

From: Diane Vaykovich <dvaykovich@rdos.bc.ca>
Sent: February 8, 2012 3:28 PM
To: Deibert, Yvonne TRAN:EX; Bell, Valerie J TRAN:EX
Subject: License - Barrington Ranch Ltd.

Good day,

The RDOS has submitted the ALR Transportation, Utility or Recreational Trail Use Application for the Burlington Northern Railway for the Similkameen Trail License LIS 479-000, Expiry: August 31, 2031.

We are aware that Barrington Ranch Ltd. was provided a 5-year term license (July 1, 2008 to June 30, 2013) over PID 011-412-356.

The RDOS is willing to work with Barrington Ranch Ltd., as we do not wish to impede their agricultural operations, while we proceed.

Is it possible to receive a copy of their License? What steps are required to request that the License does not receive further approvals over the ROW?

Thank you for your assistance.

Diane Vaykovich | Rural Projects Coordinator | **Regional District of Okanagan-Similkameen**
101 Martin Street Penticton BC V2A 5J9 | P 250.490.4136 | F 250.492.0063 | TF 1.877.610.3737 | E dvaykovich@rdos.bc.ca
 please consider the environment before printing this e-mail

This communication is intended for the use of the recipient to which it is addressed, and may contain confidential, personal, and or privileged information. Please contact the sender immediately if you are not the intended recipient of this communication, and do not copy, distribute, or take action relying on it. Any communication received in error, or subsequent reply, should be deleted or destroyed.

From: Diane Vaykovich [<mailto:dvaykovich@rdos.bc.ca>]
Sent: Thursday, October 13, 2011 2:16 PM
To: Thom, Jeff TRAN:EX
Cc: Mark Woods
Subject: FW: Similkameen Trail Licence draft

Good day Jeff,

The RDOS is prepared to endorse the agreement based on the comments from the RDOS Insurance provider, Municipal Insurance Association (MIA). MIA has provided a Certificate of Insurance and initialed components of your certificate. Please see comments below from MIA.

If you are prepared to send the License back to the RDOS for endorsement we could sign off based on MIA's ability to insure. Or we could remove the draft and endorse?

The RDOS was advised, through a community meeting last night, that the ALC has a requirement to sign off on the trail through a referral / application process initiated by BCTFA. The RDOS and MFLNRO, John Hawkings, are willing to complete the application process on your behalf to ensure we proceed without any delay.

PART 4 — APPLICATIONS FILED DIRECTLY WITH THE COMMISSION

Transportation and utility use applications

6 Unless permitted under sections 2 and 3, a person must file an application under section 34 (6) of the Act directly with the office of the commission and in a form acceptable to the commission for any of the following uses:

- (a) widening of an existing road right of way;
- (b) construction of a road within an existing right of way;
- (c) dedication of a right of way or construction of any of the following:
 - (i) a new or existing road or railway;
 - (ii) a new or existing recreational trail;
 - (iii) a utility corridor use;
 - (iv) a sewer or water line other than for ancillary utility connections;
 - (v) a forest service road under the *Forest Act*;
- (d) the new use of an existing right of way for a recreational trail.

Diane Vaykovich | Special Projects Coordinator



please consider the environment before printing this e-mail

From: Lindsay Nilsson [<mailto:lnilsson@miabc.org>]

Sent: October-07-11 5:37 PM

To: Diane Vaykovich

Cc: Warren Everton; Keith Gibson

Subject: RE: Similkameen Trail Licence draft

Hi Diane,

Please find enclosed your requested Certificate of Insurance for the BC Transportation Financing Authority.

Please note, having looked through the contract, I note the MIABC's *Liability Protection Agreement* ("LPA") does not meet several of the insurance requirements set out in Article 6. The terms of the contract to which the MIABC cannot comply are as follows:

1. **Blanket Contractual Liability Insurance (Article 6.1(a))** – we are not able to provide this coverage. We can only provide coverage directly to parties who are members of the association, so if the RDOS assumes liability for the actions of the Province or for the actions of a contractor hired by the RDOS, we are not licensed to cover this. A more direct way to handle this risk in the case of a contractor might be to make it a requirement under the license agreement that all contractors hired by the RDOS to perform work applicable to the contract must also provide the Province with a Certificate of Insurance. This arguably achieves the same protection without making that liability flow through the RDOS. Also, under such an arrangement, the Province would enjoy the full protection as an additional named insured under the contractor's policy instead of relying on the vicarious coverage under the RDOS policy.
2. **Additional Named Insured (Article 6.1(a))** – we cannot list the Province as an Additional Named Insured but have listed them as an Additional Insured on the Certificate. As stated above, we are only licensed to insure our members and that extends only to coverage for vicarious liability that arises out of

our members' actions. We cannot insure the Province for liability arising out of its own negligence. If the RDOS were to assume such liability via contract, you could be jeopardizing your coverage under the *LPA*.

3. **Cancellation/Reduction/ Alteration or Material Change to Policy (Article 6.1)** – this requirement is set out at the bottom of page 6 and the top of page 7 of the contract. It is largely moot because our policy is never cancelled or changed in any way during the policy year (Jan 1 - Dec 31). Notice by a member to cancel their policy with us requires 6 months notice. We won't however, provide an endorsement as outlined in this term of the contract.
4. **Waiver of Right of Subrogation (Article 6.3)** – the MIABC as the liability insurer for the RDOS cannot waive its right to subrogate. The *LPA* states as follows:

If the Association makes any payment under this Agreement, it shall be subrogated to the extent of such payment to all rights of recovery of an Insured Party. An Insured Party shall co-operate with the Association to secure and enforce such rights.

A copy of the contract is attached and the provisions of concern have been highlighted.

Finally, I attach the completed H0111 Form. Please note we have been using a modified version of page 2 of this form so that it complies with our coverage terms.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Lindsay

Lindsay E.W. Nilsson
Risk Management Co-ordinator

Municipal Insurance Association
#390 - 1050 Homer Street
Vancouver, BC V6B 2W9
Phone: (604) 683-6266 Ext 112
Fax: (604) 683-6244
Email: lnilsson@miabc.org

The information transmitted herein is confidential and may contain privileged information. It is intended solely for the person or entity to which it is addressed. Any review, retransmission, dissemination, taking of any action in reliance upon, or other use of this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please notify the sender and delete or destroy all digital and printed copies.

From: Diane Vaykovich [<mailto:dvaykovich@rdos.bc.ca>]
Sent: Friday, October 07, 2011 2:59 PM
To: Lindsay Nilsson
Subject: RE: Similkameen Trail Licence draft

Hi Lindsay,

Yes you are correct the clean version is the revisions made that are in the black-line document. Thank you.

Diane Vaykovich | Special Projects Coordinator | **Regional District of Okanagan-Similkameen** | 101 Martin Street Penticton BC V2A 5J9 |
P 250.490.4136 | **F** 250.492.0063 | **TF** 1.877.610.3737 | **E** dvaykovich@rdos.bc.ca
♻️ please consider the environment before printing this e-mail

This communication is intended for the use of the recipient to which it is addressed, and may contain confidential, personal, and or privileged information. Please contact the sender immediately if you are not the intended recipient of this communication, and do not copy, distribute, or take action relying on it. Any communication received in error, or subsequent reply, should be deleted or destroyed.

From: Lindsay Nilsson [<mailto:lnilsson@miabc.org>]
Sent: October-07-11 2:42 PM
To: Diane Vaykovich
Subject: FW: Similkameen Trail Licence draft

Hi Diane,

I am the new risk management co-ordinator for the MIABC. I am going to review these docs for you but just wanted to check that the “clean.doc” version is simply the revisions that have been made to the “black-line.doc” version – just so I don’t have to read both. Let me know. Thanks.

Sincerely,

Lindsay

Lindsay E.W. Nilsson
Risk Management Co-ordinator

Municipal Insurance Association
#390 - 1050 Homer Street
Vancouver, BC V6B 2W9
Phone: (604) 683-6266 Ext 112
Fax: (604) 683-6244
Email: lnilsson@miabc.org

The information transmitted herein is confidential and may contain privileged information. It is intended solely for the person or entity to which it is addressed. Any review, retransmission, dissemination, taking of any action in reliance upon, or other use of this information by persons or entities other than the intended recipient is prohibited. If you

received this in error, please notify the sender and delete or destroy all digital and printed copies.

From: Diane Vaykovich [<mailto:dvaykovich@rdos.bc.ca>]
Sent: October-06-11 2:20 PM
To: Keith Gibson
Cc: Sandy Croteau; Mark Woods
Subject: FW: Similkameen Trail Licence draft

Good day Keith:

The RDOS is seeking a license agreement with BCTFA for the Similkameen Trail Coordinator (former Burlington Northern Railway) and it appears we are nearing the final version of the agreement.

Could you please review the draft license and assist with the Insurance Certificate completion?

Thank you for your assistance.

Diane Vaykovich | Special Projects Coordinator | **Regional District of Okanagan-Similkameen** | 101 Martin Street Penticton BC V2A 5J9 |
P 250.490.4136 | **F** 250.492.0063 | **TF** 1.877.610.3737 | **E** dvaykovich@rdos.bc.ca
🖨️ please consider the environment before printing this e-mail

This communication is intended for the use of the recipient to which it is addressed, and may contain confidential, personal, and or privileged information. Please contact the sender immediately if you are not the intended recipient of this communication, and do not copy, distribute, or take action relying on it. Any communication received in error, or subsequent reply, should be deleted or destroyed.

From: Thom, Jeff TRAN:EX [<mailto:Jeff.Thom@gov.bc.ca>]
Sent: October-05-11 9:33 AM
To: Diane Vaykovich
Cc: Mark Woods
Subject: RE: Similkameen Trail Licence draft

Diane, I believe I have received a final approval. However, since our last version of the licence that RDOS reviewed, we have made some changes to the document for your further review and consideration. The changes are noted in the "black line" copy. I have also provided "clean" for your review. The changes are mostly of administrative nature. Please feel free to call me to discuss the changes proposed.

Please find attached;

- Licence – Blackline
- Licence – Clean
- H0111 - Insurance Certificate

Jeff Thom

Ministry of Transportation and Infrastructure

Land and Property Administrator

Land Management Branch

Ph: 250-387-2664, Cell: 250-889-0387

Fx: 250-356-2112

Email: jeff.thom@gov.bc.ca

Civic Address: 5A-940 Blanshard Street, Victoria, BC V8W 3E6

Mailing Address: P.O. Box 9850 Stn Prov Govt, Victoria, BC V8W 9T5

From: Diane Vaykovich [<mailto:dvaykovich@rdos.bc.ca>]

Sent: Tuesday, August 30, 2011 4:11 PM

To: Thom, Jeff TRAN:EX

Cc: Mark Woods

Subject: RE: Similkameen Trail Licence draft

Importance: High

Good day Jeff,

The Regional District Board meets this Thursday, September 1st and I am receiving calls asking the status of the trail license. Could you provide me with an update that I can provide on Thursday to the Board?

Thanks.

Diane Vaykovich | Special Projects Coordinator | **Regional District of Okanagan-Similkameen** | 101 Martin Street Penticton BC V2A 5J9 |

P 250.490.4136 | **F** 250.492.0063 | **TF** 1.877.610.3737 | **E** dvaykovich@rdos.bc.ca

♻️ please consider the environment before printing this e-mail

This communication is intended for the use of the recipient to which it is addressed, and may contain confidential, personal, and or privileged information. Please contact the sender immediately if you are not the intended recipient of this communication, and do not copy, distribute, or take action relying on it. Any communication received in error, or subsequent reply, should be deleted or destroyed.

From: Thom, Jeff TRAN:EX [<mailto:Jeff.Thom@gov.bc.ca>]

Sent: July-13-11 9:42 AM

To: Diane Vaykovich

Cc: Mark Woods

Subject: RE: Similkameen Trail Licence draft

Thank you, I review and forward for our approvals.

From: Diane Vaykovich [<mailto:dvaykovich@rdos.bc.ca>]

Sent: Tuesday, July 12, 2011 2:52 PM

To: Thom, Jeff TRAN:EX


Cc: Mark Woods

Subject: RE: Similkameen Trail Licence draft

Hi Jeff,

I've made a couple of minor editing changes and returning to you for final version.

Thanks.

Diane Vaykovich | Special Projects Coordinator | **Regional District of Okanagan-Similkameen** | 101
Martin Street Penticton BC V2A 5J9 |
P 250.490.4136 | **F** 250.492.0063 | **TF** 1.877.610.3737 | **E** dvaykovich@rdos.bc.ca
 please consider the environment before printing this e-mail

This communication is intended for the use of the recipient to which it is addressed, and may contain confidential, personal, and or privileged information. Please contact the sender immediately if you are not the intended recipient of this communication, and do not copy, distribute, or take action relying on it. Any communication received in error, or subsequent reply, should be deleted or destroyed.

From: Thom, Jeff TRAN:EX [<mailto:Jeff.Thom@gov.bc.ca>]
Sent: June-30-11 2:49 PM
To: Diane Vaykovich
Cc: Mark Woods; Loggin, Kevin TRAN:EX; Kelly Chatterson
Subject: Similkameen Trail Licence draft

LIS 479

Diane, for advanced reviewing, please find attached a revised draft of the Similkameen Trail Licence. I have added language regarding the third party users and MoTI highway dedications, existing private crossings.

Do you have any information on the level of any consultations that have been undertaken with First Nations or any identified impacts to First Nation rights and title interests.

I will add the schedule of properties once Kevin and Kelly complete the GIS work. Would you please provide me with an updated copy of the Management Plan. Please call if you have any questions thank you.

