



# MEMORANDUM

District Highway Manager  
310 Ward Street  
Nelson, British Columbia V1L 5S4  
CENTRAL KOOTENAY DISTRICT

March 21, 1990  
Properties Branch  
Headquarters

PS 22263

Yours: Rixen #274 CENTRAL KOOTENAY DISTRICT  
NELSON

RECEIVED

MAR 26 1990

Attention: Peter Muirhead

Re: Rixen Road 274  
Unmaintained Section to DL 12332, KD

MINISTRY OF TRANSPORTATION  
AND HIGHWAYS

Please refer to your memo of 6 October 1989 to our Regional Office in Nelson.

From our research we are led to conclude that the evidence, though somewhat limited, is sufficient for the Ministry to take the position that the subject portion of Rixen Road qualifies as public highway pursuant to Section 4 of the Highway Act. Lot 12332 therefore would appear to have legal access.

#### Lambert Mill Road

Road 274 originated as part of a route built to serve logging interests in the Sproule Creek drainage north of Taghum. This route was known at first as Lambert Mill Road (1912-13) or a little later as Lambert's Road (by 1925-26), after the logging company, A.G. Lambert & Co., that built the initial 1 1/2 mile segment up Sproule Creek in 1906. By 1909-10, the company was asking the government to take over and maintain the road - see copies of correspondence from 1909-10. Ministry annual reports record government spending on Lambert Mill Road beginning in 1912-13. In all, we find expenditures in ten reports from 1912-13 to 1932-33, see copies.

When, in the winter of 1915-16 the company moved its sawmill north, it extended the road to the new mill, for which it requested further government assistance. See copies of 1916 correspondence. This extension may be clearly identified with Rixen Road, as demonstrated by map evidence which shows the second mill in Lot 12332 and the road leading to it. (The original Lambert Mill Road built in 1906, before the Rixen Road extension, eventually became known as the initial piece of Sproule Creek Road, probably by the later 1930's.)

Ministry reports on file for the 1920's provide significant information about the government's involvement with the road.

. . . 2

Enclosed are copies of the reports of 12 October 1920, 24 October 1922 and 31 October 1923. A common thread in these reports is that the lower (south) end of the road serves settlers while the upper end is used almost solely by the sawmill operator. This may pose some question about the degree of Ministry concern with the upper end (leading to DL 12332), and the report of 31 October 1923 seems rather ambiguous on the point. However, we also note that the reports state that the road extends to the sawmill while, on the other hand, there is no mention of the road's public status ending before reaching the sawmill. We think it reasonable to conclude that the District Engineer regarded the road as a public highway as far as the mill because of public spending.

We have a fair sampling of map evidence dated at least as early as 1916, the year Lots 12330, 12331 and 12332 were surveyed. The survey plan shows "Old Logging Road" in a location approximating the present Rixen Road, and running to and through Lot 12332, see copy. (Deer Creek was an early name for Rixen Creek.) As well, the survey notes make a number of references to this logging wagon road. A plan of subdivision of expired timber lease Lot 937 made the same year, 1916, shows the same "Old Logging Road" as the 1916 survey plan for the three lots above. The mill's location in Lot 12332 is shown on Mineral Reference Map - Nelson and Trail Creek Mining Divisions, published by B.C. Department of Lands sometime in the 1920's, see copy. Note that this map also shows the subject road leading to the mill and beyond to timber holdings. ITO Plan 1798 of 1933, forwarded with your memo, also provides good evidence and serves to corroborate earlier maps.

Width of the subject piece of Section 4 road appears restricted to the travelled surface, about 18 to 20 feet or the width needed for two vehicles to pass.

We regret the delay in replying to your inquiry, which resulted from work backlog.

*R. Hadley*

R. Hadley  
Research Section

RH:slw  
Enclosure

cc: Jim McDonnell, Regional Property Agent - Nelson



DRAFT

## PERMISSION TO CONSTRUCT, USE, AND MAINTAIN ACCESS TO A PROVINCIAL HIGHWAY

The works comprising of one (1) nine (9) metre access at the terminal point of Rixen Road #274 to serve D.L. 12332, K.D. and permission to use the unmaintained section of Rixen Road #274. All work is to be in accordance with Ministry specifications and to the satisfaction of the District Highways Manager, Nelson, B.C.  
See attached for conditions.

are hereby approved insofar as they relate to the use of highway right of way, interference with public works, or other matter under the jurisdiction of the Minister of Transportation and Highways, and permission to construct, use, maintain and operate the said works is hereby granted to Clarence Barabonoff

R.R. #2, Site 10, Comp. 7

Castlegar, B. C. V1N 3L4

The said approval and permission to construct, use and maintain the said works is, however, at all times subject to the following conditions:

1. That the construction and maintenance of the said works is carried out to the satisfaction of the Regional Director—Highways.

2. That any person appointed by the Regional Director—Highways for that purpose shall have free access to all parts of the said works for the purpose of inspecting same.

