each Road Section.

The Board’s calculations are in the table below:

Road Section	1	2	3
Users	DLO Holder Blish North Country	DLO Holder Blish	DLO Holder
Length	350 meters	2,650 meters	500 meters
Road Section %	10 %	75.71%	14.29%
Road Section Share	117 meters	1,325 meters	500 meters
Road Section Capital Cost	\$50,000.00	\$378,550.00	\$71,450.00
Road Section Capital per User	\$16,666.67	\$189,275.00	\$71,450.00

[35] Based on the information before the Board, the Board finds:

- the DLO Holder is responsible for the Road Section Capital Costs for one third of Road Section 1, half for of Section 2, and all of Section 3;
- Blish should contribute one third to the Capital Costs of Section 1 and half of Section 2; and
- North Country should contribute one third to the Capital Costs of Section 1.

[36] When the Capital Costs for each Road Section are added for each Party (“Individual Capital Costs”), the results are as follows:

Road Section	DLO Holder	Blish	North Country
1	\$16,666.67	\$16,666.67	\$16,666.67
2	\$189,275.00	\$189,275.00	\$0.00
3	\$71,450.00	0.00	\$0.00
<b>Total:</b>	<b>\$277,391.67</b>	<b>\$205,941.67</b>	<b>\$16,666.67</b>

**(c) Annual Maintenance Cost**

[37] The cost to maintain the Road should be shared by the Parties. The Parties did not provide sufficiently detailed submissions on annual maintenance costs (“AMC”). Therefore, based on the Board’s professional experience, AMC is calculated at 10% of the Capital Cost (\$500,000.000) per year, which is \$50,000.00 per Party. The Board considered the following in determining the AMC cost for each Party (“Individual AMC”):

- (a) as noted by the DLO Holder, increased traffic with heavily loaded gravel trucks will require more maintenance;<sup>14</sup>
- (b) AMC should be determined for each Road Section by tonnage hauled on that section;
- (c) the Parties provided estimates of tonnage of aggregate in their SMLs as follows:
  - DLO Holder: 220,785 tonnes;<sup>15</sup>
  - Blish: 400,000 tonnes;<sup>16</sup> and
  - North Country: 900,000 tonnes<sup>17</sup>

[38] The Board calculated each Party's Individual AMC as follows:

1. the total tonnage to be hauled on each Road Section ("Road Section Tonnage") was determined by adding each Party's estimated tonnage to be hauled on each Road Section;
2. the percentage of the total tonnage hauled on the Road was calculated by dividing the Road Section Tonnage by the total of all tonnage to be hauled on the Road ("Total Tonnage %");
3. each Party's percentage of Tonnage for each Road Section was calculated by multiplying the Total Tonnage % by each Party's Road Section Tonnage ("Party Tonnage %");
4. the AMC for each Road Section was determined by multiplying the AMC (\$50,000.00) by the Total Tonnage % ("Road Section AMC"); and
5. the Individual Road Section AMC for each Party and for each Road Section was calculated by multiplying the Party Tonnage % by the Road Section AMC.

---

<sup>14</sup> DLO Holder's Response Submission, February 3, 2023, at page 5.

<sup>15</sup> DLO Holder's Response to the Board's Questions, February 26, 2023.

<sup>16</sup> Blish's Initial Submission, January 13, 2023.

<sup>17</sup> North Country's Initial Submission, January 13, 2023, at page 4. The Board notes North Country provided an estimate of between 800,000 to 1,000,000 tonnes. The Board used 900,000 tonnes as a reasonable middle estimate.



The following table demonstrates the Board’s calculations.

Table 3: Individual Road Section AMC						
Road Section	Users	Road Section Tonnage	Total Tonnage %	Party Tonnage %	Road Section AMC	Individual AMC
1	DLO Holder	220,785		14.52		\$4,673.98
	Blish	400,000		26.30		\$8,465.97
	North Country	900,000		59.18		\$20,723.92
Total		1,520,785	64.38		\$32,190.00	
2	DLO Holder	220,785		36		\$4,728.60
	Blish	400,000		64		\$8,406.40
	Total	620,785	26.27		\$13,135.00	
3	DLO Holder	220,785		100		\$4,675.00
Total		220,785	9.35	100	\$4,675.00	

[39] The Individual AMC for each Party was calculated by adding the AMC for the Road Sections required by each Party, as follows:

Table 4: Individual AMC				
Party	Road Section 1	Road Section 2	Road Section 3	AMC Total
DLO Holder	\$4,673.98	\$4,728.60	\$4,675.00	\$14,077.58
Blish	\$8,465.97	\$8,406.40	\$0.00	\$16,872.37
North Country	\$20,723.92	\$0.00	\$0.00	\$20,723.92

**(c) Total Cost per Tonne**

[40] The tonnage hauled on the Road by each Party may vary year-to-year. Therefore, the Board found it useful to determine the Individual AMC on a dollar amount per tonnage hauled on the Road. For ease of calculations, the Board also included Capital Costs so that the Parties would have one amount to calculate. To determine the total cost per tonne for each Party (“Cost Per Tonne”) the Board proceeded as follows:

1. the Board noted the remaining time in each Party’s SML:
  - DLO Holder: 5 years (DLO);
  - Blish: 5 years;
  - North Country: 8 years;

2. the total amount each Party would pay for AMC for the remaining years of their lease (“Total Maintenance Costs”, or “TMC”) was calculated by multiplying the Individual AMC by the remaining years of their lease; and
3. the Board added the Individual Capital Costs to the TMC and divided by each Party’s total tonnage to obtain an amount per tonne.

The Board’s calculations are as follows:

Table 5: Cost Per Tonne			
	DLO Holder	Blish	North Country
Lease Years Remaining	5	5	8
Multiply	x	x	x
Individual AMC	\$14,077.58	\$16,872.37	\$20,723.92
TMC	\$70,387.90	\$84,361.85	\$165,791.36
Add	+	+	+
Individual Capital Costs	\$277,391.67	\$205,941.67	\$16,666.67
Subtotal	\$347,779.57	\$290,303.52	\$182,458.03
Divide	/	/	/
Party’s Total Tonnage	220,785	400,000	900,000
<b>Cost Per Tonne</b>	<b>\$1.57/tonne</b>	<b>\$0.73/tonne</b>	<b>\$0.20/tonne</b>

[41] To access the Road, the Board finds it would be appropriate for:

- (a) North Country to pay to the DLO Holder \$0.20 per tonne that North Country hauls on the Road; and
- (b) Blish to pay to the DLO Holder \$0.73 per tonne that Blish hauls on the Road.

**(d) Other Terms and Conditions**

[42] The Parties were asked to provide the Board with comparable road use agreements. Based on the agreements provided, and on the Board’s experience, the Road Use Agreement in Appendix A includes detailed terms and conditions addressing the following:

- (a) *Road Restrictions*: terms regarding Rules of the Road, Gates and Security, and restrictions on the use of the Road.
- (b) *Maintenance*: terms regarding the maintenance of the Road.
- (c) *Liability and Indemnity*: terms regarding risk, liability, indemnity, environmental matters, and insurance.
- (d) *Dispute Resolution*: terms involving resolution of disputes.

- (e) *Notices*: terms regarding the provision of notices.
- (f) *Assignment*: the Agreement is not assignable without mutual agreement of the Parties and the Government of Alberta.
- (g) *Termination*: terms regarding termination of the Agreement.
- (h) *Amendment*: terms on how the Agreement may be amended.
- (i) *Waiver*: terms detailing waiver of performance.
- (j) *Encumbrances*: no encumbrances are permitted.