Jeff Thom
Ministry of Transportation and Infrastructure
Land and Property Administrator
Land Management Branch
Ph: 250-387-2664, Cell: 250-889-0387
Fx: 250-356-6970
Email: jeff.thom@gov.bc.ca

Civic Address: 5A-940 Blanshard Street, Victoria, BC V8W 3E6
Mailing Address: P.O. Box 9850 Stn Prov Govt, Victoria, BC V8W 9T5

Burlington Northern Rail Trail Management Plan

Red Bridge – Keremeos – Cawston Recreational Trail Plan

Regional District of Okanagan-Similkameen and Village of Keremeos



101 Martin Street
Penticton, BC V2A 7L6
250 492 0237
info@rdos.bc.ca
www.rdos.bc.ca



Box 160
702 – 4th Street
Keremeos, BC V0X 1N0
250 499 2711
town@keremeos.ca

Revised, July 2011
Keremeos Addendum, July, 2016

Page 009 of 126 to/à Page 024 of 126

Withheld pursuant to/removal as

Copyright

Page 026 of 126 to/à Page 028 of 126

Withheld pursuant to/removed as

Copyright

Page 030 of 126 to/à Page 053 of 126

Withheld pursuant to/removed as

Copyright

Page 054 of 126 to/à Page 056 of 126

Withheld pursuant to/removed as

s.21

From: Diane Vaykovich <dvaykovich@rdos.bc.ca>
Sent: November 15, 2011 1:37 PM
To: Thom, Jeff FLNR:EX
Cc: Mark Woods; Sandy Croteau; Deibert, Yvonne TRAN:EX; Bell, Valerie J TRAN:EX
Subject: RE: Similkameen Trail Licence draft

Hi Jeff,

Your timing is impeccable! The Mayor of Keremeos was just in my office and he is so pleased that we are progressing to the formal license. The Similkameen Trails Society meets on Thursday and the Mayor will advise of our positive progress.

Martin Collins, ALC, called this morning as well and he provided information on the ALC application that needs to be completed to meet their requirements.

I'll send to MIA for signature and print for our signing authorities and get back to your colleagues in the near future.

Establishing relationships with you and BCTFA is what makes my job so enjoyable.
possibly our paths will cross in the future.

s.22

Diane Vaykovich | Special Projects Coordinator | **Regional District of Okanagan-Similkameen** | 101 Martin Street Penticton BC V2A 5J9 |

P 250.490.4136 | **F** 250.492.0063 | **TF** 1.877.610.3737 | **E** dvaykovich@rdos.bc.ca

 please consider the environment before printing this e-mail

This communication is intended for the use of the recipient to which it is addressed, and may contain confidential, personal, and or privileged information. Please contact the sender immediately if you are not the intended recipient of this communication, and do not copy, distribute, or take action relying on it. Any communication received in error, or subsequent reply, should be deleted or destroyed.

From: Thom, Jeff TRAN:EX [mailto:Jeff.Thom@gov.bc.ca]
Sent: November-15-11 12:34 PM
To: Diane Vaykovich
Cc: Mark Woods; Sandy Croteau; Deibert, Yvonne TRAN:EX; Bell, Valerie J TRAN:EX
Subject: RE: Similkameen Trail Licence draft

Diane, please find a clean copy of the Licence agreement. I have attached the H0111, for completion by your MIA broker. I have attached a copy of the changes that are acceptable (i.e. approved by MIA, David Tupper). I trust that this will bring to completion the licence negotiations and mark the beginning of a much anticipated development of the recreational trail in the RDOS. I would like to wish you, the RDOS, and the Village of Keremeos well on your project.

s.22, therefore, I will not be able to follow through on this file. I have enjoyed working with you and the RDOS staff, and for transition purposes, I leave my file with my capable colleagues, Valerie Bell, and Yvonne Deibert. Future correspondence can be directed to Valerie and Yvonne.


Good Luck and Best Wishes on your project. ☺

From: Diane Vaykovich [<mailto:dvaykovich@rdos.bc.ca>]
Sent: Monday, November 7, 2011 3:02 PM
To: Thom, Jeff TRAN:EX
Cc: Mark Woods; Sandy Croteau
Subject: RE: Similkameen Trail Licence draft

Good day Jeff,

MIA has provided approval to proceed with endorsement of the License. Could you send a clean License, email or mail, seeking endorsement by the Regional District?

Thank you.

Diane Vaykovich | Special Projects Coordinator | **Regional District of Okanagan-Similkameen** | 101 Martin Street Penticton BC V2A 5J9 |
P 250.490.4136 | **F** 250.492.0063 | **TF** 1.877.610.3737 | **E** dvaykovich@rdos.bc.ca
 please consider the environment before printing this e-mail

This communication is intended for the use of the recipient to which it is addressed, and may contain confidential, personal, and or privileged information. Please contact the sender immediately if you are not the intended recipient of this communication, and do not copy, distribute, or take action relying on it. Any communication received in error, or subsequent reply, should be deleted or destroyed.

From: Thom, Jeff TRAN:EX [<mailto:Jeff.Thom@gov.bc.ca>]
Sent: October-27-11 9:38 AM
To: Diane Vaykovich
Cc: Mark Woods
Subject: RE: Similkameen Trail Licence draft

Diane, regarding the insurance revisions that RDOS have requested, our Risk Management Manager (Jenny Pleice) has discussed MoTI insurance requirements with David Tupper of the Municipal Insurance Association (MIA), and as a result of those discussion, we have accepted some of the RDOS revisions and rejected others.


Please find attached a copy of page 2 of the H0111 (insurance certificate) showing the accepted and rejected revisions. Also please find a copy of the revisions that have been approved by both MIA (David Tupper) and MoTI Risk Management.

Would you please review the acceptable revisions with your MIA broker, (you may wish to also contact David Tupper, MIA).

Please contact me if there are additional issues to discuss. Thanks.

From: Diane Vaykovich [<mailto:dvaykovich@rdos.bc.ca>]
Sent: Friday, October 14, 2011 1:38 PM
To: Thom, Jeff TRAN:EX
Cc: Mark Woods
Subject: RE: Similkameen Trail Licence draft

Thanks very much Jeff, sorry I missed your call I'm just heading into a meeting. We will definitely be in touch.

Diane Vaykovich | Special Projects Coordinator | **Regional District of Okanagan-Similkameen** | 101 Martin Street Penticton BC V2A 5J9 |
P 250.490.4136 | **F** 250.492.0063 | **TF** 1.877.610.3737 | **E** dvaykovich@rdos.bc.ca
 please consider the environment before printing this e-mail

From: Thom, Jeff TRAN:EX [<mailto:Jeff.Thom@gov.bc.ca>]
Sent: October-14-11 1:30 PM
To: Diane Vaykovich
Cc: Mark Woods
Subject: RE: Similkameen Trail Licence draft

I am agreeable to RDOS and MFLNRO making the referral on our behalf as recommended below. Would your office or John or please let me know what information you will require from our office, and keep me updated. Thanks.

From: Diane Vaykovich [<mailto:dvaykovich@rdos.bc.ca>]
Sent: Thursday, October 13, 2011 2:16 PM
To: Thom, Jeff TRAN:EX
Cc: Mark Woods
Subject: FW: Similkameen Trail Licence draft

Good day Jeff,

The RDOS is prepared to endorse the agreement based on the comments from the RDOS Insurance provider, Municipal Insurance Association (MIA). MIA has provided a Certificate of Insurance and initialed components of your certificate. Please see comments below from MIA.

If you are prepared to send the License back to the RDOS for endorsement we could sign off based on MIA's ability to insure. Or we could remove the draft and endorse?

The RDOS was advised, through a community meeting last night, that the ALC has a requirement to sign off on the trail through a referral / application process initiated by BCTFA. The RDOS and MFLNRO, John Hawkings, are willing to complete the application process on your behalf to ensure we proceed without any delay.

PART 4 — APPLICATIONS FILED DIRECTLY WITH THE COMMISSION

Transportation and utility use applications

6 Unless permitted under sections 2 and 3, a person must file an application under section 34 (6) of the Act directly with the office of the commission and in a form acceptable to the commission for any of the following uses:

- (a) widening of an existing road right of way;
- (b) construction of a road within an existing right of way;
- (c) dedication of a right of way or construction of any of the following:
 - (i) a new or existing road or railway;
 - (ii) a new or existing recreational trail;
 - (iii) a utility corridor use;
 - (iv) a sewer or water line other than for ancillary utility connections;
 - (v) a forest service road under the *Forest Act*;
- (d) the new use of an existing right of way for a recreational trail.

Diane Vaykovich | Special Projects Coordinator



From: Lindsay Nilsson [<mailto:lnilsson@miabc.org>]
Sent: October-07-11 5:37 PM
To: Diane Vaykovich
Cc: Warren Everton; Keith Gibson
Subject: RE: Similkameen Trail Licence draft

Hi Diane,

Please find enclosed your requested Certificate of Insurance for the BC Transportation Financing Authority.

Please note, having looked through the contract, I note the MIABC's *Liability Protection Agreement* ("LPA") does not meet several of the insurance requirements set out in Article 6. The terms of the contract to which the MIABC cannot comply are as follows:

1. **Blanket Contractual Liability Insurance (Article 6.1(a))** – we are not able to provide this coverage. We can only provide coverage directly to parties who are members of the association, so if the RDOS assumes liability for the actions of the Province or for the actions of a contractor hired by the RDOS, we are not licensed to cover this. A more direct way to handle this risk in the case of a contractor might be to make it a requirement under the license agreement that all contractors hired by the RDOS to perform work applicable to the contract must also provide the Province with a Certificate of Insurance. This arguably achieves the same protection without making that liability flow through the RDOS. Also, under such an arrangement, the Province would enjoy the full protection as an additional named insured under the contractor's policy instead of relying on the vicarious coverage under the RDOS policy.
2. **Additional Named Insured (Article 6.1(a))** – we cannot list the Province as an Additional Named Insured but have listed them as an Additional Insured on the Certificate. As stated above, we are only licensed to insure our members and that extends only to coverage for vicarious liability that arises out of our members' actions. We cannot insure the Province for liability arising out of its own negligence. If the RDOS were to assume such liability via contract, you could be jeopardizing your coverage under the *LPA*.
3. **Cancellation/Reduction/ Alteration or Material Change to Policy (Article 6.1)** – this requirement is set out at the bottom of page 6 and the top of page 7 of the contract. It is largely moot because our policy is never cancelled or changed in any way during the policy year (Jan 1 - Dec 31). Notice by a member to cancel their policy with us requires 6 months notice. We won't however, provide an endorsement as outlined in this term of the contract.
4. **Waiver of Right of Subrogation (Article 6.3)** – the MIABC as the liability insurer for the RDOS cannot waive its right to subrogate. The *LPA* states as follows:

If the Association makes any payment under this Agreement, it shall be subrogated to the extent of such payment to all rights of recovery of an Insured Party. An Insured Party shall co-operate with the Association to secure and enforce such rights.

A copy of the contract is attached and the provisions of concern have been highlighted.

Finally, I attach the completed H0111 Form. Please note we have been using a modified version of page 2 of this form so that it complies with our coverage terms.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Lindsay

Lindsay E.W. Nilsson
Risk Management Co-ordinator

Municipal Insurance Association
#390 - 1050 Homer Street
Vancouver, BC V6B 2W9
Phone: (604) 683-6266 Ext 112
Fax: (604) 683-6244
Email: lnilsson@miabc.org

The information transmitted herein is confidential and may contain privileged information. It is intended solely for the person or entity to which it is addressed. Any review, retransmission, dissemination, taking of any action in reliance upon, or other use of this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please notify the sender and delete or destroy all digital and printed copies.

From: Diane Vaykovich [<mailto:dvaykovich@rdos.bc.ca>]
Sent: Friday, October 07, 2011 2:59 PM
To: Lindsay Nilsson
Subject: RE: Similkameen Trail Licence draft

Hi Lindsay,

Yes you are correct the clean version is the revisions made that are in the black-line document. Thank you.

Diane Vaykovich | Special Projects Coordinator | **Regional District of Okanagan-Similkameen** | 101 Martin Street Penticton BC V2A 5J9 |
P 250.490.4136 | **F** 250.492.0063 | **TF** 1.877.610.3737 | **E** dvaykovich@rdos.bc.ca
♻️ please consider the environment before printing this e-mail

This communication is intended for the use of the recipient to which it is addressed, and may contain confidential, personal, and or privileged information. Please contact the sender immediately if you are not the

intended recipient of this communication, and do not copy, distribute, or take action relying on it. Any communication received in error, or subsequent reply, should be deleted or destroyed.

From: Lindsay Nilsson [<mailto:lnilsson@miabc.org>]
Sent: October-07-11 2:42 PM
To: Diane Vaykovich
Subject: FW: Similkameen Trail Licence draft

Hi Diane,

I am the new risk management co-ordinator for the MIABC. I am going to review these docs for you but just wanted to check that the "clean.doc" version is simply the revisions that have been made to the "black-line.doc" version – just so I don't have to read both. Let me know. Thanks.

Sincerely,

Lindsay

Lindsay E.W. Nilsson
Risk Management Co-ordinator

Municipal Insurance Association
#390 - 1050 Homer Street
Vancouver, BC V6B 2W9
Phone: (604) 683-6266 Ext 112
Fax: (604) 683-6244
Email: lnilsson@miabc.org

The information transmitted herein is confidential and may contain privileged information. It is intended solely for the person or entity to which it is addressed. Any review, retransmission, dissemination, taking of any action in reliance upon, or other use of this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please notify the sender and delete or destroy all digital and printed copies.