3. That the construction of the said works shall be commenced on or before the 4th day of July 1990 and shall be prosecuted with due diligence and completed to the satisfaction of the Regional Director—Highways on or before the 4th day of October 1990, or this permit is void.

4. That the safety, economy, and convenience of the travelling public must at all times be recognized and all traffic control must be undertaken by the permittee to the satisfaction of the Regional Director—Highways.

5. That where the said works are in the proximity of any bridge, culvert, ditch or other existing work, such work shall be properly maintained and supported in such manner as not to interfere with its proper function, and on the completion of the said works any bridge, culvert, ditch or other existing work interfered with shall be completely restored to its original condition.

6. That the permittee shall at all times accept full responsibility for any accident that may occur or damage that may be done to any person or property whatsoever caused directly or indirectly by the said works, and shall save harmless and keep indemnified the Crown from all claims and demands whatsoever in respect of the works. That, prior to proceeding with any excavation, the permittee will be responsible for notifying any utility company whose works may be close to or affected by the installation.

7. That the permission herein granted to use and maintain the said works is only granted for such time as the land on which the said work is constructed is under the jurisdiction of the Minister of Transportation and Highways.

8. This permission shall not be deemed to vest in the permittee any right, title, or interest whatsoever in or to the lands upon which the works are constructed.

9. This permission is contingent upon the following land use Residential (Single Family Dwelling)  
& Timber Extraction (From June 1, 1990 until December 1, 1990)

Any change in land use shall render the permission void.

10. That should the proposed land use not be instituted within six months of the date of this permit or should it be instituted and subsequently discontinued for a period of 30 days, this permit shall be void.

11. This permission is granted only to the person or corporation named above, and any change in ownership to the property renders this permit void.

12. That while reasonable care will be taken on the part of the Crown to do as little damage as possible to any works authorized by this permit in the carrying-out of the construction, extension, alteration, improvement, repair, maintenance or operation of any public work adjacent thereto, the Crown and its employees accept no responsibility of any kind for such damage.

13. That, after receiving notice in writing of the intention of the Crown to construct, extend, alter, or improve any public works, the permittee shall within 30 days move or alter works authorized by this permit at his own expense to such new position or in such manner as may be necessitated by the construction, extension, alteration, or improvement, and that where such movement of access point or change of grade takes place there shall be no claim against the Crown for damages arising out of the changed access condition.

14. (a) This permit may be cancelled in the absolute discretion of the Minister of Transportation and Highways without any notice of hearing.

(b) This permit may be cancelled by the Regional Director—Highways when alternative access becomes available as a result of the construction of a frontage road or other service road.

15. Any existing access to the property not covered by a valid permit shall be removed within 90 days of the date of this permit.

16. That the access or accesses may be restricted as to allowable movements as traffic safety and flow conditions warrant, and at that time this permit may be cancelled and a new permit issued.

17. Clauses 19, 28, 43 - 54  
as printed or typed overleaf on this permit, shall be deemed to apply and form part of these conditions.

Dated at 820 Nelson Avenue, Nelson, B.C. V1L 2N9

this 4th day of June 1990

D.P. Williams

District Highways Manager

For Minister of Transportation and Highways (OVER)

18. This permit cancels and replaces Permit No. ....
- \* 19. This property shall not be connected to any other property by private roadway.
20. The access (or accesses) shall be defined to the satisfaction of the Regional Director—Highways by the erection of standard white-painted delineator posts, guard-rail, nonmountable curb, or some other substantial barrier to traffic satisfactory to the Regional Director—Highways.
21. This permit includes permission to construct channelization within the highway right of way as specified by the Regional Director—Highways, and such channelization shall be constructed at the permittee's expense and maintained and operated by the Ministry of Transportation and Highways.
22. The access (or accesses) shall be gravelled to an extent satisfactory to the Regional Director—Highways to prevent the tracking of mud and soil onto the highway surface.
23. The access (or accesses) shall be paved to the satisfaction of the Regional Director—Highways.
24. The highway shoulder between these accesses shall be paved to the satisfaction of the Regional Director—Highways.
25. The finished grade of the access (or accesses) at the ditch-line shall be 15 cm below the highway shoulder elevation.
26. The access (or accesses) shall be restricted to the following movements only .....

and the permittee shall construct and erect all necessary channelization, signs, and other traffic-control devices at his cost.

27. This permit is temporary and expires the ..... day of ..... 19.....
- \* 28. The permittee shall be responsible for replacing any survey monuments that may be disturbed or destroyed by construction of the works allowed by this permit. Replacement must be by a British Columbia land surveyor at the permittee's expense.
29. The access (or accesses) will only be open to traffic between the ..... day of ..... and the ..... day of ..... each year, and when not open shall be closed with a suitable barrier and signs.
30. Before commencing construction, intimation in writing of the intention to do so must be given to the District Highways Manager at least seven days before the work is begun.
31. The access (or accesses) shall be used jointly with the access covered by Permit No. ...., which serves the property legally described as .....