## VI. RECOMMENDATION

[43] The Board recommends the Minister order the DLO Holder, 1617453 Alberta Ltd., to grant access to the specified portions of DLO 160106, identified in Appendix B of this Report and Recommendations, to North Country Aggregates Ltd., and to Ms. Beverly Blish, on the terms and conditions outlined in Appendix A of this Report and Recommendations.

[44] In accordance with section 124(4) of the Act<sup>18</sup> a copy of this Report and Recommendations and any decision by the Minister regarding this appeal is to be provided to:

- (a) The Lornel Group, on behalf of North Country Aggregates Ltd.;
- (b) Ms. Beverly Blish; and
- (c) Mr. Les Helm, Silver Sage Enterprises, on behalf of 1617453 Alberta Ltd.

Dated on April 19, 2023, at Edmonton, Alberta.

**Brenda Ballachey**

Signed with ConsignO Cloud (2022/05/26)

Verify with [verify.adobe.com](https://verify.adobe.com) or Adobe Reader.

Dr. Brenda Ballachey  
Panel Chair and Board Member

**Angela Aalbers**

Signed with ConsignO Cloud (2023/05/23)

Verify with [verify.adobe.com](https://verify.adobe.com) or Adobe Reader.

Angela Aalbers  
Board Member

---

<sup>18</sup> Section 124(4) of the Act states:

“The Minister shall immediately give notice of any decision made under this section to the appeal body, and the appeal body shall immediately, on receipt of the notice of the decision, give notice of the decision to all persons who submitted notices of appeal or made representations or written submissions to the appeal body and to all the persons who the appeal body considers should receive notice of the decision.”

**VII. APPENDIX A**

**Road Use Agreement**

As ordered by the Minister of Forestry, Parks and Tourism, under section 124 of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”), and section 98 of the *Public Lands Administration Regulation*, AR 187/2011 (“PLAR”), 1617453 Alberta Ltd. (the “DLO Holder”), as holder of DLO 160106 (the “DLO”), grants to:

- A. North Country Aggregates Ltd. (“North Country”), the right to use Road Section 1 as defined in section 1.1(i) of this Road Use Agreement (the “Agreement”), subject to the terms and conditions of this Agreement; and
- B. Ms. Beverly Blish (“Blish”), the right to use Road Sections 1 and 2 as defined in sections 1.1(i) and (j) of this Agreement, subject to the terms and conditions of this Agreement.

**1. Definitions**

1.1 In this Agreement, including the recitals, and the Addendums attached, the following terms have the following meanings:

- (a) “Active Road Use” means one or more days where hauling or maintenance is conducted on the Road;
- (b) “Agreement” means the body of this agreement plus any Addendums;
- (c) “Authorized User” means North Country Aggregates Ltd. or Beverly Blish, acting independently;
- (d) “Capital Costs” means the cost to build the Road;
- (e) “DLO” means Department Licence of Occupation 160106;
- (f) “Party” means 1617453 Alberta Ltd., or North Country, or Beverly Blish, acting independently;

- (g) “Parties” means 1617453 Alberta Ltd., North Country, and Beverly Blish, collectively;
- (h) “Road” means the road built on DLO 160106;
- (i) “Road Section 1” means the portion of the Road starting at the intersection of the DLO and Stoney Mountain Road, proceeding Southeast and then South for 350 meters, following the DLO, as outlined approximately in Appendix B.
- (j) “Road Section 2” means the portion of the Road starting at the South end of Road Section 1 and proceeding south for 2,650 meters, following the DLO, as outlined approximately in Appendix B.
- (k) “Road Section 3” means the portion of the Road starting at the South end of Road Section 2 and proceeding South for 500 meters to the end of the DLO at Surface Material Lease SML 160053, held by the DLO Holder, as outlined approximately in Appendix B.
- (l) “SML” is defined as Surface Material Lease.”
- (m) “Traffic Rules” are defined as the rules governing the safe use of the Road.

## **2. Interpretation**

### **2.1 In this Agreement:**

- (a) All distances, weights, and measurements are approximate.
- (b) This Agreement is enforceable by the Courts of Alberta.
- (c) This Agreement is subject to the Act and PLAR. If any terms or conditions of this Agreement conflict with the Act or PLAR, the Act or PLAR shall prevail.
- (d) The headings of the paragraphs and Schedules are inserted for convenience of reference only and shall not affect meaning or construction;

- (e) Whenever the singular or masculine or neuter is used in the paragraphs and Schedules each shall be interpreted as meaning the plural or feminine or body politic or corporate and vice versa, as the context requires;
- (f) All references to currency are references to the currency of Canada;
- (g) All claims in respect of which a Party has a claim pursuant to this Agreement include without limitations reasonable legal fees and disbursements on a solicitor and their own client basis and on a full indemnity basis;
- (h) References to a statute is a reference to such enactment as amended or re-enacted from time to time and every statute that may be substituted in whole or in part and the regulations, bylaws or other subsidiary legislation made pursuant to such statute;
- (i) If a derivative form of a term or expression that is defined in this Agreement is also used in this Agreement, such derivative form shall have a meaning that corresponds to such term or expression in the context in which it is used.

### **3. Acting Reasonably**

- 3.1 In exercising their rights and carrying out their obligations under this Agreement, the Parties shall act reasonably.

### **4. Consideration and Compensation**

#### Per Tonne Consideration

- 4.1 In recognition of the Capital Costs the DLO Holder incurred in building the Road, and in recognition of the ongoing maintenance that will be required to keep the Road operational, Authorized User shall pay DLO Holder per tonne of material hauled on the Road as follows:
  - (a) North Country shall pay to DLO Holder \$0.20 per tonne of material hauled on the Road from SML 160058.

- (b) Blish shall pay to DLO Holder \$0.73 per tonne of material hauled on the Road from SML 160052.
- 4.2 Authorized User shall submit to DLO Holder written proof of material hauled on the Road in each calendar year by December 31 of each year the Road is used by Authorized User.
- 4.3 Authorized User shall submit full payment to DLO Holder by December 31 of each year the Road is used by the Authorized User.
- 5. Road Restrictions**
- 5.1 In using the Road, Authorized User shall comply with the requirements of all federal, provincial, and municipal laws.
- 5.2 DLO Holder reserves to itself the exclusive control and operation of the Road and Authorized User shall observe all load limits, speed limits, road bans, closures, and restrictions whether imposed by governmental authority or, if it reasonably deems the Road conditions warrant such, by DLO Holder.
- 5.3 DLO Holder shall, on a best-efforts basis, notify Authorized User when anticipated closures or restrictions are to be imposed.
- 5.4 DLO Holder shall not be liable for any loss or damage to Authorized User as a result of the imposition of any limits, bans, closures and restrictions or of any failure to give reasonable notice thereof to Authorized User.
- 5.5 DLO Holder reserves the right to control the entrances of any access road connected to the Road and to control the location of signs and culvert installations at such access points.
- 5.6 The rights of Authorized User under this Agreement are non-exclusive.

- 5.7 DLO Holder may use or access the Road and any other person who has permission from DLO Holder or from the Government of Alberta may use or access the Road, including those authorized under the Act.