From: Diane Vaykovich [<mailto:dvaykovich@rdos.bc.ca>]
Sent: October-06-11 2:20 PM
To: Keith Gibson
Cc: Sandy Croteau; Mark Woods
Subject: FW: Similkameen Trail Licence draft

Good day Keith:

The RDOS is seeking a license agreement with BCTFA for the Similkameen Trail Coordinator (former Burlington Northern Railway) and it appears we are nearing the final version of the agreement.

Could you please review the draft license and assist with the Insurance Certificate completion?

Thank you for your assistance.

Diane Vaykovich | Special Projects Coordinator | **Regional District of Okanagan-Similkameen** | 101
Martin Street Penticton BC V2A 5J9 |
P 250.490.4136 | **F** 250.492.0063 | **TF** 1.877.610.3737 | **E** dvaykovich@rdos.bc.ca
🖨️ please consider the environment before printing this e-mail

This communication is intended for the use of the recipient to which it is addressed, and may contain confidential, personal, and or privileged information. Please contact the sender immediately if you are not the intended recipient of this communication, and do not copy, distribute, or take action relying on it. Any communication received in error, or subsequent reply, should be deleted or destroyed.

From: Thom, Jeff TRAN:EX [<mailto:Jeff.Thom@gov.bc.ca>]
Sent: October-05-11 9:33 AM
To: Diane Vaykovich
Cc: Mark Woods
Subject: RE: Similkameen Trail Licence draft

Diane, I believe I have received a final approval. However, since our last version of the licence that RDOS reviewed, we have made some changes to the document for your further review and consideration. The changes are noted in the "black line" copy. I have also provided "clean" for your review. The changes are mostly of administrative nature. Please feel free to call me to discuss the changes proposed.

Please find attached;

- Licence – Blackline
- Licence – Clean
- H0111 - Insurance Certificate

Jeff Thom
Ministry of Transportation and Infrastructure
Land and Property Administrator
Land Management Branch
Ph: 250-387-2664, Cell: 250-889-0387
Fx: 250-356-2112
Email: jeff.thom@gov.bc.ca

Civic Address: 5A-940 Blanshard Street, Victoria, BC V8W 3E6
Mailing Address: P.O. Box 9850 Stn Prov Govt, Victoria, BC V8W 9T5

From: Diane Vaykovich [<mailto:dvaykovich@rdos.bc.ca>]
Sent: Tuesday, August 30, 2011 4:11 PM
To: Thom, Jeff TRAN:EX
Cc: Mark Woods
Subject: RE: Similkameen Trail Licence draft
Importance: High

Good day Jeff,

The Regional District Board meets this Thursday, September 1st and I am receiving calls asking the status of the trail license. Could you provide me with an update that I can provide on Thursday to the Board?

Thanks.

Diane Vaykovich | Special Projects Coordinator | **Regional District of Okanagan-Similkameen** | 101 Martin Street Penticton BC V2A 5J9 |
P 250.490.4136 | **F** 250.492.0063 | **TF** 1.877.610.3737 | **E** dvaykovich@rdos.bc.ca
♻️ please consider the environment before printing this e-mail

This communication is intended for the use of the recipient to which it is addressed, and may contain confidential, personal, and or privileged information. Please contact the sender immediately if you are not the intended recipient of this communication, and do not copy, distribute, or take action relying on it. Any communication received in error, or subsequent reply, should be deleted or destroyed.

From: Thom, Jeff TRAN:EX [<mailto:Jeff.Thom@gov.bc.ca>]
Sent: July-13-11 9:42 AM
To: Diane Vaykovich
Cc: Mark Woods
Subject: RE: Similkameen Trail Licence draft

Thank you, I review and forward for our approvals.

From: Diane Vaykovich [<mailto:dvaykovich@rdos.bc.ca>]
Sent: Tuesday, July 12, 2011 2:52 PM
To: Thom, Jeff TRAN:EX
Cc: Mark Woods
Subject: RE: Similkameen Trail Licence draft

Hi Jeff,

I've made a couple of minor editing changes and returning to you for final version.

Thanks.

Diane Vaykovich | Special Projects Coordinator | **Regional District of Okanagan-Similkameen** | 101 Martin Street Penticton BC V2A 5J9 |
P 250.490.4136 | **F** 250.492.0063 | **TF** 1.877.610.3737 | **E** dvaykovich@rdos.bc.ca
♻️ please consider the environment before printing this e-mail

This communication is intended for the use of the recipient to which it is addressed, and may contain confidential, personal, and or privileged information. Please contact the sender immediately if you are not the intended recipient of this communication, and do not copy, distribute, or take action relying on it. Any communication received in error, or subsequent reply, should be deleted or destroyed.

From: Thom, Jeff TRAN:EX [<mailto:Jeff.Thom@gov.bc.ca>]
Sent: June-30-11 2:49 PM
To: Diane Vaykovich

Cc: Mark Woods; Loggin, Kevin TRAN:EX; Kelly Chatterson
Subject: Similkameen Trail Licence draft

LIS 479

Diane, for advanced reviewing, please find attached a revised draft of the Similkameen Trail Licence. I have added language regarding the third party users and MoTI highway dedications, existing private crossings.

Do you have any information on the level of any consultations that have been undertaken with First Nations or any identified impacts to First Nation rights and title interests.

I will add the schedule of properties once Kevin and Kelly complete the GIS work. Would you please provide me with an updated copy of the Management Plan. Please call if you have any questions thank you.

Jeff Thom
Ministry of Transportation and Infrastructure
Land and Property Administrator
Land Management Branch
Ph: 250-387-2664, Cell: 250-889-0387
Fx: 250-356-6970
Email: jeff.thom@gov.bc.ca

Civic Address: 5A-940 Blanshard Street, Victoria, BC V8W 3E6
Mailing Address: P.O. Box 9850 Stn Prov Govt, Victoria, BC V8W 9T5

THIS AGREEMENT is dated for reference April 15, 2015

BETWEEN:

BC TRANSPORTATION FINANCING AUTHORITY, a corporation continued under the *Transportation Act*
(the “BCTFA”)

AND:

REGIONAL DISTRICT OF OKANAGAN SIIMILKAMEEN
(the “Licensee”)

Background:

- A. The BCTFA is the registered owner in fee simple of the Land and is holding the Land for future transportation purposes.
- B. The Licensee wishes to use and occupy the Land for a recreational trail (the “Trail”) and the BCTFA has agreed to permit it to do so in accordance with the terms and conditions of this Agreement.
- C. The Trail crosses other parcels not part of the Land, including highways operated by the BC Ministry of Transportation and Infrastructure (“MOTT”).

For valuable consideration, the parties agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 In this Agreement,

“**Agreement**” means this licence of occupation;

“**Commencement Date**” means April 22, 2015;

“**Contaminants**” means any chemicals, materials or substances regulated under Environmental Laws or which cause all or any part of the Land or any user or occupant of the Land to be in violation of any Environmental Laws;

“**Environmental Claims**” means any and all enforcement, clean-up, removal, remedial, or other governmental or regulatory actions pursuant to any Environmental Laws;

“**Environmental Laws**” means any local, provincial or federal laws, rules, ordinances, regulations, orders or other edicts having the force of law relating to the environment or environmental conditions on, under or about the Land including, without limitation, soil, groundwater, and indoor and ambient air conditions;

“Fee” means the fee set out in Article 3;

“Improvements” includes anything:

- (a) made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, or
- (b) any clearing, excavating, digging, drilling, tunneling, filling, grading or ditching of, in, on or under the Land,

by the Licensee, or forming part of the Trail or facilitating the use of the Land for the Trail, including geotechnical stability, and riparian and stormwater management works;

“Land” means those portions shown outlined in bold on Schedule A (Plans of Land) of the parcels legally described in Schedule B (Legal Descriptions of Land). For greater certainty, the Land does not include the beds of any bodies of water, nor any road, arterial road, or highway lands;

“Trail Management Plan” means the management plan prepared by the Licensee pursuant to section 4.1(d) and accepted by the BCTFA, and includes all amendments to and replacements of that plan;

“Permitted Use” means construction and operation of a regional public trail, including use by the public thereof, but excluding the use of motorised vehicles except for the purposes of construction and maintenance;

“Realty Taxes” means all taxes, rates, levies, duties, charges and assessments lawfully levied or charged, at any time, by any competent governmental authority which relate to the Land, the Improvements or both of them;

“Term” means the period of time set out in section 2.2.

ARTICLE 2 - GRANT AND TERM

- 2.1 Subject to the terms and conditions set out in this Agreement, the BCTFA grants to the Licensee a licence of occupation over the Land for the Permitted Use and for no other purpose unless agreed to in writing by BCTFA (in BCTFA’s sole discretion).
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on April 21, 2030, or such earlier date provided for in this Agreement.
- 2.3 If, after the termination of this Agreement, the BCTFA permits the Licensee to remain in possession of the Land, the Licensee will be a monthly licensee subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 3 - FEE

- 3.1 The BCTFA acknowledges receipt from the Licensee of \$10.00 as the fee for the Term.

ARTICLE 4 - COVENANTS

- 4.1 The Licensee must
 - (a) pay, when due,

- (i) the Fee to the BCTFA at the address set out in Article 10,
 - (ii) the Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land;
- (b) deliver to the BCTFA, immediately upon request, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by the Licensee under this Agreement;
- (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and the Improvements, or their use and occupation, and
 - (ii) the provisions of this Agreement;
- (d) prepare a Trail Management Plan in consultation with the BCTFA and MOTI, and revise and update it as required in consultation with the BCTFA and MOTI. The Licensee will complete the first Trail Management Plan before the first anniversary of the Commencement Date;
- (e) keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to the BCTFA, and at the BCTFA's written request, make the Land and the Improvements safe, clean and sanitary;
- (f) enforce local government by-laws as they relate to subsection 2.1, and as required by the Licensee to ensure the safety of the general public and Improvements;
- (g) deliver to the BCTFA copies of all significant inspection reports received by the Licensee with respect to the Trail, Land, or Improvements;
- (h) the BCTFA and the Licensee may, upon mutual agreement, conduct a joint inspections on the Trail, Land, and Improvements, with no set recurring interval during the Term;
- (i) not commit any waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance or annoyance to an owner or occupier of land in the vicinity of the Land;
- (j) use and occupy the Land only in accordance with and for the purposes set out in section 2.1;
- (k) obtain and maintain in good standing any permits, authorisations or other interests required for those portions of the Trail not located on the Land, including without limitation Permits for Works in Highway from MOTI;
- (l) not construct, place or affix any Improvement on or to the Land except as necessary for the purposes set out in section 2.1;
- (m) be responsible at its cost for the construction or improvement of any Improvements;
- (n) consult the BCTFA regarding the construction or improvement of any major infrastructure projects relating to the Trail;
- (o) notify BCTFA when encroachments from adjacent land uses or activities are identified. The Licensee will take appropriate actions towards resolving encroachments and will address any ongoing encroachment problems in the Trail Management Plan;

- (p) pay all accounts and expenses as they become due for labour or services performed on, or materials supplied to, the Land except for money that the Licensee is required to hold back under the *Builders Lien Act*;
- (q) if any claim of lien over the Land is made under the *Builders Lien Act*, immediately take all steps necessary to have the lien discharged;
- (r) cut or remove timber on or from the Land
 - (i) only to address an unsafe condition or for the purposes set out in section 2.1, and
 - (ii) in accordance with an agreement issued to the Licensee under the *Forest Act* to permit the harvest of Crown timber on the Land unless the minister responsible for the *Forest Act* permits the harvest of timber on the Land without the issuance of an agreement under the *Forest Act*;
- (s) permit the BCTFA to enter on the Land at any time and for any purpose
- (t) The Licensee will, at its sole cost and expense:
 - (i) comply with all Environmental Laws;
 - (ii) not deposit or release or permit the deposit or release of any Contaminants on, under, about or from the Land or Improvements;
 - (iii) not store or permit to be stored on or in the Land or Improvements anything that is of a dangerous, hazardous, inflammable or explosive nature or anything that would have the effect of increasing insurance costs or leading to the cancellation of any insurance with respect to the Land or Improvements;
 - (iv) after the commencement of the Term, and immediately on being made aware, notify the BCTFA in writing, of the existence of any Environmental Claim or any Contaminants on the Land or Improvements, or any discharges, emissions, migration, or spill of Contaminants on, under, about or from the Land or Improvements;
 - (v) promptly provide the BCTFA with copies of all notices relating to the Land or Improvements, issued pursuant to any Environmental Laws and evidence the Licensee is responding to such notices in a responsible manner if they concern matters which are the responsibility or obligation of the Licensee hereunder;
 - (vi) remove any and all Contaminants from the Land or Improvements deposited or released by the Licensee or any person entering the Land or Improvements pursuant to the Licensee's rights hereunder, and immediately repair all damage to the Land or Improvements caused by such removal;
- (u) indemnify and save the BCTFA and Her Majesty the Queen in Right of the Province and their respective servants, employees, officers, directors and agents harmless against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs and liabilities, including fees of solicitors and other professional advisors, arising out of or in connection with
 - (i) the Licensee's breach, violation or nonperformance of a provision of this Agreement,
 - (ii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of the Licensee's entry upon, use or occupation of the Land, and

- (iii) without limiting paragraph (ii), any environmental liability on or off the Land related to the Licensee's entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land,

and the amount of all such losses, damages, fines, penalties, costs, expenses and liabilities will be payable to the BCTFA immediately upon demand. This indemnity will survive the expiry or earlier termination of this Agreement;

- (v) release the BCTFA and Her Majesty the Queen in Right of the Province and their respective servants, employees, officers, directors and agents from and against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities arising out of or in connection with any environmental liability on or off the Land related to the Licensee's entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land. This release will survive the expiry or earlier termination of this Agreement; and
- (w) on the termination of this Agreement,
 - (i) peaceably quit and deliver to the BCTFA possession of the Land and, subject to paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary condition (including, without limitation, free of any environmental contamination related to the Licensee's entry upon, use or occupation of the Land),
 - (ii) within 60 days, remove from the Land any Improvement the Licensee wants to remove, if the Improvement was placed on or made to the Land by or for the Licensee, is in the nature of a fixture normally removable by licensees and is not part of a building or part of the Land,
 - (iii) remove from the Land any Improvement that was placed on or made to the Land by or for the Licensee, and that the BCTFA, in writing, directs or permits the Licensee to remove,
 - (iv) restore the surface of the Land as nearly as may reasonably be possible to the same condition as it was on the Commencement Date, to the BCTFA's satisfaction, but if the Licensee is not directed or permitted to remove an Improvement under paragraph (ii) or (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located, and
 - (v) if the BCTFA requires, provide to the BCTFA a "site profile", "preliminary site investigation" or "detailed site investigation" (as those terms are defined in the *Environmental Management Act*) for the Land and or other similar type of investigation of the Land,

and all of the Licensee's right, interest and estate in the Land will be absolutely forfeited to the BCTFA, and this covenant will survive the expiry or earlier termination of this Agreement.