32. The permittee shall erect a tight board fence or thick evergreen hedge so that no part of the property is visible from the highway at any point along its frontage at an eye elevation 2.5 m above highway pavement.

33. The access (or accesses) shall be constructed with ..... culvert pipe manufactured to CSA or ASTM standards and laid at ditch invert elevation. Maintenance and periodic cleaning of this culvert is the responsibility of the permittee.

34. Any mud, soil, debris, or other foreign material tracked onto the highway from the access (or accesses) shall be removed by the permittee at his expense, at least daily, or at any time the material unduly inconveniences traffic.

35. The access (or accesses) shall be constructed of standard concrete drop curb and sidewalk crossing, to the satisfaction of the Regional Director—Highways.

36. The profile of the access (or accesses) shall not exceed ..... % grade from the ditchline for a distance of at least ..... metres as measured away from the highway along the centreline of the access.

37. The layout shown on permittee's drawing ..... is a condition of this permit and any change in layout without prior consent in writing to the Regional Director—Highways shall render this permit void.

38. Placing of speed arresters on the access (or accesses) or in the permittee's property without the prior consent in writing of the Regional Director—Highways shall render the permit void.

39. The permittee shall, at his cost, supply, erect, and maintain standard traffic control signs, as specified by the Regional Director—Highways.

40. The permittee shall provide offstreet parking in the amount of .....

41. This permission is subject to compliance with the conditions of approval stated in the Public Works (Canada) letter to the permittee dated .....

42. The layout shown on the attached drawing is a condition of this permit, and any change in layout without the prior consent in writing of the Regional Director—Highways shall render the permit void.

43. The permittee shall be aware that Rixen Road north of D.L. 12330 K.D. is classed as Sec. 4 under the Highway Act and is unmaintainable beyond the Kotyk residence.

The Sec. 4 status means there is no established right-of-way and only the travelled portion of the road is public. Any upgrading outside the boundaries of the traveled portion is beyond the jurisdiction of this Ministry and must have the approval of the adjacent property owners; be it the Crown or private individuals.

44. The permittee shall be aware that the section of Rixen Road beyond the Kotyk residence is considered unmaintainable by this Ministry. Due to the excessive grades, no amount of widening or surfacing would upgrade this road to a maintainable standard.

45. There is existing waterlines running under and across Rixen Road. Care must be taken to protect any existing works and all repairs shall be made by the permittee at their expense. Prior to starting any works, the permittee will insure they are aware of the location of all existing works.

## CONDITIONS FOR BARABONOFF PERMIT # \_\_\_\_\_

46. The permittee shall co-ordinate all log hauling so as not to conflict with School buses on Sproule Creek Road. Contact must be made through Grant Davidson, School District #7 at 354-4871.
47. The Area Manager, Mr. Bill Ogden at 354-6521 must be notified 48 hours prior to commencement of any works, including possible surfacing or widening.
48. Rixen Road may be subject to load restrictions as deemed necessary by the District Highways Manager.
49. The permittee shall place crushed gravel surfacing along the permitted section of Rixen Road, as and when deemed necessary by the District Highways Manager, to maintain a stable running surface and provide adequate drainage.
50. The permittee will apply dust abatement (water only) when deemed necessary by the District Highways Manager.
51. The permittee shall strictly comply with conditions of Ministry of Transportation and Highways Industrial Certificate No. \_\_\_\_\_.
52. The following conditions have been established by the Ministry of Environment and form part of this permit and would also apply should widening by contemplated, therefore requiring Ministry of Crown Lands approval.
  - (a) Water lines and boxes are identified and that no disturbance occurs to these licenced works.
  - (b) The stable road grade shall not be disturbed.
  - (c) No sidecasting of material shall be permitted.
  - (d) Any widening of the road width shall be limited to 1 metre.
  - (e) All excavated material shall be end hauled and placed in an area where it will not cause any water quality problems.
  - (f) Proper road surfacing shall be maintained.
  - (g) New cut slopes shall be of a minimum slope of 1.5:1
  - (h) The grading of the road shall not result in any material being deposited on the steep slope above Rixen Creek.
  - (i) Any disturbed areas shall be adequately stabilized utilizing engineering measures and/or appropriate vegetation and seeding.
  - (j) Any road drainage shall be adequately dealt with such that it does not concentrate on the steep slopes above Rixen Creek.
  - (k) Upon deactivation, the road shall be adequately put to bed with the construction of water bars.
  - (l) The holder of the road permit shall comply with the conditions outlined in the ~~attached~~ contingency plan for the Rixen Creek watershed.
  - (m) Construction should only take place during dry periods and suspended during times of rain.

- Signed  
 - [Signature]  
 - [Signature]

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  - (m) Construction should only take place during dry periods and suspended during times of rain.
53. This permit is not valid until one copy is signed by the permittee and returned to the District Highways Manager, 820 Nelson, B. C. V1L 2N9.
54. Special attention should be paid to condition number six of this permit.

\_\_\_\_\_  
Signature of Permittee