#### Active Road Use

- 5.8 A Party shall provide a minimum of 24 hours written notice to the other Parties before commencing Active Road Use. The notice shall include the estimated number of vehicles using the Road and starting and finishing dates. Notice shall be given to the other Parties at the end of the Active Road Use within 24 hours of ending Active Road Use.
- 5.9 If four or more consecutive days occur with no hauling or maintenance on the Road, the start of hauling or maintenance on the Road constitutes new Active Road Use.
- 5.10 If Active Road Use extends for more than three months, a Party providing notice of Active Road Use shall provide a new notice of Active Road Use to the other Parties at the end of each three-month period.

#### Rules of the Road

- 5.11 The Parties shall conduct their activities on the Road in a safe manner and in accordance with the terms and conditions of this Agreement. The Parties shall ensure any activities on the Road by their employees, contractors, subcontractors, and agents are conducted in a safe manner and in accordance with the terms and conditions of this Agreement.
- 5.12 In addition to section 5.1 of this Agreement, the use of the Road by Parties, their contractors, subcontractors, and agents shall be subject to the Traffic Rules for the safety of all users and the preservation of the Road.
- 5.13 A mutual agreement by the Parties on Traffic Rules shall be reached prior to any hauling on the Road.



- 5.14 DLO Holder has exclusive responsibility, control, and operation of the Road and Authorized User shall observe all load limits, speed limits, road bans, closures, and restrictions, whether imposed by a governmental authority or by DLO Holder, acting reasonably.
- 5.15 DLO Holder shall take reasonable steps to notify Authorized User when anticipated closures or restrictions are to be imposed.
- 5.16 Authorized User may appeal any road restriction imposed by DLO Holder to a Referee or an Arbitrator as provided for in Part 12 of this Agreement.
- 5.17 DLO Holder shall not be liable for any loss or damage incurred by Authorized User because of the imposition of reasonable limits, bans, closures, and restrictions.

## **6. Maintenance**

- 6.1 DLO Holder shall perform and effect such maintenance and repairs to the Road as it deems necessary to maintain it in a condition acceptable for DLO Holder's use.
- 6.2 Authorized User shall not alter, modify, or change the Road or any structures forming a part of the Road without first obtaining the written consent of DLO Holder, or by order of a Referee or an Arbitrator under Part 12 of this Agreement.
- 6.3 DLO Holder has the right to enter on the Road at DLO Holder's discretion to effect maintenance and repairs and DLO Holder shall not be responsible or liable to compensate Authorized User for any loss, injury, damage, inconvenience, or annoyance Authorized User may suffer from such entry.
- 6.4 Authorized User agrees that if damage or destruction to the Road, as determined by DLO Holder acting reasonably, results from the exercise by Authorized User and its agents, employees, contractors and subcontractors of the rights herein granted, Authorized User shall, at DLO Holder's request, restore the Road to its condition immediately prior to the damage. If Authorized User fails to comply with such instruction within thirty (30) days,

DLO Holder may restore the Road to its condition immediately prior to the damage at the expense of Authorized User. In such event, Authorized User will reimburse DLO Holder the DLO Holder's costs of the restoration within thirty (30) days of receiving DLO Holder's invoice.

## **7. Liability and Indemnity**

7.1 Authorized User uses the Road under this Agreement at their own risk and, by entering onto the Road under this Agreement, Authorized User is liable for and assumes the risk of any loss, damage, or expense suffered by DLO Holder, North Country, Blish, or any third person as a result of the use of the Road by Authorized User, their employees, agents, contractors, or subcontractors.

7.2 Authorized User shall hold DLO Holder and the Government of Alberta harmless and indemnify DLO Holder and the Government of Alberta against all liability, actions, proceedings, claims, demands, judgments, and costs (including actual solicitor client costs incurred in defending against the same) suffered by DLO Holder or the Government of Alberta resulting from or arising out of the use of the Road by North Country, Blish, their employees, agents, contractors, or subcontractors, including all claims for bodily injury or death to any person or persons resulting from or arising out of Authorized User's use of or activity on the Road or the use of or activity on the Road by Authorized User's employees, agents, contractors, or subcontractors.

## **8. Environmental Matters**

8.1 Authorized User shall notify DLO Holder immediately in the event of any environmental pollution or contamination problems caused by Authorized User's operations on the Road or on any adjacent lands because of the use of the Road ("Environmental Contamination") and Authorized User shall be solely responsible to notify the appropriate agencies related to the event and for the cost of all work carried out to correct any and all Environmental Contamination caused by Authorized User.

- 8.2 Authorized User shall indemnify and save DLO Holder harmless against all loss, damages, and expenses which may be brought against or suffered by DLO Holder and which are incidental to any Environmental Contamination, except to the extent that such loss, damage, or expense is the result of DLO Holder's operations.
- 8.3 Upon termination of this Agreement, Authorized User shall leave the Road, and any lands adjacent to the Road, free of any Environmental Contamination resulting from Authorized User's operation, which may adversely affect the land. The liability and responsibility of Authorized User to DLO Holder with respect to the environmental obligations contained in this Agreement shall continue to be enforceable by DLO Holder notwithstanding the termination of this Agreement.

## **9. Default**

- 9.1 If Authorized User fails to comply with any of the terms or conditions of this Agreement or is otherwise in default of any provisions of this Agreement and such failure to comply or default continues for a period of thirty (30) days after receipt of notice from DLO Holder to remedy such default, DLO Holder may, without limiting any other remedies it may have, terminate this Agreement in full or in part.
- 9.2 Authorized User shall be liable for and shall pay all reasonable costs and expenses incurred by DLO Holder including, without limitation, reasonable legal fees on a solicitor and client basis and other professional fees and disbursements on a full indemnity basis.

## **10. Representations**

- 10.1 DLO Holder represents and warrants that:
- (a) all work shall be performed in a competent fashion, with integrity, and in accordance with applicable standards of the aggregate industry in Alberta.

10.2 Authorized User represents and warrants that:

- (a) all work shall be performed in a competent fashion, with integrity, and in accordance with applicable standards of the aggregate industry in Alberta.

**11. Insurance**

11.1 Authorized User shall, at their own cost, obtain and keep in force during the term of this Agreement, and on a claims basis for three years after termination of this Agreement, liability insurance protecting against any liability for bodily injury or property damage occurring on the Road or because of Authorized User's use of the Road, with the following policy limits with insurers acceptable to DLO Holder:

- (a) Bodily Injury – \$2 million; and
- (b) Property Damage – \$2 million.

11.2 DLO Holder shall be named as an additional insured on the policies required under section 11.1 with respect to any claim arising out of or in connection with Authorized User's use of the Road.

11.3 Authorized User shall provide DLO Holder with proof of insurance before Authorized User may use the Road for hauling of aggregate.

11.4 Authorized User shall ensure that any of their agents, employees, contractors, and subcontractors who are not covered under Authorized User's insurance policies maintain insurance in the same amounts and subject to the same requirements as set out in section 11.1 above before those agents, employees, contractors, and subcontractors, may use the Road under this Agreement.

11.5 Authorized User shall provide DLO Holder with proof of insurance for their agents, employees, contractors, and subcontractors before those agents, employees, contractors, and subcontractors may use the Road for hauling of aggregate.

- 11.6 Authorized User shall maintain in force and ensure their contractors maintain in force Workers' Compensation coverage as required by Alberta law.
- 11.7 The insurance policies shall be endorsed to provide that in the event of any change that could affect the interests of DLO Holder, or in the event of their cancellation, the insurers shall notify DLO Holder thirty (30) days prior to the effective date of such change or cancellation.