4.2 The Licensee will not permit any person to do anything it is restricted from doing under this Article.

ARTICLE 5 - LIMITATIONS

5.1 The Licensee agrees with the BCTFA that:

- (a) this Agreement does not grant it the exclusive use and occupancy of the Land;
- (b) it has inspected the Land and Improvements and fully accepts the Land and Improvements in the

- condition and state they are in on the Commencement Date;
- (c) it has conducted an investigation of the condition, environmental or otherwise, of the Land;
 - (d) the Land is being licensed to it on an “as is, where is” basis;
 - (e) the BCTFA is under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
 - (f) the BCTFA may, without the Licensee’s consent, make other dispositions of or over the Land, and the Licensee acknowledges and agrees with the following:
 - i. the Licensee's rights and this Agreement are subject to the rights and interest of all persons who are not a party hereto with interest in all or any part of the Land on or after the Commencement Date, provided that if the actions of such persons pursuant to such interests have a material and adverse impact on the Licensee's use of the Land, and the consent of the BCTFA is required under the relevant interest to permit such actions, then the BCTFA will consult with the Licensee before consenting to such actions;
 - ii. in connection with such dispositions, the BCTFA temporarily close the whole or any part of the Land where reasonably required. The BCTFA will give the Licensee no less than 30 days’ notice of its intent to grant such permit and provide the Licensee an opportunity to consult with the BCTFA as to the method of installation of such facilities, the timing of such installation, and the period of closure of all or any portion of the Land required for such installation;
 - iii. the BCTFA, Her Majesty the Queen in Right of the Province or a municipality may gazette, dedicate or otherwise acquire highways across or along the Land. The BCTFA will consult with the Licensee as to any acquisitions for highway purposes across the Land;
 - iv. the Licensee will make no claim for compensation, in damages or otherwise, in respect of a disposition made by the BCTFA under this section;
 - v. all of the Licensee's costs and expenses, direct or indirect, that arise out of any interference with its rights under this Agreement as a result of a disposition made by the BCTFA under this section will be borne solely by the Licensee; and
 - vi. the Licensee releases and discharges the BCTFA from all claims arising directly or indirectly out of any interference with the Licensee’s rights under this Agreement as a result of a disposition made by the BCTFA under this section;
 - (g) the Licensee will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
 - (h) any interest the Licensee may have in the Improvements ceases to exist and becomes the property of the BCTFA upon the termination of this Agreement, except where an Improvement is directed or permitted to be removed under this Agreement, in which case any interest the Licensee may have in that Improvement ceases to exist and becomes the property of the BCTFA if the Improvement is not removed from the Land within the time provided for in the direction or permission; and
 - (i) the Licensee will make no claim for compensation, in damages or otherwise, if the Land becomes unsuitable for the purposes set out in this Agreement.

ARTICLE 6 - INSURANCE

The Licensee must, without limiting its obligations or liabilities under this Agreement, at its expense, maintain during the Term

- (a) Commercial General Liability Insurance including non-owned automobile and contractual liability insurance with inclusive limits of not less than \$5,000,000 for bodily injury, death or property damage arising from any one accident or occurrence which insurance policy will indemnify the named insureds under the policy for all sums which the insured may become liable to pay or pays for bodily injury, death or property damage or for loss of use, arising out of or resulting from the work or operations of the parties under this Agreement which must be endorsed as follows:

"It is understood and agreed that Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure (the "Province"), together with the employees, agents (including the BC Transportation Financing Authority and its officers, directors, employees, servants and agents), and servants of the Province (the "Additional Named Insureds"), are each added as an Additional Named Insured, in respect of liability arising from the work or operations of the insured and each Additional Named Insured, in connection with contracts entered into between the insured and the Additional Named Insured.

The Insurance as is afforded by this policy will apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of the policy by any insured will not affect the protection given by this policy to any other insured. The inclusion herein of more than one insured will not operate to increase the limit of liability under this policy.";

- (b) if vessels are owned, leased or rented or used in the performance of this Agreement by the Licensee and are not covered under the general liability policy, the Licensee will provide Protection and Indemnity insurance with limits of not less than \$5,000,000 for such vessels and will include four-fourths collision liability insurance,
- (c) if any licensed vehicles are owned, leased, rented or used by the Licensee in the performance of this Agreement, Automobile Liability Coverage with inclusive limits of not less than \$5,000,000 providing third party liability and accident benefits insurance for all such vehicles, and

which, in the case of the policies of insurance described in subsections (a), (b) and (d), must include endorsements or provisions that they may not be cancelled, reduced, altered or materially changed without the insurer or insurers giving not less than 30 days' prior written notice to the BCTFA by registered mail, which endorsements must be in terms comparable to those normally obtainable from insurers in the Province of British Columbia or Canada issuing comparable policies.

6.2 All insurance required to be maintained by the Licensee under this Agreement must be placed with insurers licensed to transact business in British Columbia or Canada and, the Licensee must, under the insurance required to be maintained by it under this Agreement,

- (a) pay all deductibles;
- (b) not exclude hazardous operations such as excavation, pile driving, shoring, blasting, under-pinning or demolition work or any other operation or work from insurance coverage;
- (c) deliver to the BCTFA, on the Commencement Date, on the renewal of the insurance and at other times required by it

- (i) for all policies except Automobile Liability Insurance, a completed and executed certificate of insurance in a form acceptable to the BCTFA (as of the Commencement Date, such form is entitled "Certificate of Insurance" and is numbered H-111), and
- (ii) evidence of Automobile Liability Insurance in the form of a duly executed Insurance Corporation of British Columbia APV47 or APV250 form or a copy of the vehicle registration/insurance certificate;
- (d) on the BCTFA's request, deliver to it evidence that the insurance remains in force and effect by way of the originals or certified copies of all current insurance policies and endorsements.

6.3 The Licensee acknowledges and agrees that, in the event of any third party loss or damage or any physical loss or damage to the Land (and the Licensee's associated apparatus, improvements or fixtures), the settlement or payment by the insurer of the subsequent claim will be made without the right of subrogation against the BCTFA or Her Majesty the Queen in Right of the Province of British Columbia or those for whom the BCTFA and Her Majesty the Queen in Right of the Province of British Columbia are legally obligated to indemnify against such claims.

ARTICLE 7 - ASSIGNMENT

- 7.1 The Licensee must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without the BCTFA's prior written consent, which consent it may withhold in its sole discretion.
- 7.2 For the purpose of section 7.1, if the Licensee is a corporation, a change in control (as that term is defined in subsection 2(3) of the *Business Corporations Act*) of the Licensee will be deemed to be a transfer of this Agreement.
- 7.4 Prior to considering a request for consent under section 7.1, the BCTFA may require the Licensee to meet certain conditions, including without limitation, that it provide to the BCTFA a "site profile", "preliminary site investigation" or "detailed site investigation" (as those terms are defined in the *Environmental Management Act*) for the Land and or other similar type of investigation of the Land.

ARTICLE 8 - SUSPENSION, REALIGNMENT AND CANCELLATION

- 8.1 At any time the BCTFA believes, in its sole discretion, that the use or occupation of the Land or Improvements by the Licensee or any third party presents a potential or actual hazard to the public, the Land, or the Improvements, then the BCTFA may suspend the rights granted to the Licensee hereunder (including access to the Land or Improvements) for any reasonable period of time determined by the BCTFA, without abatement of any costs, expenses or other monies payable by the Licensee hereunder, and require the Licensee to remedy the hazard or perform the remedy itself in which case the Licensee will repay to the BCTFA on demand for all costs and expenses in connection therewith or incidental thereto. Such suspension and remedy may be effective in relation to all, or any portion of, the Land and Improvements, in the sole discretion of the BCTFA.
- 8.2 If the Licensee
 - (a) defaults in the payment of any money payable by it under this Agreement, and its default or failure continues for 10 days after the BCTFA gives written notice of the default or failure to the Licensee, or
 - (b) fails to observe, abide by and comply with the provisions of this Agreement, and its default or failure continues for 60 days after the BCTFA gives written notice of the default or failure to the Licensee,

then the BCTFA may, at its option, do any one or more of the following:

- (c) make any repairs or observe and perform the Licensee's obligations it has failed to observe and perform, in which case the Licensee will repay to the BCTFA on demand for all costs and expenses in connection therewith or incidental thereto; or
- (d) suspend the rights granted to the Licensee hereunder for a stated period(s) of time, and terminate this Agreement any time thereafter; or
- (e) terminate this Agreement; and

such suspension or termination may be effective in relation to all, or any portion of, the Land and Improvements, in the sole discretion of the BCTFA. In the case of emergency, the BCTFA may exercise the remedies in 8.2(c) and (d) immediately and without prior notice to the Licensee.

8.3 If the condition complained of in subsection 8.2(a) or (b) (other than the payment of any money payable by the Licensee under this Agreement) reasonably requires more time to cure than 60 days, the Licensee will be deemed to have complied with the remedying of it if the Licensee commences remedying or curing the condition within 60 days and diligently completes the same.

8.4 The Licensee agrees with the BCTFA that

- (a) the BCTFA may, on 180 days' written notice to it, terminate or temporarily suspend this Agreement for all, or any portion, of the Land and Improvements, if the BCTFA or Her Majesty the Queen in Right of the Province of British Columbia requires such portion of the Land or Improvements for transportation purposes;
- (b) it will make no claim for compensation, in damages or otherwise, upon the suspension or termination of this Agreement pursuant to its terms or under subsection 62(5) of the *Transportation Act*.

8.5 On the termination of this Agreement, the Licensee will:

- (a) peaceably quit and deliver to the BCTFA possession of the Land and, subject to paragraph (b), the Improvements in a safe, clean and sanitary condition (including, without limitation, free of any Contaminants related to the Licensee's entry upon, use or occupation of the Land hereunder); and
- (b) within 180 days, remove from the Land any Improvements the Licensee wants to remove, if the Improvement was placed on or made to the Land by or for the Licensee, is in the nature of a fixture normally removable by lessees and is not part of a building or part of the Land;

and all of the Licensee's right, interest and estate in the Land and Improvements will be absolutely forfeited to the BCTFA, and to the extent necessary, this covenant will survive the termination of this Agreement.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, the parties will attempt to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts. If a dispute cannot be resolved, executive members of each party will meet to review and direct resolution of the matter.
- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, the dispute will be resolved by arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be

governed by the laws of the Province of British Columbia.

- 9.4 The arbitration will be conducted at the office of the BCTFA in Victoria, British Columbia, and if there is no office of the BCTFA in Victoria, British Columbia, then at the office of the BCTFA that is closest to Victoria, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within the BCTFA's sole discretion cannot, unless the BCTFA agrees, be referred to arbitration as set out in section 9.2.

ARTICLE 10 - NOTICE

- 10.1 Any notice or other document required or permitted to be given by either party to the other must be in writing and will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the BCTFA

Land and Property Administrator
Ministry of Transportation and Infrastructure
Land Management Branch
PO Box 9850 Stn Prov Govt
Victoria BC V8W 9T5
Telephone: 250 387-2664
Fax: 250 356-6970

to the Licensee

Attention: Parks and Facilities Coordinator
Regional District Okanagan Similkameen
101 Martin Street
Penticton, BC
V2A 5J9
Telephone: 250-492-0237
Fax: 250-492-0063

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 10.2 In order to expedite the delivery of any notice or other document required or permitted to be given by either party to the other, a concurrent electronic copy of any notice will, where possible, be provided to the other party but will not affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to the BCTFA under this Agreement will be effected by hand, courier or prepaid regular mail to the BCTFA's address specified in or otherwise established under section 10.1, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to the BCTFA under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release the Licensee from its obligation to observe and perform all the provisions of this Agreement on its part to be observed and performed unless the BCTFA specifically releases the Licensee from such obligation in its consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond the Licensee's reasonable control, other than normal weather conditions, the Licensee is delayed in performing any of its obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as the Licensee
- (a) gives notice to the BCTFA within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of its obligation; and
 - (b) diligently attempts to remove the delay.
- 11.6 The Licensee agrees with the BCTFA that
- (a) the BCTFA is under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of maintaining, servicing, creating or developing the Land or the Improvements and the Licensee is solely responsible for all costs and expenses associated with its use of the Land and the Improvements for the purposes set out in this Agreement;
 - (b) nothing in this Agreement constitutes the Licensee as an agent, joint venturer or partner of the BCTFA or Her Majesty the Queen in Right of the Province of British Columbia or gives it any authority or power to bind the BCTFA or Her Majesty the Queen in Right of the Province of British Columbia in any way; and
 - (c) any information regarding this Agreement or the Licensee may be disclosed or required to be disclosed under the *Freedom of Information and Protection of Privacy Act*, governmental policy or otherwise.
- 11.7 There are no warranties, representations, collateral agreements or conditions affecting this Agreement except as set out in this Agreement.