## **12. Referee/Arbitration**

- 12.1 Breaches or disagreements under this Agreement may be referred for a decision to a mutually agreed upon Referee or an Arbitrator pursuant to the *Alberta Arbitration Act*, R.S.A. 2000, c. A-43.
- 12.2 Breaches or disputes of a minor nature may be referred to a Referee. Breaches or disputes properly before an Arbitrator include, but are not limited to, road modifications, cost or safety disputes, and any other matter the Parties agree to refer to an Arbitrator.
- 12.3 If a Referee or Arbitrator cannot be mutually agreed upon, the party seeking the decision may request the ADR Institute of Alberta appoint a qualified Referee or Arbitrator to hear the dispute.
- 12.4 If the dispute involves a safety violation, the Referee or Arbitrator may fine either party.

### Fines and Penalties

- 12.5 If a fine is levied by a Referee or an Arbitrator against DLO Holder and DLO Holder does not pay by the date set by the Referee or the Arbitrator, then the fine amount may be deducted from the next maintenance payment owed by Authorized User.
- 12.6 If a fine is levied by a Referee or an Arbitrator against Authorized User and Authorized User does not pay by the date set by the Referee or the Arbitrator, Authorized User is prohibited from using the Road until the fine is paid.

## Costs and Appeals

- 12.7 The costs of a Referee are to be paid equally by Authorized User involved in the dispute and DLO Holder.
- 12.8 The costs of any arbitration are to be determined and awarded as the Arbitrator may decide in their sole discretion.
- 12.9 A decision of a Referee may be appealed to an Arbitrator.
- 12.10 An Arbitrator's decision is final and binding pursuant to the provisions of the *Arbitration Act*, R.S.A. 2000, c. A-43.

## 13. Notices

- 13.1 Any notices or other communications required or permitted to be delivered under this Agreement shall be in writing and delivered by hand delivery, email, facsimile, or pre-paid registered mail. Such notice or communication shall be deemed to have been given and received by the other party on the date when hand delivered or sent by confirmed facsimile transmission (if delivered during the recipient's regular business hours on the business day, and otherwise on the next business day), or three days after being sent by pre-paid registered mail to the other party, at the addresses below:

Mr. Joel Melanson, President & CEO  
1617453 Alberta Ltd., Larr Management Corp.  
#1400, 10665 Jasper Avenue  
Edmonton AB TSJ 3S9  
Phone: 587-335-0322  
Email: joel@larrmanagementcorp.ca

North Country Aggregates Ltd.  
PO Box 907  
Athabasca, AB T9S 2A7  
Phone: 1-780-598-5080  
E-Mail: kwasneytrucking@mcsnet.ca

Ms. Beverly Blish  
122 Clenell Bay

Fort McMurray, AB T9K 1P5  
Phone: 780-799-1593  
E-Mail: bevblish@gmail.com

- 13.2 A Party may, from time to time, change the address for service by giving written notice by email or postal mail to the other Parties.

**14. Force Majeure**

- 14.1 If a Party is prevented by Force Majeure from fulfilling any obligation, the obligations of the Party, insofar only as its obligations are affected by the Force Majeure, shall be suspended while the Force Majeure continues to prevent the performance of such obligations and for that time as that Party may reasonably require to commence to fulfill such obligation. A Party prevented from fulfilling any obligation by Force Majeure shall give the other Party notice of the Force Majeure and the affected obligations including reasonably full particulars as soon as reasonably possible in the circumstances. Nothing is construed to relieve either Party of its obligation to pay monies due under this Agreement.

**15. Assignment**

- 15.1 This Agreement is not assignable in whole or in part without mutual agreement of DLO Holder and Authorized User involved in the assignment in writing, and the written approval of the Government of Alberta.

**16. Termination**

- 16.1 This Agreement terminates when the DLO terminates unless the DLO is renewed or extended by the Government of Alberta, or unless otherwise specified under this Agreement.
- 16.2 This Agreement terminates if the Government of Alberta cancels the DLO.
- 16.3 The Parties may agree in writing to terminate this Agreement earlier than the termination date of the DLO.

- 16.4 Authorized User may terminate this Agreement 30 days after providing notice in writing of intent to terminate this Agreement.
- 16.5 If this Agreement is terminated Authorized User is prohibited from using the Road.
- 16.6 If at the time of the termination of this Agreement any amounts arising from this Agreement are owing by one party to the other, that amount is due and payable by the party owing the amount by the last calendar day of the month following the termination.

**17. Miscellaneous**

- 17.1 If compliance with any provision of this Agreement would result in violation of any applicable codes, statutes, laws, regulations, permits, licenses, orders and directions of any governmental authority, such code, statute, law, regulation, permit, license, order and direction of any governmental authority shall prevail and this Agreement shall be deemed to be amended accordingly.
- 17.2 This Agreement, as amended from time to time by agreement in writing of the Parties, shall be the entire agreement between DLO Holder and Authorized User as to the matters herein and all previous promises, representations, or agreements between the Parties, whether oral or written, shall be deemed to have been replaced by this Agreement.
- 17.3 If any provision of this Agreement is wholly or partially unenforceable for any reason, such unenforceability will not affect the enforceability of the balance of this Agreement and all provisions of this Agreement shall, if alternative interpretations are applicable, be construed to preserve the enforceability of this Agreement.
- 17.4 No failure or delay by a Party in exercising any right, power or privilege under this Agreement shall operate as a waiver, nor shall any single or partial exercise preclude any other or further exercise or the exercise of any right, power, or privilege under this Agreement.



- 17.5 The failure of a Party to seek redress for violation of or to insist on the strict performance of any covenant or condition of this Agreement does not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.
- 17.6 This Agreement has been ordered by the Minister, and is a legal, valid, and binding obligation between the Parties, enforceable in accordance with its terms, subject to the qualification that such enforceability may be limited by bankruptcy, insolvency, reorganization, or other laws of general application relating to or affecting rights of creditors and that equitable remedies, including specific performance, are discretionary and may not be ordered.
- 17.7 This Agreement shall be governed and construed in accordance with the laws of the province of Alberta and the federal laws of Canada, as applicable, and shall be treated as a contract of Alberta.
- 17.8 Time is of the essence throughout.

**18. Amendment**

- 18.1 The Parties may mutually agree to amend this Agreement at any time in writing.
- 18.2 Any amendment that would breach the terms and conditions of the DLO is void.
- 18.3 Any amendment extending the termination date beyond the expiry of the DLO is void.

**19. Waiver**

- 19.1 Failure by a Party, at any time, to require strict performance by another Party of any provision of this Agreement will in no way affect the first Party's rights to enforce such provision.
- 19.2 Any waiver by a Party of any breach shall not be held to be a waiver of any subsequent breach or waiver of any other provision.

19.3 No waiver of any breach of any provision of this Agreement shall take effect or be binding upon a Party unless it is in writing.

**20. Encumbrances**

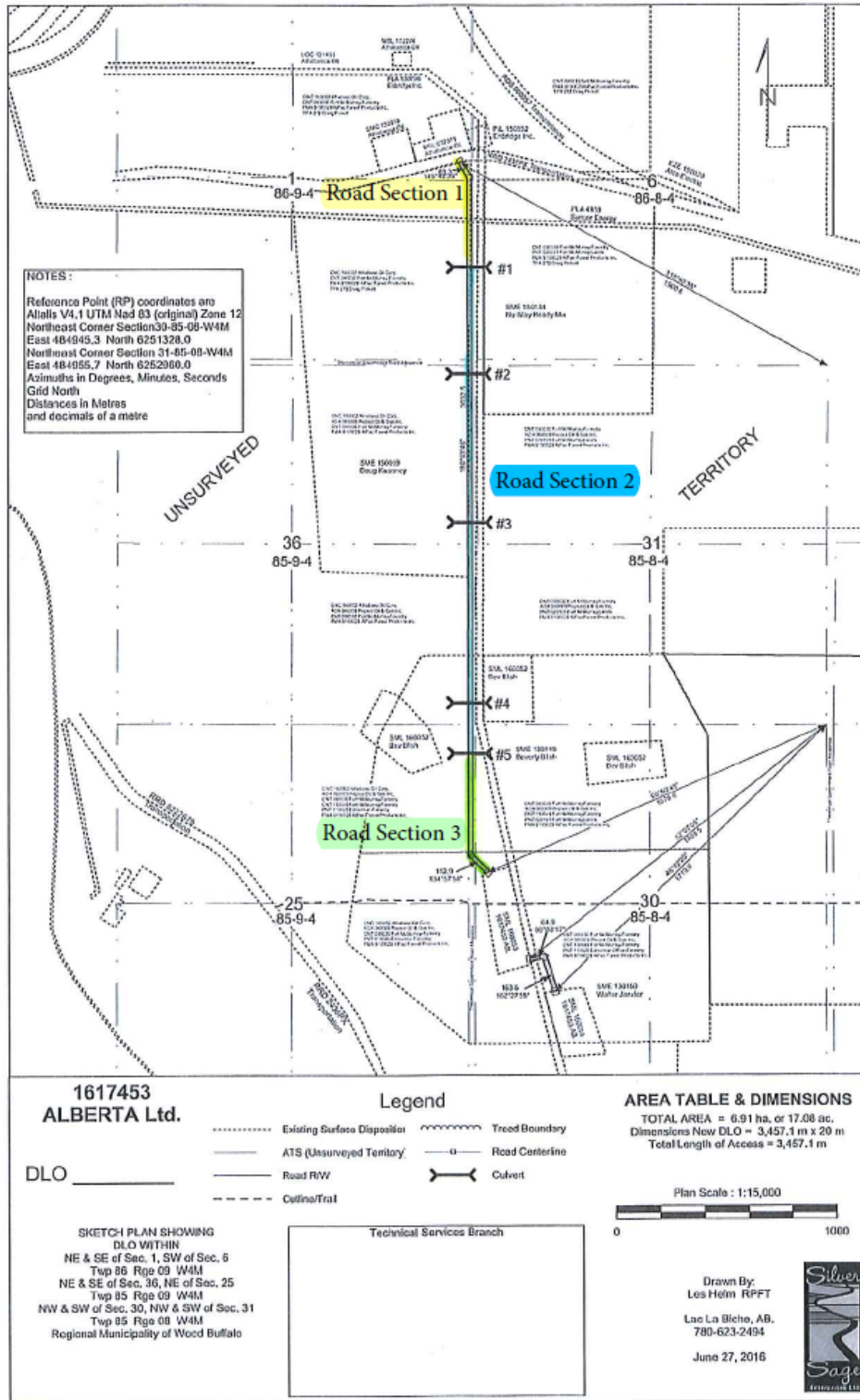
20.1 Authorized User shall not:

- (a) permit any builder's liens or other liens for labour or material relating to work to remain filed against the DLO, nor
- (b) register, cause or allow to be registered, or permit to remain registered, any caveat or encumbrance against the DLO.

20.2 Where a builder's lien or other lien for labour or material relating to work is registered against the DLO because of any action or inaction of Authorized User, Authorized User shall immediately take whatever steps are necessary to discharge the lien.

20.3 Where a caveat or encumbrance is registered against the title to the DLO because of any action or inaction of Authorized User, Authorized User shall immediately take whatever steps are necessary to discharge the caveat or encumbrance.

VIII. APPENDIX B



Map provided by DLO Holder.



ALBERTA

FORESTRY, PARKS AND TOURISM

*Office of the Minister*

**Ministerial Order**

**39/2023**

*Public Lands Act,*  
R.S.A. 2000, c. P-40;

and

*Public Lands Administration Regulation,*  
Alta. Reg. 187/2011.

**Order Respecting Public Lands Appeal Board  
Appeal Nos. 22-0005 and 22-0007**

I, Todd Loewen, Minister of Forestry, Parks and Tourism, pursuant to section 124 of the *Public Lands Act*, make the order in the attached Appendices, being an Order Respecting Public Lands Appeal Board Appeal Nos. 22-0005 and 22-0007.

Dated at Edmonton, in the Province of Alberta, this 25 day of April,  
2023.

Todd Loewen  
Minister

## **Appendix A**

### Order Respecting Public Lands Appeal Board Appeal Nos. 22-0005 and 22-0007

With respect to Department Licence of Occupation DLO 160106, I, Todd Loewen, Minister of Forestry, Parks and Tourism, order:

1. The holder of DLO 160106, 1617453 Alberta Ltd., shall allow North Country Aggregates Ltd. access to a portion of DLO 160106 on terms and conditions as specified in Appendix B.
2. The holder of DLO 160106, 1617453 Alberta Ltd., shall allow Ms. Beverly Blish access to a portion of DLO 160106 on terms and conditions as specified in Appendix B.

## Appendix B

### Road Use Agreement

As ordered by the Minister of Forestry, Parks and Tourism, under section 124 of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the "Act"), and section 98 of the *Public Lands Administration Regulation*, AR 187/2011 ("PLAR"), 1617453 Alberta Ltd. (the "DLO Holder"), as holder of DLO 160106 (the "DLO"), grants to:

- A. North Country Aggregates Ltd. ("North Country"), the right to use Road Section 1 as defined in section 1.1(i) of this Road Use Agreement (the "Agreement"), subject to the terms and conditions of this Agreement; and
- B. Ms. Beverly Blish ("Blish"), the right to use Road Sections 1 and 2 as defined in sections 1.1(i) and (j) of this Agreement, subject to the terms and conditions of this Agreement.

#### 1. Definitions

1.1 In this Agreement, including the recitals, and the Addendums attached, the following terms have the following meanings:

- (a) "Active Road Use" means one or more days where hauling or maintenance is conducted on the Road;
- (b) "Agreement" means the body of this agreement plus any Addendums;
- (c) "Authorized User" means North Country Aggregates Ltd. or Beverly Blish, acting independently;
- (d) "Capital Costs" means the cost to build the Road;
- (e) "DLO" means Department Licence of Occupation 160106;
- (f) "Party" means 1617453 Alberta Ltd., or North Country, or Beverly Blish, acting independently;

- (g) “Parties” means 1617453 Alberta Ltd., North Country, and Beverly Blish, collectively;
- (h) “Road” means the road built on DLO 160106;
- (i) “Road Section 1” means the portion of the Road starting at the intersection of the DLO and Stoney Mountain Road, proceeding Southeast and then South for 350 meters, following the DLO, as outlined approximately in Appendix C.
- (j) “Road Section 2” means the portion of the Road starting at the South end of Road Section 1 and proceeding south for 2,650 meters, following the DLO, as outlined approximately in Appendix C.
- (k) “Road Section 3” means the portion of the Road starting at the South end of Road Section 2 and proceeding South for 500 meters to the end of the DLO at Surface Material Lease SML 160053, held by the DLO Holder, as outlined approximately in Appendix C.
- (l) “SML” is defined as Surface Material Lease.”
- (m) “Traffic Rules” are defined as the rules governing the safe use of the Road.