ARTICLE 12 - INTERPRETATION

- 12.1 In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.

- 12.2 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 12.3 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 12.4 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 12.5 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 12.6 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 12.7 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 12.8 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 12.9 All provisions of this Agreement in the BCTFA's favour and all of its rights and remedies, either at law or in equity, will survive the termination of this Agreement.
- 12.10 Time is of the essence of this Agreement.
- 12.11 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made then each party will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that a party has sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED by an authorized signatory of
BC TRANSPORTATION FINANCING AUTHORITY

Authorized Signatory of
BC Transportation Financing Authority

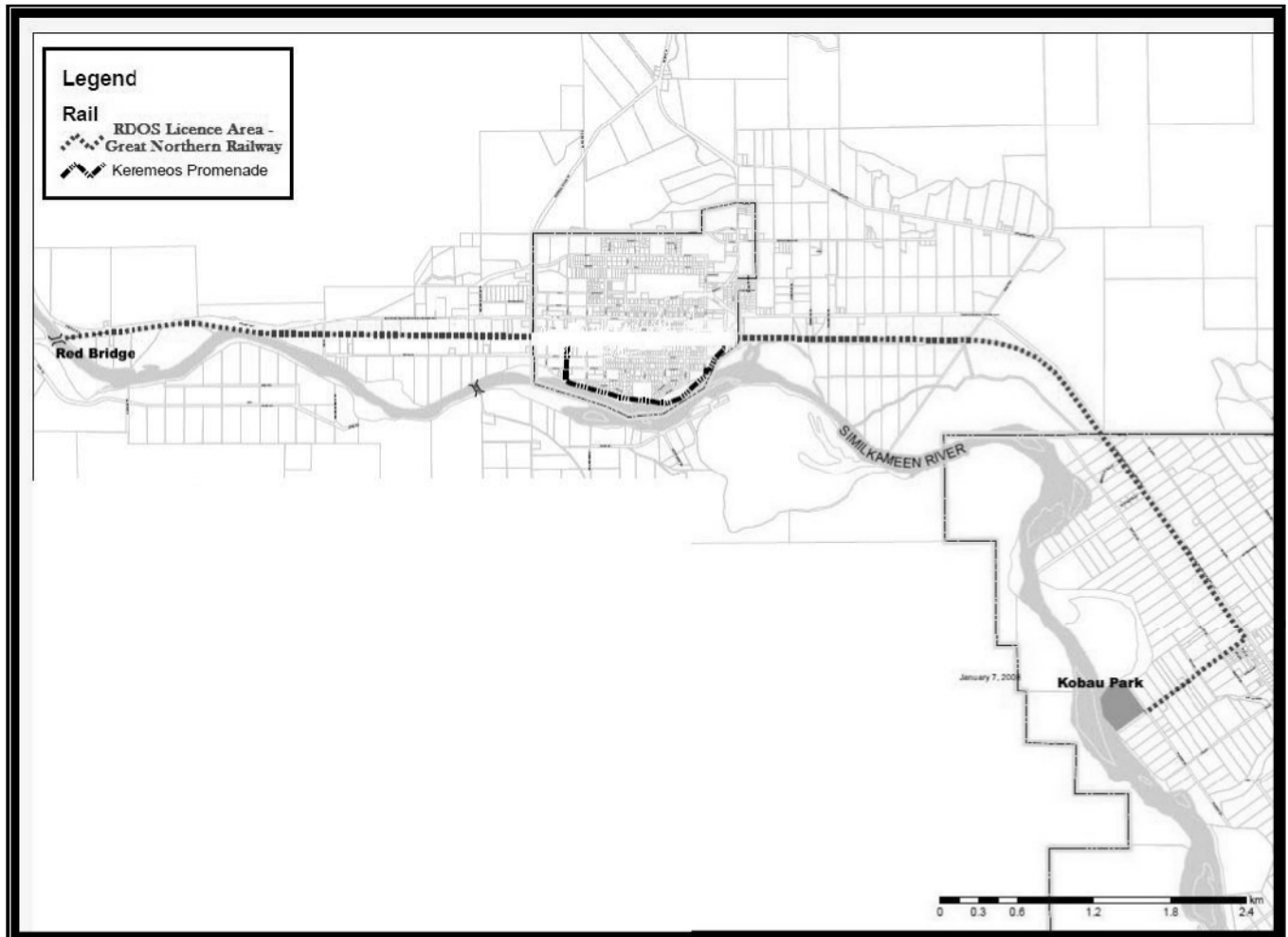
SIGNED on behalf of
REGIONAL DISTRICT OF OKANAGAN SIMILKAMEEN
by its authorized signatories

Authorized Signatory

Authorized Signatory

SCHEDULE A

"Land" means the land shown outlined by the dashed red line on the following illustration:



SCHEDULE B**Legal Description of Land:**

FILE #	P.I.D.	Short Legal	Owner on Title	Shown on Plan
None	Hwy 16866 H	Part Hwy 16866 H Through DL 657 & DL 656	HMQ	Hwy 16866 H
None	014-374-587	Part DL 656 on Plan DD 1822	HMQ	DD 1822
0479-015	011-412-470	Part DL 277 on Plan DD 1822	BCTFA	DD 1822
0479-004	011-412-445	Part DL 323 on Plan DD 678	BCTFA	DD 678
0479-005	011-412-381	Part DL 110 on Plan DD 678	BCTFA	DD 678
0479-006	011-412-356	Part DL 111 on Plan DD 1689	BCTFA	DD 1689
0479-007	011-412-330	Part Sec 16, twp 52, Plan DD 8285	BCTFA	DD 8285
0479-008	011-412-305	Part Sec 9, twp 52, Plan DD 8285	BCTFA	DD 8285

SCHEDULE C

Management Plan:

THIS AGREEMENT is dated for reference April 15, 2015

BETWEEN:

BC TRANSPORTATION FINANCING AUTHORITY, a corporation continued under the *Transportation Act*
(the “BCTFA”)

AND:

VILLAGE OF KEREMEOS
(the “Licensee”)

Background:

- A. The BCTFA is the registered owner in fee simple of the Land and is holding the Land for future transportation purposes.
- B. The Licensee wishes to use and occupy the Land for a recreational trail (the “Trail”) and the BCTFA has agreed to permit it to do so in accordance with the terms and conditions of this Agreement.
- C. The Trail crosses other parcels not part of the Land, including highways operated by the BC Ministry of Transportation and Infrastructure (“MOTT”) and municipalities.

For valuable consideration, the parties agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 In this Agreement,

“**Agreement**” means this licence of occupation;

“**Commencement Date**” means April 22, 2015;

“**Contaminants**” means any chemicals, materials or substances regulated under Environmental Laws or which cause all or any part of the Land or any user or occupant of the Land to be in violation of any Environmental Laws;

“**Environmental Claims**” means any and all enforcement, clean-up, removal, remedial, or other governmental or regulatory actions pursuant to any Environmental Laws;

“**Environmental Laws**” means any local, provincial or federal laws, rules, ordinances, regulations, orders or other edicts having the force of law relating to the environment or environmental conditions on, under or about the Land including, without limitation, soil, groundwater, and indoor and ambient air conditions;

“**Fee**” means the fee set out in Article 3;

“**Improvements**” includes anything:

- (a) made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, or
- (b) any clearing, excavating, digging, drilling, tunneling, filling, grading or ditching of, in, on or under the Land,

by the Licensee, or forming part of the Trail or facilitating the use of the Land for the Trail, including geotechnical stability, and riparian and stormwater management works;

“**Land**” means those portions shown outlined in bold on Schedule A (Plans of Land) of the parcels legally described in Schedule B (Legal Descriptions of Land). For greater certainty, the Land does not include the beds of any bodies of water, nor any road, arterial road, or highway lands;

“**Trail Management Plan**” means the management plan prepared by the Licensee pursuant to section 4.1(d) and accepted by the BCTFA, and includes all amendments to and replacements of that plan;

“**Permitted Use**” means construction and operation of a regional public trail, including use by the public thereof, but excluding the use of motorised vehicles except for the purposes of construction and maintenance;

“**Realty Taxes**” means all taxes, rates, levies, duties, charges and assessments lawfully levied or charged, at any time, by any competent governmental authority which relate to the Land, the Improvements or both of them;

“**Term**” means the period of time set out in section 2.2.

ARTICLE 2 - GRANT AND TERM

- 2.1 Subject to the terms and conditions set out in this Agreement, the BCTFA grants to the Licensee a licence of occupation over the Land for the Permitted Use and for no other purpose unless agreed to in writing by BCTFA (in BCTFA’s sole discretion).
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on April 21, 2030, or such earlier date provided for in this Agreement.
- 2.3 If, after the termination of this Agreement, the BCTFA permits the Licensee to remain in possession of the Land, the Licensee will be a monthly licensee subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 3 - FEE

- 3.1 The BCTFA acknowledges receipt from the Licensee of \$10.00 as the fee for the Term.

ARTICLE 4 - COVENANTS

- 4.1 The Licensee must
 - (a) pay, when due,

- (i) the Fee to the BCTFA at the address set out in Article 10,
 - (ii) the Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land;
- (b) deliver to the BCTFA, immediately upon request, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by the Licensee under this Agreement;
- (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and the Improvements, or their use and occupation, and
 - (ii) the provisions of this Agreement;
- (d) prepare a Trail Management Plan in consultation with the BCTFA and MOTI, and revise and update it as required in consultation with the BCTFA and MOTI. The Licensee will complete the first Trail Management Plan before the first anniversary of the Commencement Date;
- (e) keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to the BCTFA, and at the BCTFA's written request, make the Land and the Improvements safe, clean and sanitary;
- (f) enforce municipal by-laws as they relate to subsection 2.1, and as required by the Licensee to ensure the safety of the general public and Improvements;
- (g) deliver to the BCTFA copies of all significant inspection reports received by the Licensee with respect to the Trail, Land, or Improvements;
- (h) the BCTFA and the Licensee may, upon mutual agreement, conduct a joint inspections on the Trail, Land, and Improvements, with no set recurring interval during the Term;
- (i) not commit any waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance or annoyance to an owner or occupier of land in the vicinity of the Land;
- (j) use and occupy the Land only in accordance with and for the purposes set out in section 2.1;
- (k) obtain and maintain in good standing any permits, authorisations or other interests required for those portions of the Trail not located on the Land, including without limitation Permits for Works in Highway from MOTI, and road use permits from municipalities;
- (l) not construct, place or affix any Improvement on or to the Land except as necessary for the purposes set out in section 2.1;
- (m) be responsible at its cost for the construction or improvement of any Improvements;
- (n) consult the BCTFA regarding the construction or improvement of any major infrastructure projects relating to the Trail;
- (o) notify BCTFA when encroachments from adjacent land uses or activities are identified. The Licensee will take appropriate actions towards resolving encroachments and will address any ongoing encroachment problems in the Trail Management Plan;

- (p) pay all accounts and expenses as they become due for labour or services performed on, or materials supplied to, the Land except for money that the Licensee is required to hold back under the *Builders Lien Act*;
- (q) if any claim of lien over the Land is made under the *Builders Lien Act*, immediately take all steps necessary to have the lien discharged;
- (r) cut or remove timber on or from the Land
 - (i) only to address an unsafe condition or for the purposes set out in section 2.1, and
 - (ii) in accordance with an agreement issued to the Licensee under the *Forest Act* to permit the harvest of Crown timber on the Land unless the minister responsible for the *Forest Act* permits the harvest of timber on the Land without the issuance of an agreement under the *Forest Act*;
- (s) permit the BCTFA to enter on the Land at any time and for any purpose
- (t) The Licensee will, at its sole cost and expense:
 - (i) comply with all Environmental Laws;
 - (ii) not deposit or release or permit the deposit or release of any Contaminants on, under, about or from the Land or Improvements;
 - (iii) not store or permit to be stored on or in the Land or Improvements anything that is of a dangerous, hazardous, inflammable or explosive nature or anything that would have the effect of increasing insurance costs or leading to the cancellation of any insurance with respect to the Land or Improvements;
 - (iv) after the commencement of the Term, and immediately on being made aware, notify the BCTFA in writing, of the existence of any Environmental Claim or any Contaminants on the Land or Improvements, or any discharges, emissions, migration, or spill of Contaminants on, under, about or from the Land or Improvements;
 - (v) promptly provide the BCTFA with copies of all notices relating to the Land or Improvements, issued pursuant to any Environmental Laws and evidence the Licensee is responding to such notices in a responsible manner if they concern matters which are the responsibility or obligation of the Licensee hereunder;
 - (vi) remove any and all Contaminants from the Land or Improvements deposited or released by the Licensee or any person entering the Land or Improvements pursuant to the Licensee's rights hereunder, and immediately repair all damage to the Land or Improvements caused by such removal;
- (u) indemnify and save the BCTFA and Her Majesty the Queen in Right of the Province and their respective servants, employees, officers, directors and agents harmless against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs and liabilities, including fees of solicitors and other professional advisors, arising out of or in connection with
 - (i) the Licensee's breach, violation or nonperformance of a provision of this Agreement,
 - (ii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of the Licensee's entry upon, use or occupation of the Land, and

- (iii) without limiting paragraph (ii), any environmental liability on or off the Land related to the Licensee's entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land,

and the amount of all such losses, damages, fines, penalties, costs, expenses and liabilities will be payable to the BCTFA immediately upon demand. This indemnity will survive the expiry or earlier termination of this Agreement;

- (v) release the BCTFA and Her Majesty the Queen in Right of the Province and their respective servants, employees, officers, directors and agents from and against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities arising out of or in connection with any environmental liability on or off the Land related to the Licensee's entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land. This release will survive the expiry or earlier termination of this Agreement; and
- (w) on the termination of this Agreement,
 - (i) peaceably quit and deliver to the BCTFA possession of the Land and, subject to paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary condition (including, without limitation, free of any environmental contamination related to the Licensee's entry upon, use or occupation of the Land),
 - (ii) within 60 days, remove from the Land any Improvement the Licensee wants to remove, if the Improvement was placed on or made to the Land by or for the Licensee, is in the nature of a fixture normally removable by licensees and is not part of a building or part of the Land,
 - (iii) remove from the Land any Improvement that was placed on or made to the Land by or for the Licensee, and that the BCTFA, in writing, directs or permits the Licensee to remove,
 - (iv) restore the surface of the Land as nearly as may reasonably be possible to the same condition as it was on the Commencement Date, to the BCTFA's satisfaction, but if the Licensee is not directed or permitted to remove an Improvement under paragraph (ii) or (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located, and
 - (v) if the BCTFA requires, provide to the BCTFA a "site profile", "preliminary site investigation" or "detailed site investigation" (as those terms are defined in the *Environmental Management Act*) for the Land and or other similar type of investigation of the Land,

and all of the Licensee's right, interest and estate in the Land will be absolutely forfeited to the BCTFA, and this covenant will survive the expiry or earlier termination of this Agreement.