## **2. Interpretation**

### **2.1 In this Agreement:**

- (a) All distances, weights, and measurements are approximate.
- (b) This Agreement is enforceable by the Courts of Alberta.
- (c) This Agreement is subject to the Act and PLAR. If any terms or conditions of this Agreement conflict with the Act or PLAR, the Act or PLAR shall prevail.

- (d) The headings of the paragraphs and Schedules are inserted for convenience of reference only and shall not affect meaning or construction;
- (e) Whenever the singular or masculine or neuter is used in the paragraphs and Schedules each shall be interpreted as meaning the plural or feminine or body politic or corporate and vice versa, as the context requires;
- (f) All references to currency are references to the currency of Canada;
- (g) All claims in respect of which a Party has a claim pursuant to this Agreement include without limitations reasonable legal fees and disbursements on a solicitor and their own client basis and on a full indemnity basis;
- (h) References to a statute is a reference to such enactment as amended or re-enacted from time to time and every statute that may be substituted in whole or in part and the regulations, bylaws or other subsidiary legislation made pursuant to such statute;
- (i) If a derivative form of a term or expression that is defined in this Agreement is also used in this Agreement, such derivative form shall have a meaning that corresponds to such term or expression in the context in which it is used.

### **3. Acting Reasonably**

- 3.1 In exercising their rights and carrying out their obligations under this Agreement, the Parties shall act reasonably.

### **4. Consideration and Compensation**

#### Per Tonne Consideration

- 4.1 In recognition of the Capital Costs the DLO Holder incurred in building the Road, and in recognition of the ongoing maintenance that will be required to keep the



Road operational, Authorized User shall pay DLO Holder per tonne of material hauled on the Road as follows:

- (a) North Country shall pay to DLO Holder \$0.20 per tonne of material hauled on the Road from SML 160058.
- (b) Blish shall pay to DLO Holder \$0.73 per tonne of material hauled on the Road from SML 160052.

4.2 Authorized User shall submit to DLO Holder written proof of material hauled on the Road in each calendar year by December 31 of each year the Road is used by Authorized User.

4.3 Authorized User shall submit full payment to DLO Holder by December 31 of each year the Road is used by the Authorized User.

## **5. Road Restrictions**

5.1 In using the Road, Authorized User shall comply with the requirements of all federal, provincial, and municipal laws.

5.2 DLO Holder reserves to itself the exclusive control and operation of the Road and Authorized User shall observe all load limits, speed limits, road bans, closures, and restrictions whether imposed by governmental authority or, if it reasonably deems the Road conditions warrant such, by DLO Holder.

5.3 DLO Holder shall, on a best-efforts basis, notify Authorized User when anticipated closures or restrictions are to be imposed.

5.4 DLO Holder shall not be liable for any loss or damage to Authorized User as a result of the imposition of any limits, bans, closures and restrictions or of any failure to give reasonable notice thereof to Authorized User.

5.5 DLO Holder reserves the right to control the entrances of any access road connected to the Road and to control the location of signs and culvert installations at such access points.

- 5.6 The rights of Authorized User under this Agreement are non-exclusive.
- 5.7 DLO Holder may use or access the Road and any other person who has permission from DLO Holder or from the Government of Alberta may use or access the Road, including those authorized under the Act.

#### Active Road Use

- 5.8 A Party shall provide a minimum of 24 hours written notice to the other Parties before commencing Active Road Use. The notice shall include the estimated number of vehicles using the Road and starting and finishing dates. Notice shall be given to the other Parties at the end of the Active Road Use within 24 hours of ending Active Road Use.
- 5.9 If four or more consecutive days occur with no hauling or maintenance on the Road, the start of hauling or maintenance on the Road constitutes new Active Road Use.
- 5.10 If Active Road Use extends for more than three months, a Party providing notice of Active Road Use shall provide a new notice of Active Road Use to the other Parties at the end of each three-month period.

#### Rules of the Road

- 5.11 The Parties shall conduct their activities on the Road in a safe manner and in accordance with the terms and conditions of this Agreement. The Parties shall ensure any activities on the Road by their employees, contractors, subcontractors, and agents are conducted in a safe manner and in accordance with the terms and conditions of this Agreement.
- 5.12 In addition to section 5.1 of this Agreement, the use of the Road by Parties, their contractors, subcontractors, and agents shall be subject to the Traffic Rules for the safety of all users and the preservation of the Road.
- 5.13 A mutual agreement by the Parties on Traffic Rules shall be reached prior to any hauling on the Road.

- 5.14 DLO Holder has exclusive responsibility, control, and operation of the Road and Authorized User shall observe all load limits, speed limits, road bans, closures, and restrictions, whether imposed by a governmental authority or by DLO Holder, acting reasonably.
- 5.15 DLO Holder shall take reasonable steps to notify Authorized User when anticipated closures or restrictions are to be imposed.
- 5.16 Authorized User may appeal any road restriction imposed by DLO Holder to a Referee or an Arbitrator as provided for in Part 12 of this Agreement.
- 5.17 DLO Holder shall not be liable for any loss or damage incurred by Authorized User because of the imposition of reasonable limits, bans, closures, and restrictions.

**6. Maintenance**

- 6.1 DLO Holder shall perform and effect such maintenance and repairs to the Road as it deems necessary to maintain it in a condition acceptable for DLO Holder's use.
- 6.2 Authorized User shall not alter, modify, or change the Road or any structures forming a part of the Road without first obtaining the written consent of DLO Holder, or by order of a Referee or an Arbitrator under Part 12 of this Agreement.
- 6.3 DLO Holder has the right to enter on the Road at DLO Holder's discretion to effect maintenance and repairs and DLO Holder shall not be responsible or liable to compensate Authorized User for any loss, injury, damage, inconvenience, or annoyance Authorized User may suffer from such entry.
- 6.4 Authorized User agrees that if damage or destruction to the Road, as determined by DLO Holder acting reasonably, results from the exercise by Authorized User and its agents, employees, contractors and subcontractors of the rights herein granted, Authorized User shall, at DLO Holder's request, restore the Road to its condition immediately prior to the damage. If Authorized User fails to comply with such instruction within thirty (30) days, DLO Holder may restore the Road to its condition immediately prior to the damage at the expense of Authorized User. In

such event, Authorized User will reimburse DLO Holder the DLO Holder's costs of the restoration within thirty (30) days of receiving DLO Holder's invoice.

## **7. Liability and Indemnity**

7.1 Authorized User uses the Road under this Agreement at their own risk and, by entering onto the Road under this Agreement, Authorized User is liable for and assumes the risk of any loss, damage, or expense suffered by DLO Holder, North Country, Blish, or any third person as a result of the use of the Road by Authorized User, their employees, agents, contractors, or subcontractors.

7.2 Authorized User shall hold DLO Holder and the Government of Alberta harmless and indemnify DLO Holder and the Government of Alberta against all liability, actions, proceedings, claims, demands, judgments, and costs (including actual solicitor client costs incurred in defending against the same) suffered by DLO Holder or the Government of Alberta resulting from or arising out of the use of the Road by North Country, Blish, their employees, agents, contractors, or subcontractors, including all claims for bodily injury or death to any person or persons resulting from or arising out of Authorized User's use of or activity on the Road or the use of or activity on the Road by Authorized User's employees, agents, contractors, or subcontractors.

## **8. Environmental Matters**

8.1 Authorized User shall notify DLO Holder immediately in the event of any environmental pollution or contamination problems caused by Authorized User's operations on the Road or on any adjacent lands because of the use of the Road ("Environmental Contamination") and Authorized User shall be solely responsible to notify the appropriate agencies related to the event and for the cost of all work carried out to correct any and all Environmental Contamination caused by Authorized User.

8.2 Authorized User shall indemnify and save DLO Holder harmless against all loss, damages, and expenses which may be brought against or suffered by DLO Holder

and which are incidental to any Environmental Contamination, except to the extent that such loss, damage, or expense is the result of DLO Holder's operations.

8.3 Upon termination of this Agreement, Authorized User shall leave the Road, and any lands adjacent to the Road, free of any Environmental Contamination resulting from Authorized User's operation, which may adversely affect the land. The liability and responsibility of Authorized User to DLO Holder with respect to the environmental obligations contained in this Agreement shall continue to be enforceable by DLO Holder notwithstanding the termination of this Agreement.

## **9. Default**

9.1 If Authorized User fails to comply with any of the terms or conditions of this Agreement or is otherwise in default of any provisions of this Agreement and such failure to comply or default continues for a period of thirty (30) days after receipt of notice from DLO Holder to remedy such default, DLO Holder may, without limiting any other remedies it may have, terminate this Agreement in full or in part.

9.2 Authorized User shall be liable for and shall pay all reasonable costs and expenses incurred by DLO Holder including, without limitation, reasonable legal fees on a solicitor and client basis and other professional fees and disbursements on a full indemnity basis.

## **10. Representations**

10.1 DLO Holder represents and warrants that:

(a) all work shall be performed in a competent fashion, with integrity, and in accordance with applicable standards of the aggregate industry in Alberta.

10.2 Authorized User represents and warrants that:

(a) all work shall be performed in a competent fashion, with integrity, and in accordance with applicable standards of the aggregate industry in Alberta.

## **11. Insurance**

- 11.1 Authorized User shall, at their own cost, obtain and keep in force during the term of this Agreement, and on a claims basis for three years after termination of this Agreement, liability insurance protecting against any liability for bodily injury or property damage occurring on the Road or because of Authorized User's use of the Road, with the following policy limits with insurers acceptable to DLO Holder:
- (a) Bodily Injury – \$2 million; and
  - (b) Property Damage – \$2 million.
- 11.2 DLO Holder shall be named as an additional insured on the policies required under section 11.1 with respect to any claim arising out of or in connection with Authorized User's use of the Road.
- 11.3 Authorized User shall provide DLO Holder with proof of insurance before Authorized User may use the Road for hauling of aggregate.
- 11.4 Authorized User shall ensure that any of their agents, employees, contractors, and subcontractors who are not covered under Authorized User's insurance policies maintain insurance in the same amounts and subject to the same requirements as set out in section 11.1 above before those agents, employees, contractors, and subcontractors, may use the Road under this Agreement.
- 11.5 Authorized User shall provide DLO Holder with proof of insurance for their agents, employees, contractors, and subcontractors before those agents, employees, contractors, and subcontractors may use the Road for hauling of aggregate.
- 11.6 Authorized User shall maintain in force and ensure their contractors maintain in force Workers' Compensation coverage as required by Alberta law.
- 11.7 The insurance policies shall be endorsed to provide that in the event of any change that could affect the interests of DLO Holder, or in the event of their cancellation, the insurers shall notify DLO Holder thirty (30) days prior to the effective date of such change or cancellation.

## **12. Referee/Arbitration**

- 12.1 Breaches or disagreements under this Agreement may be referred for a decision to a mutually agreed upon Referee or an Arbitrator pursuant to the *Alberta Arbitration Act*, R.S.A. 2000, c. A-43.
- 12.2 Breaches or disputes of a minor nature may be referred to a Referee. Breaches or disputes properly before an Arbitrator include, but are not limited to, road modifications, cost or safety disputes, and any other matter the Parties agree to refer to an Arbitrator.
- 12.3 If a Referee or Arbitrator cannot be mutually agreed upon, the party seeking the decision may request the ADR Institute of Alberta appoint a qualified Referee or Arbitrator to hear the dispute.
- 12.4 If the dispute involves a safety violation, the Referee or Arbitrator may fine either party.

### Fines and Penalties

- 12.5 If a fine is levied by a Referee or an Arbitrator against DLO Holder and DLO Holder does not pay by the date set by the Referee or the Arbitrator, then the fine amount may be deducted from the next maintenance payment owed by Authorized User.
- 12.6 If a fine is levied by a Referee or an Arbitrator against Authorized User and Authorized User does not pay by the date set by the Referee or the Arbitrator, Authorized User is prohibited from using the Road until the fine is paid.

### Costs and Appeals

- 12.7 The costs of a Referee are to be paid equally by Authorized User involved in the dispute and DLO Holder.
- 12.8 The costs of any arbitration are to be determined and awarded as the Arbitrator may decide in their sole discretion.

- 12.9 A decision of a Referee may be appealed to an Arbitrator.
- 12.10 An Arbitrator's decision is final and binding pursuant to the provisions of the *Arbitration Act*, R.S.A. 2000, c. A-43.

**13. Notices**

- 13.1 Any notices or other communications required or permitted to be delivered under this Agreement shall be in writing and delivered by hand delivery, email, facsimile, or pre-paid registered mail. Such notice or communication shall be deemed to have been given and received by the other party on the date when hand delivered or sent by confirmed facsimile transmission (if delivered during the recipient's regular business hours on the business day, and otherwise on the next business day), or three days after being sent by pre-paid registered mail to the other party, at the addresses below:

Mr. Joel Melanson, President & CEO  
1617453 Alberta Ltd., Larr Management Corp.  
#1400, 10665 Jasper Avenue  
Edmonton AB T5J 3S9  
Phone: 587-335-0322  
Email: joel@larrmanagementcorp.ca

North Country Aggregates Ltd.  
PO Box 907  
Athabasca, AB T9S 2A7  
Phone: 1-780-598-5080  
E-Mail: kwasneytrucking@mcsnet.ca

Ms. Beverly Blish  
122 Clenell Bay  
Fort McMurray, AB T9K 1P5  
Phone: 780-799-1593  
E-Mail: bevblish@gmail.com

- 13.2 A Party may, from time to time, change the address for service by giving written notice by email or postal mail to the other Parties.



**14. Force Majeure**

14.1 If a Party is prevented by Force Majeure from fulfilling any obligation, the obligations of the Party, insofar only as its obligations are affected by the Force Majeure, shall be suspended while the Force Majeure continues to prevent the performance of such obligations and for that time as that Party may reasonably require to commence to fulfill such obligation. A Party prevented from fulfilling any obligation by Force Majeure shall give the other Party notice of the Force Majeure and the affected obligations including reasonably full particulars as soon as reasonably possible in the circumstances. Nothing is construed to relieve either Party of its obligation to pay monies due under this Agreement.

**15. Assignment**

15.1 This Agreement is not assignable in whole or in part without mutual agreement of DLO Holder and Authorized User involved in the assignment in writing, and the written approval of the Government of Alberta.

**16. Termination**

16.1 This Agreement terminates when the DLO terminates unless the DLO is renewed or extended by the Government of Alberta, or unless otherwise specified under this Agreement.