4.2 The Licensee will not permit any person to do anything it is restricted from doing under this Article.

ARTICLE 5 - LIMITATIONS

5.1 The Licensee agrees with the BCTFA that:

- (a) this Agreement does not grant it the exclusive use and occupancy of the Land;
- (b) it has inspected the Land and Improvements and fully accepts the Land and Improvements in the

- condition and state they are in on the Commencement Date;
- (c) it has conducted an investigation of the condition, environmental or otherwise, of the Land;
 - (d) the Land is being licensed to it on an “as is, where is” basis;
 - (e) the BCTFA is under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
 - (f) the BCTFA may, without the Licensee’s consent, make other dispositions of or over the Land, and the Licensee acknowledges and agrees with the following:
 - i. the Licensee's rights and this Agreement are subject to the rights and interest of all persons who are not a party hereto with interest in all or any part of the Land on or after the Commencement Date, provided that if the actions of such persons pursuant to such interests have a material and adverse impact on the Licensee's use of the Land, and the consent of the BCTFA is required under the relevant interest to permit such actions, then the BCTFA will consult with the Licensee before consenting to such actions;
 - ii. in connection with such dispositions, the BCTFA temporarily close the whole or any part of the Land where reasonably required. The BCTFA will give the Licensee no less than 30 days’ notice of its intent to grant such permit and provide the Licensee an opportunity to consult with the BCTFA as to the method of installation of such facilities, the timing of such installation, and the period of closure of all or any portion of the Land required for such installation;
 - iii. the BCTFA, Her Majesty the Queen in Right of the Province or a municipality may gazette, dedicate or otherwise acquire highways across or along the Land. The BCTFA will consult with the Licensee as to any acquisitions for highway purposes across the Land;
 - iv. the Licensee will make no claim for compensation, in damages or otherwise, in respect of a disposition made by the BCTFA under this section;
 - v. all of the Licensee's costs and expenses, direct or indirect, that arise out of any interference with its rights under this Agreement as a result of a disposition made by the BCTFA under this section will be borne solely by the Licensee; and
 - vi. the Licensee releases and discharges the BCTFA from all claims arising directly or indirectly out of any interference with the Licensee’s rights under this Agreement as a result of a disposition made by the BCTFA under this section;
 - (g) the Licensee will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
 - (h) any interest the Licensee may have in the Improvements ceases to exist and becomes the property of the BCTFA upon the termination of this Agreement, except where an Improvement is directed or permitted to be removed under this Agreement, in which case any interest the Licensee may have in that Improvement ceases to exist and becomes the property of the BCTFA if the Improvement is not removed from the Land within the time provided for in the direction or permission; and
 - (i) the Licensee will make no claim for compensation, in damages or otherwise, if the Land becomes unsuitable for the purposes set out in this Agreement.

ARTICLE 6 - INSURANCE

The Licensee must, without limiting its obligations or liabilities under this Agreement, at its expense, maintain during the Term

- (a) Commercial General Liability Insurance including non-owned automobile and contractual liability insurance with inclusive limits of not less than \$5,000,000 for bodily injury, death or property damage arising from any one accident or occurrence which insurance policy will indemnify the named insureds under the policy for all sums which the insured may become liable to pay or pays for bodily injury, death or property damage or for loss of use, arising out of or resulting from the work or operations of the parties under this Agreement which must be endorsed as follows:

"It is understood and agreed that Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure (the "Province"), together with the employees, agents (including the BC Transportation Financing Authority and its officers, directors, employees, servants and agents), and servants of the Province (the "Additional Named Insureds"), are each added as an Additional Named Insured, in respect of liability arising from the work or operations of the insured and each Additional Named Insured, in connection with contracts entered into between the insured and the Additional Named Insured.

The Insurance as is afforded by this policy will apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of the policy by any insured will not affect the protection given by this policy to any other insured. The inclusion herein of more than one insured will not operate to increase the limit of liability under this policy.";

- (b) if vessels are owned, leased or rented or used in the performance of this Agreement by the Licensee and are not covered under the general liability policy, the Licensee will provide Protection and Indemnity insurance with limits of not less than \$5,000,000 for such vessels and will include four-fourths collision liability insurance,
- (c) if any licensed vehicles are owned, leased, rented or used by the Licensee in the performance of this Agreement, Automobile Liability Coverage with inclusive limits of not less than \$5,000,000 providing third party liability and accident benefits insurance for all such vehicles, and

which, in the case of the policies of insurance described in subsections (a), (b) and (d), must include endorsements or provisions that they may not be cancelled, reduced, altered or materially changed without the insurer or insurers giving not less than 30 days' prior written notice to the BCTFA by registered mail, which endorsements must be in terms comparable to those normally obtainable from insurers in the Province of British Columbia or Canada issuing comparable policies.

6.2 All insurance required to be maintained by the Licensee under this Agreement must be placed with insurers licensed to transact business in British Columbia or Canada and, the Licensee must, under the insurance required to be maintained by it under this Agreement,

- (a) pay all deductibles;
- (b) not exclude hazardous operations such as excavation, pile driving, shoring, blasting, under-pinning or demolition work or any other operation or work from insurance coverage;
- (c) deliver to the BCTFA, on the Commencement Date, on the renewal of the insurance and at other times required by it

- (i) for all policies except Automobile Liability Insurance, a completed and executed certificate of insurance in a form acceptable to the BCTFA (as of the Commencement Date, such form is entitled "Certificate of Insurance" and is numbered H-111), and
- (ii) evidence of Automobile Liability Insurance in the form of a duly executed Insurance Corporation of British Columbia APV47 or APV250 form or a copy of the vehicle registration/insurance certificate;
- (d) on the BCTFA's request, deliver to it evidence that the insurance remains in force and effect by way of the originals or certified copies of all current insurance policies and endorsements.

6.3 The Licensee acknowledges and agrees that, in the event of any third party loss or damage or any physical loss or damage to the Land (and the Licensee's associated apparatus, improvements or fixtures), the settlement or payment by the insurer of the subsequent claim will be made without the right of subrogation against the BCTFA or Her Majesty the Queen in Right of the Province of British Columbia or those for whom the BCTFA and Her Majesty the Queen in Right of the Province of British Columbia are legally obligated to indemnify against such claims.

ARTICLE 7 - ASSIGNMENT

- 7.1 The Licensee must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without the BCTFA's prior written consent, which consent it may withhold in its sole discretion.
- 7.2 For the purpose of section 7.1, if the Licensee is a corporation, a change in control (as that term is defined in subsection 2(3) of the *Business Corporations Act*) of the Licensee will be deemed to be a transfer of this Agreement.
- 7.4 Prior to considering a request for consent under section 7.1, the BCTFA may require the Licensee to meet certain conditions, including without limitation, that it provide to the BCTFA a "site profile", "preliminary site investigation" or "detailed site investigation" (as those terms are defined in the *Environmental Management Act*) for the Land and or other similar type of investigation of the Land.

ARTICLE 8 - SUSPENSION, REALIGNMENT AND CANCELLATION

- 8.1 At any time the BCTFA believes, in its sole discretion, that the use or occupation of the Land or Improvements by the Licensee or any third party presents a potential or actual hazard to the public, the Land, or the Improvements, then the BCTFA may suspend the rights granted to the Licensee hereunder (including access to the Land or Improvements) for any reasonable period of time determined by the BCTFA, without abatement of any costs, expenses or other monies payable by the Licensee hereunder, and require the Licensee to remedy the hazard or perform the remedy itself in which case the Licensee will repay to the BCTFA on demand for all costs and expenses in connection therewith or incidental thereto. Such suspension and remedy may be effective in relation to all, or any portion of, the Land and Improvements, in the sole discretion of the BCTFA.
- 8.2 If the Licensee
 - (a) defaults in the payment of any money payable by it under this Agreement, and its default or failure continues for 10 days after the BCTFA gives written notice of the default or failure to the Licensee, or
 - (b) fails to observe, abide by and comply with the provisions of this Agreement, and its default or failure continues for 60 days after the BCTFA gives written notice of the default or failure to the Licensee,

then the BCTFA may, at its option, do any one or more of the following:

- (c) make any repairs or observe and perform the Licensee's obligations it has failed to observe and perform, in which case the Licensee will repay to the BCTFA on demand for all costs and expenses in connection therewith or incidental thereto; or
- (d) suspend the rights granted to the Licensee hereunder for a stated period(s) of time, and terminate this Agreement any time thereafter; or
- (e) terminate this Agreement; and

such suspension or termination may be effective in relation to all, or any portion of, the Land and Improvements, in the sole discretion of the BCTFA. In the case of emergency, the BCTFA may exercise the remedies in 8.2(c) and (d) immediately and without prior notice to the Licensee.

8.3 If the condition complained of in subsection 8.2(a) or (b) (other than the payment of any money payable by the Licensee under this Agreement) reasonably requires more time to cure than 60 days, the Licensee will be deemed to have complied with the remedying of it if the Licensee commences remedying or curing the condition within 60 days and diligently completes the same.

8.4 The Licensee agrees with the BCTFA that

- (a) the BCTFA may, on 180 days' written notice to it, terminate or temporarily suspend this Agreement for all, or any portion, of the Land and Improvements, if the BCTFA or Her Majesty the Queen in Right of the Province of British Columbia requires such portion of the Land or Improvements for transportation purposes;
- (b) it will make no claim for compensation, in damages or otherwise, upon the suspension or termination of this Agreement pursuant to its terms or under subsection 62(5) of the *Transportation Act*.

8.5 On the termination of this Agreement, the Licensee will:

- (a) peaceably quit and deliver to the BCTFA possession of the Land and, subject to paragraph (b), the Improvements in a safe, clean and sanitary condition (including, without limitation, free of any Contaminants related to the Licensee's entry upon, use or occupation of the Land hereunder); and
- (b) within 180 days, remove from the Land any Improvements the Licensee wants to remove, if the Improvement was placed on or made to the Land by or for the Licensee, is in the nature of a fixture normally removable by lessees and is not part of a building or part of the Land;

and all of the Licensee's right, interest and estate in the Land and Improvements will be absolutely forfeited to the BCTFA, and to the extent necessary, this covenant will survive the termination of this Agreement.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, the parties will attempt to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts. If a dispute cannot be resolved, executive members of each party will meet to review and direct resolution of the matter.
- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, the dispute will be resolved by arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be

governed by the laws of the Province of British Columbia.

- 9.4 The arbitration will be conducted at the office of the BCTFA in Victoria, British Columbia, and if there is no office of the BCTFA in Victoria, British Columbia, then at the office of the BCTFA that is closest to Victoria, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within the BCTFA's sole discretion cannot, unless the BCTFA agrees, be referred to arbitration as set out in section 9.2.

ARTICLE 10 - NOTICE

- 10.1 Any notice or other document required or permitted to be given by either party to the other must be in writing and will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the BCTFA

Land and Property Administrator
Ministry of Transportation and Infrastructure
Land Management Branch
PO Box 9850 Stn Prov Govt
Victoria BC V8W 9T5
Telephone: 250 387-2664
Fax: 250 356-6970

to the Licensee

Attention: CAO
Village of Keremeos
702-4th Street PO Box 160
Keremeos, BC VOX 1N0
Telephone: 250-499-2711
Fax: 250-499-5477

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 10.2 In order to expedite the delivery of any notice or other document required or permitted to be given by either party to the other, a concurrent electronic copy of any notice will, where possible, be provided to the other party but will not affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to the BCTFA under this Agreement will be effected by hand, courier or prepaid regular mail to the BCTFA's address specified in or otherwise established under section 10.1, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to the BCTFA under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release the Licensee from its obligation to observe and perform all the provisions of this Agreement on its part to be observed and performed unless the BCTFA specifically releases the Licensee from such obligation in its consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond the Licensee's reasonable control, other than normal weather conditions, the Licensee is delayed in performing any of its obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as the Licensee
- (a) gives notice to the BCTFA within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of its obligation; and
 - (b) diligently attempts to remove the delay.
- 11.6 The Licensee agrees with the BCTFA that
- (a) the BCTFA is under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of maintaining, servicing, creating or developing the Land or the Improvements and the Licensee is solely responsible for all costs and expenses associated with its use of the Land and the Improvements for the purposes set out in this Agreement;
 - (b) nothing in this Agreement constitutes the Licensee as an agent, joint venturer or partner of the BCTFA or Her Majesty the Queen in Right of the Province of British Columbia or gives it any authority or power to bind the BCTFA or Her Majesty the Queen in Right of the Province of British Columbia in any way; and
 - (c) any information regarding this Agreement or the Licensee may be disclosed or required to be disclosed under the *Freedom of Information and Protection of Privacy Act*, governmental policy or otherwise.
- 11.7 There are no warranties, representations, collateral agreements or conditions affecting this Agreement except as set out in this Agreement.