16.2 This Agreement terminates if the Government of Alberta cancels the DLO.

16.3 The Parties may agree in writing to terminate this Agreement earlier than the termination date of the DLO.

16.4 Authorized User may terminate this Agreement 30 days after providing notice in writing of intent to terminate this Agreement.

16.5 If this Agreement is terminated Authorized User is prohibited from using the Road.

16.6 If at the time of the termination of this Agreement any amounts arising from this Agreement are owing by one party to the other, that amount is due and payable by

the party owing the amount by the last calendar day of the month following the termination.

**17. Miscellaneous**

- 17.1 If compliance with any provision of this Agreement would result in violation of any applicable codes, statutes, laws, regulations, permits, licenses, orders and directions of any governmental authority, such code, statute, law, regulation, permit, license, order and direction of any governmental authority shall prevail and this Agreement shall be deemed to be amended accordingly.
- 17.2 This Agreement, as amended from time to time by agreement in writing of the Parties, shall be the entire agreement between DLO Holder and Authorized User as to the matters herein and all previous promises, representations, or agreements between the Parties, whether oral or written, shall be deemed to have been replaced by this Agreement.
- 17.3 If any provision of this Agreement is wholly or partially unenforceable for any reason, such unenforceability will not affect the enforceability of the balance of this Agreement and all provisions of this Agreement shall, if alternative interpretations are applicable, be construed to preserve the enforceability of this Agreement.
- 17.4 No failure or delay by a Party in exercising any right, power or privilege under this Agreement shall operate as a waiver, nor shall any single or partial exercise preclude any other or further exercise or the exercise of any right, power, or privilege under this Agreement.
- 17.5 The failure of a Party to seek redress for violation of or to insist on the strict performance of any covenant or condition of this Agreement does not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.
- 17.6 This Agreement has been ordered by the Minister, and is a legal, valid, and binding obligation between the Parties, enforceable in accordance with its terms, subject to

the qualification that such enforceability may be limited by bankruptcy, insolvency, reorganization, or other laws of general application relating to or affecting rights of creditors and that equitable remedies, including specific performance, are discretionary and may not be ordered.

17.7 This Agreement shall be governed and construed in accordance with the laws of the province of Alberta and the federal laws of Canada, as applicable, and shall be treated as a contract of Alberta.

17.8 Time is of the essence throughout.

## **18. Amendment**

18.1 The Parties may mutually agree to amend this Agreement at any time in writing.

18.2 Any amendment that would breach the terms and conditions of the DLO is void.

18.3 Any amendment extending the termination date beyond the expiry of the DLO is void.

## **19. Waiver**

19.1 Failure by a Party, at any time, to require strict performance by another Party of any provision of this Agreement will in no way affect the first Party's rights to enforce such provision.

19.2 Any waiver by a Party of any breach shall not be held to be a waiver of any subsequent breach or waiver of any other provision.

19.3 No waiver of any breach of any provision of this Agreement shall take effect or be binding upon a Party unless it is in writing.

## **20. Encumbrances**

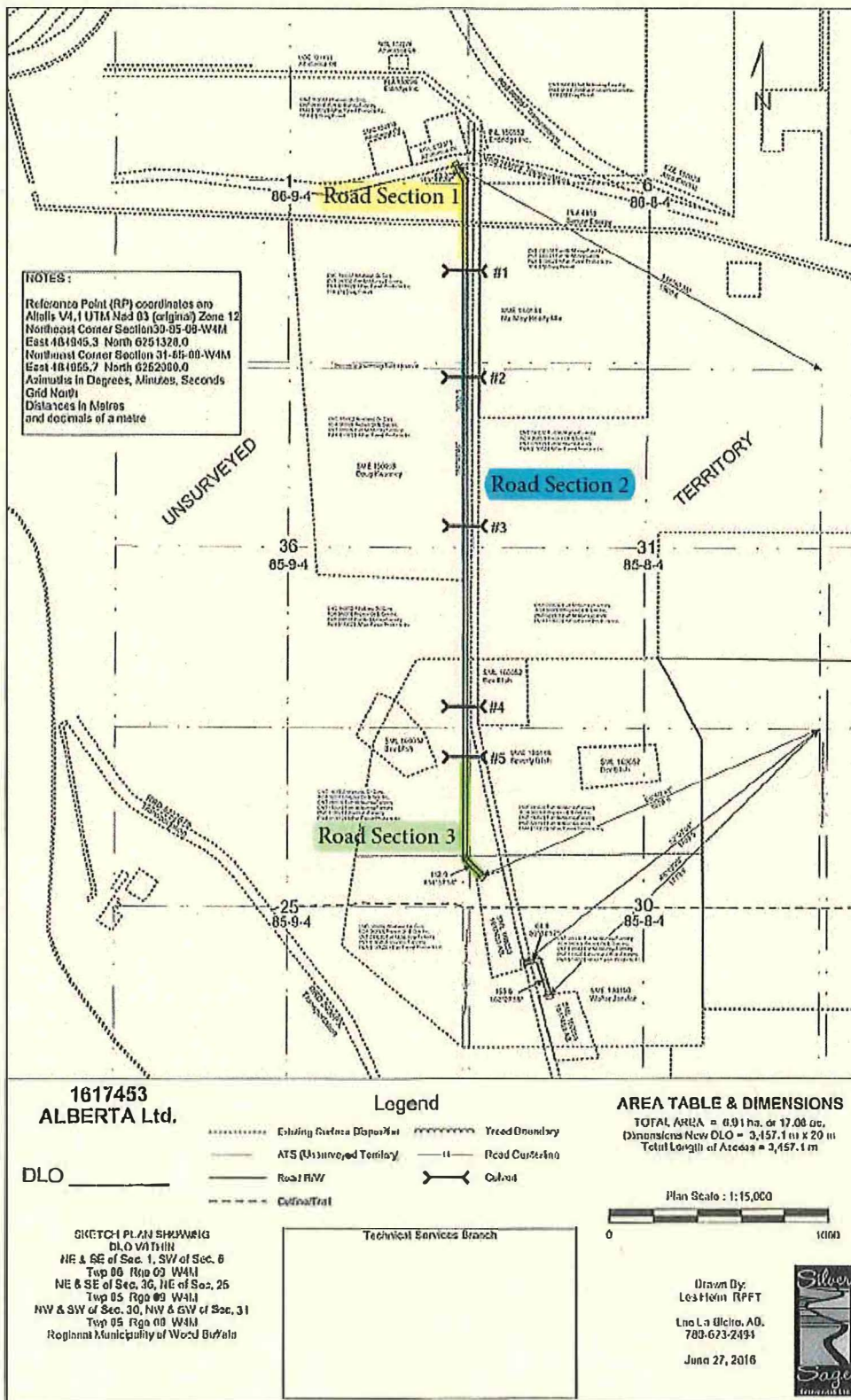
20.1 Authorized User shall not:

- (a) permit any builder's liens or other liens for labour or material relating to work to remain filed against the DLO, nor
- (b) register, cause or allow to be registered, or permit to remain registered, any caveat or encumbrance against the DLO.

20.2 Where a builder's lien or other lien for labour or material relating to work is registered against the DLO because of any action or inaction of Authorized User, Authorized User shall immediately take whatever steps are necessary to discharge the lien.

20.3 Where a caveat or encumbrance is registered against the title to the DLO because of any action or inaction of Authorized User, Authorized User shall immediately take whatever steps are necessary to discharge the caveat or encumbrance.

# APPENDIX C



Map provided by DLO Holder.