ARTICLE 12 - INTERPRETATION

- 12.1 In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.

- 12.2 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 12.3 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 12.4 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 12.5 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 12.6 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 12.7 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 12.8 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 12.9 All provisions of this Agreement in the BCTFA's favour and all of its rights and remedies, either at law or in equity, will survive the termination of this Agreement.
- 12.10 Time is of the essence of this Agreement.
- 12.11 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made then each party will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that a party has sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED by an authorized signatory of
BC TRANSPORTATION FINANCING AUTHORITY

Authorized Signatory of
BC Transportation Financing Authority

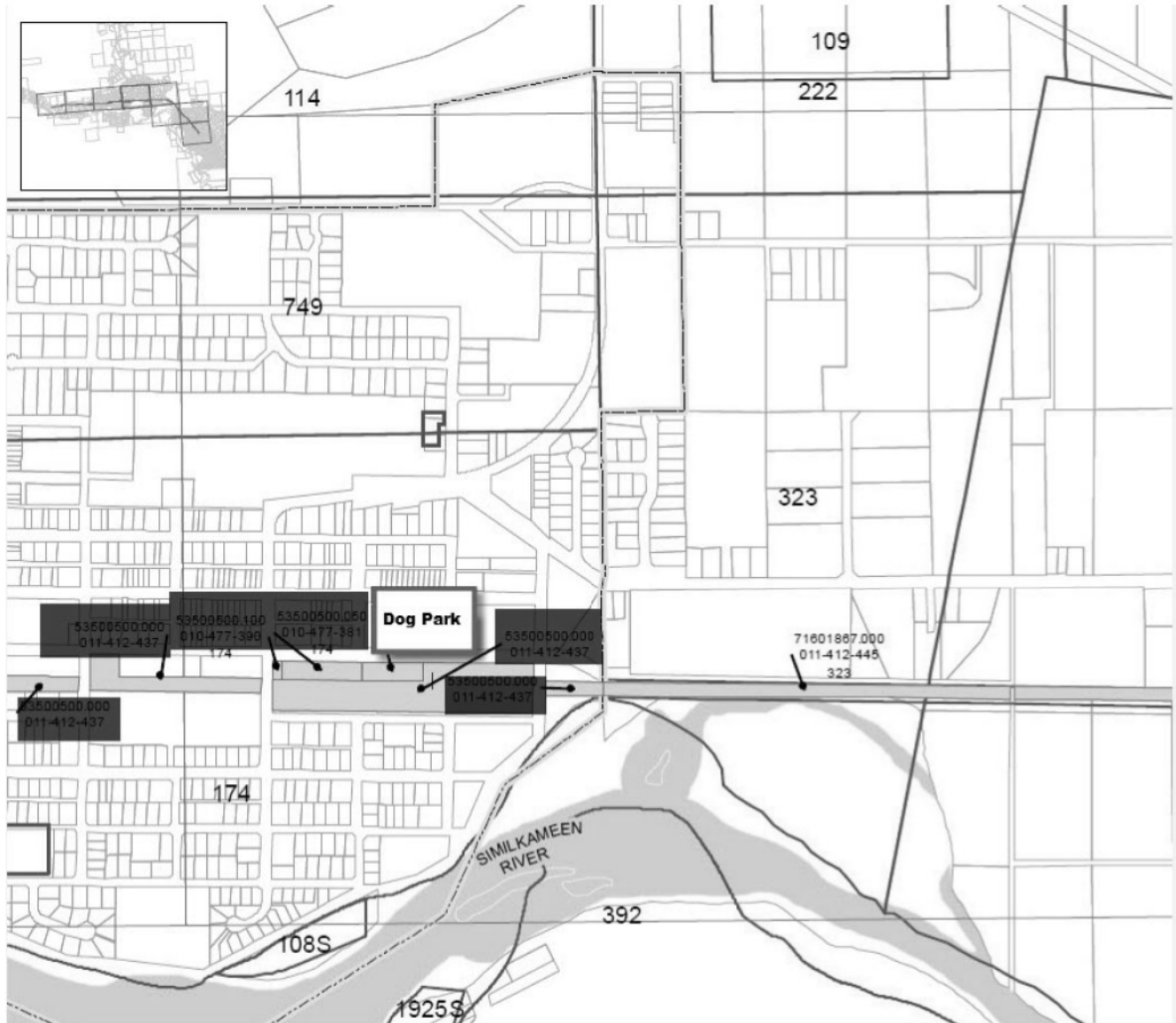
SIGNED on behalf of
VILLAGE OF KEREMEOS
by its authorized signatories

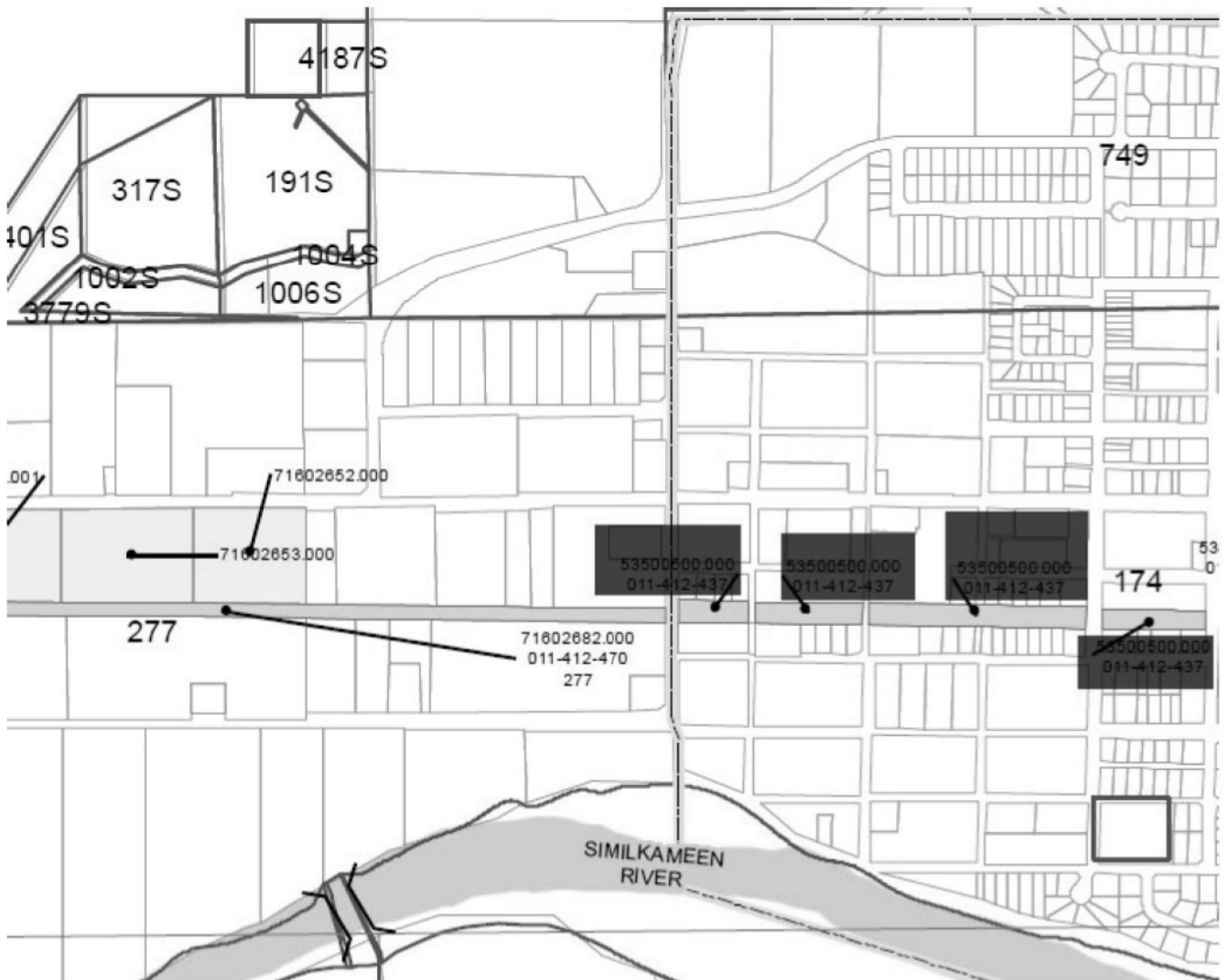
Authorized Signatory

Authorized Signatory

SCHEDULE A

"Land" means the land shown outlined by bold line on the following plan:





SCHEDULE B**Legal Description of Land:**

FILE #	P.I.D.	Short Legal	Owner on Title	Shown on Plan
0479-000	010-477-381	Part Lot 1, DL 174, Plan 4683	BCTFA	4683
0479-001	010-477-390	Part Lot 2, DL 174, Plan 4683	BCTFA	4683
0479-003	011-412-437	Part DL 174 on Plan DD 678	BCTFA	DD678

SCHEDULE C

Management Plan:



Agricultural Land Commission

133 – 4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

July 6th, 2012

Reply to the attention of Martin Collins
ALC File: 52593

Mark Woods
Regional District of Okanagan Similkameen
101 Martin St.
Penticton, BC,
V2A 5J9

Dear Sir:

Re: Application for a Recreational Trail in the Agricultural Land Reserve

Please find attached the Minutes of Resolution #231/2012 and a sketch plan outlining the Commission's decision as it relates to the above noted application. As agent, it is your responsibility to notify your client(s) accordingly.

As proponent it is your responsibility to notify any affected landowner of the Commission's decision. A copy of the minutes must be provided to each landowner contacted in the application process.

Other approvals may be necessary. Prior to proceeding, the Commission suggests you contact any other authority which has jurisdiction.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

A handwritten signature in black ink, appearing to read 'Brian Underhill', is written over a horizontal line.

Brian Underhill, Executive Director

Enclosure: Minutes/Sketch Plan/Schedule D fencing specifications



PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on June 27th, 2012 at the Ministry of Agriculture offices in Kelowna, B.C.

COMMISSION MEMBERS PRESENT:

Richard Bullock	Chair
Jennifer Dyson	Vice-Chair
Bert Miles	Commissioner
Jim Johnson	Commissioner

COMMISSION STAFF PRESENT:

Martin Collins	Regional Planner
----------------	------------------

APPLICATION: # 52593

PROPOSAL: To use an abandoned railway right of way as a recreational trail. The dimensions of the right of way are 13.3 km long, by an average of 20 meters wide. Portions of the right of way are currently being used as an informal trail.

(Submitted pursuant to Section 6 of B.C. Regulation #171/2002)

MEETING:

The Commission met with Regional District electoral area, and Keremeos representatives, adjoining landowners, and Regional District staff on June 26th, 2012 at the Village of Keremeos offices to discuss the proposal. Those in attendance were:

- Mark Woods, RDOS staff
- George Bush, Electoral Area B Director
- Duncan Baynes (Similkameen Trails)
- Angelique Wood, Electoral Area G Director
- Manfred Bauer, Village of Keremeos Mayor
- Cliff Guttman, Landowner
- Carl Withler, Ministry of Agriculture
- Mark Quaedvlieg – affected rancher
- Dave Carsons (Director, Similkameen Trails)
- Commissioners and ALC staff noted above

Regional District Staff, Mark Woods provided an overview of the project. Commission staff Martin Collins offered insights into the ALC application process, and how other similar projects had been assessed by the Commission.

At the meeting landowners indicated that trail use could result in litter and trespass onto farmland. Mark Quaedvlieg, the rancher indicated that he had improved the right of way

through DL 111 and the area was now irrigated hayfield. This improved portion of the right of way is currently leased by the rancher, but the lease expires next year. Other attendees pointed out that portions of the right of way were already being used as a trail, and for agricultural purposes (without the benefit of a lease agreement with the province).

The Commissioners then undertook a site visit and viewed portions of the existing right of way. It was noted that where a trail currently existed, many (though not all) adjoining landowners had pre-empted and improved the right of way for their own agricultural uses, either pasture or tree fruits.

COMMISSION CONSIDERATION:

Section 6 of the *Agricultural Land Commission Act* identifies the purposes of the Commission are (1) to preserve agricultural land; (2) to encourage farming on agricultural land in collaboration with other communities of interest; and (3) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

After review of all file information presented and information discussed at the exclusion meeting, the Commission has concluded as follows:

-
1. There are no external factors that render the right of way unsuitable for agricultural use. The right of way passes through, or lies adjacent, to cultivated farmland and/or the highway;
 2. The proposal has the potential to adversely impact existing or potential agricultural use of surrounding lands because of potential littering and trespass;
 3. The proposal will remove agricultural land currently utilized for irrigated forage from production and potentially disrupt irrigation systems on DL 111. As such the Commission believed that an alternate routing adjacent to the highway and along the westerly edge of the field was more appropriate;
 4. Portions of the right of way contain railway ballast rock, and as such have little agricultural potential. However, much of the right of way is undisturbed and has very good capability for agriculture. ~~Adjoining landowners have improved and/or planted portions of the right of way to tree fruits and forage/pasture;~~
 5. Fencing exists in some areas, but not in others. The Commission believed that in some cases fencing could hinder agricultural production, particularly if located on the edge of the right way. Currently some landowners are enjoying the benefits of agricultural production on right of way lands which they do not own. and the benefits of fencing to prevent trespass might not outweigh the loss of productive land;

IT WAS

MOVED BY: Commissioner J. Dyson

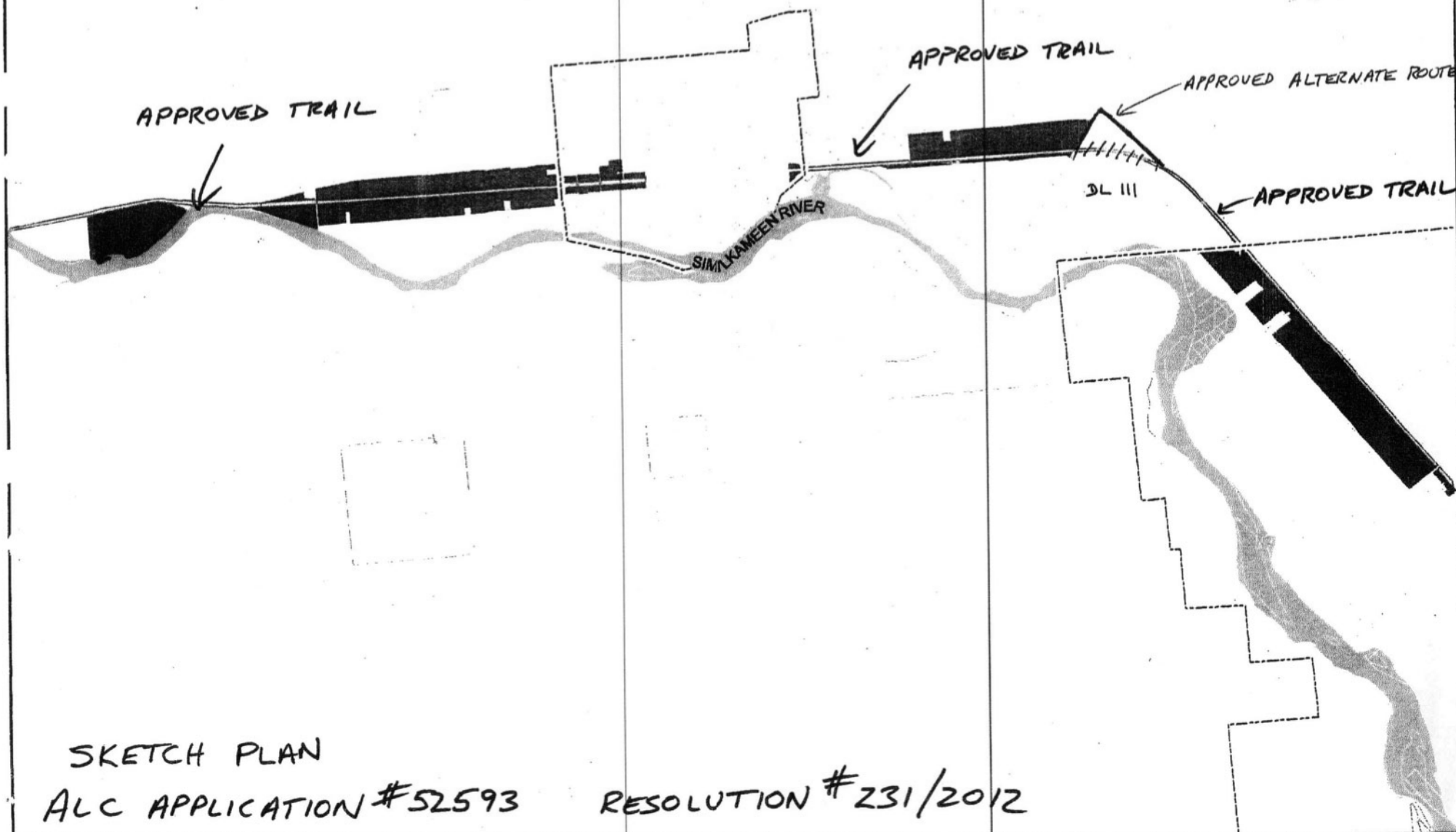
SECONDED BY: Commissioner B. Miles

THAT the application for a recreational trail use of the abandoned railway right of way be allowed, subject to the following conditions:.

- Posting signs at points of entry to the trail informing trail users that they are passing through an agricultural landscape, and that spraying, irrigation and can be expected adjacent to the trail.
- Placing litter bins at regular intervals on the trail, particularly at entry points.
- Recreational trail use of the right of way though DL 111 is not approved as proposed. However, an alternate route by way of an easement (or other legal means) along the westerly and northerly edge of the field and then following the right of way's existing route adjacent to the highway is approved (as noted on the attached sketch plan).
- Fencing the edge of the right of way with a Schedule D fence is required only if requested by the adjoining landowner(s), provided a page wire fence does not already exist.

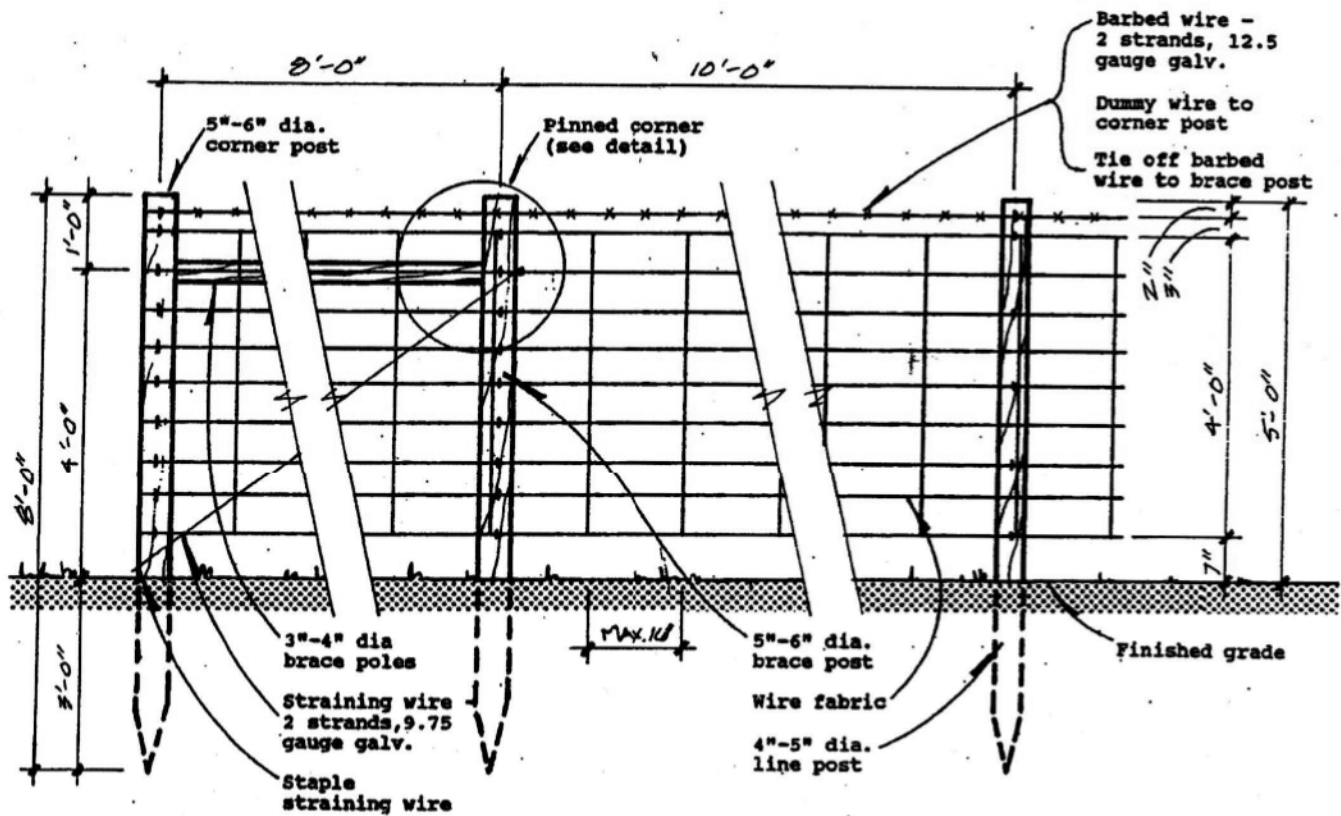
This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

CARRIED
Resolution # 231/2012



SCHEDULE D: FENCING SPECIFICATIONS

D.4: Wire Fabric Fence with One Strand Barbed Wire



3/8" x 12" rebar driven into 3/8" drilled hole. Wrap brace wire around 1" rebar protruding through brace post

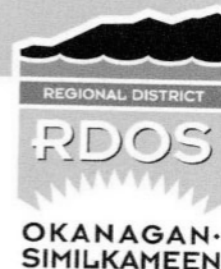
Tensioning batten

101 Martin Street, Penticton, British Columbia V2A 5J9

Tel: 250.492.0237 Fax: 250.492.0063

Toll Free: 877.610.3737

Email: info@rdos.bc.ca



December 6, 2012

File No.: 6140-20

BC TRANSPORTATION FINANCING AUTHORITY
PO BOX 9850 STN PROV GOVT
VICTORIA BC V8W9T5



Dear Adjacent Land Owner:

Re: Regional Trail Development and Improvements -Similkameen Rail Trail Corridor

As you were made aware in a letter dated January 17, 2012, the Regional District of Okanagan-Similkameen and the British Columbia Transportation & Financing Authority have entered into a Lease Agreement to provide a recreational trail over the former Burlington Northern Railway Right of Way. A portion of this Right of Way is adjacent to your property. Please refer to the attached map.

Block 87, Plan Number 300174, Land District 54, Similkameen Div of Yale

Together with the Similkameen Trails Society, the Regional District is working towards developing this trail to meet Provincial and RDOS standards. The first step in this process is to determine the scope of the trail improvements project by inviting each adjacent land owner to address any concerns they may have with this project proceeding. Our goal is to work with adjacent landowners to minimize any impact there may be to existing agricultural uses on private lands with the vision of developing a managed public recreation trail.

Through a resolution, the Agricultural Land Commission has outlined conditions for the RDOS to follow during the development and continued management of the trail. A copy of the June 27th, 2012 Agricultural Land Commission meeting minutes and subsequent resolution #231/2012 have been provided for your reference. Please review these documents and forward any requests or concerns with as much detail as possible to the undersigned via e-mail or letter by January 15th, 2013. If you wish to meet on site, feel free to make a request at this time and meetings will be scheduled accordingly in the New Year.

Please do not hesitate to contact me at (250)490-4136 if you have any questions.

Yours truly,

Justin Shuttleworth
Parks/Facilities Coordinator

Enclosures

cc D. Ashton, Chair
 A. Wood, Director Electoral Area B
 G. Bush, Director Electoral Area G
 D. Baynes, Similkameen Trails Society
 Jeff Throm, Ministry of Transportation and Infrastructure
 M. Collins, Agriculture Land Commission
 B. Newell, CAO
 M. Woods, Manager Community Services



PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on June 27th, 2012 at the Ministry of Agriculture offices in Kelowna, B.C.

COMMISSION MEMBERS PRESENT:

Richard Bullock	Chair
Jennifer Dyson	Vice-Chair
Bert Miles	Commissioner
Jim Johnson	Commissioner

COMMISSION STAFF PRESENT:

Martin Collins	Regional Planner
----------------	------------------

APPLICATION: # 52593

PROPOSAL: To use an abandoned railway right of way as a recreational trail. The dimensions of the right of way are 13.3 km long, by an average of 20 meters wide. Portions of the right of way are currently being used as an informal trail.

(Submitted pursuant to Section 6 of B.C. Regulation #171/2002)

MEETING:

The Commission met with Regional District electoral area, and Keremeos representatives, adjoining landowners, and Regional District staff on June 26th, 2012 at the Village of Keremeos offices to discuss the proposal. Those in attendance were:

- Mark Woods, RDOS staff
- George Bush, Electoral Area B Director
- Duncan Baynes (Similkameen Trails)
- Angelique Wood, Electoral Area G Director
- Manfred Bauer, Village of Keremeos Mayor
- s.22
- Carl Withler, Ministry of Agriculture
- s.22
- Dave Carsons (Director, Similkameen Trails)
- Commissioners and ALC staff noted above

Regional District Staff, Mark Woods provided an overview of the project. Commission staff Martin Collins offered insights into the ALC application process, and how other similar projects had been assessed by the Commission.

At the meeting landowners indicated that trail use could result in litter and trespass onto farmland. Mark Quaedvlieg, the rancher indicated that he had improved the right of way

through DL 111 and the area was now irrigated hayfield. This improved portion of the right of way is currently leased by the rancher, but the lease expires next year. Other attendees pointed out that portions of the right of way were already being used as a trail, and for agricultural purposes (without the benefit of a lease agreement with the province).

The Commissioners then undertook a site visit and viewed portions of the existing right of way. It was noted that where a trail currently existed, many (though not all) adjoining landowners had pre-empted and improved the right of way for their own agricultural uses, either pasture or tree fruits.

COMMISSION CONSIDERATION:

Section 6 of the *Agricultural Land Commission Act* identifies the purposes of the Commission are (1) to preserve agricultural land; (2) to encourage farming on agricultural land in collaboration with other communities of interest; and (3) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

After review of all file information presented and information discussed at the exclusion meeting, the Commission has concluded as follows:

1. There are no external factors that render the right of way unsuitable for agricultural use. The right of way passes through, or lies adjacent, to cultivated farmland and/or the highway;
2. The proposal has the potential to adversely impact existing or potential agricultural use of surrounding lands because of potential littering and trespass;
3. The proposal will remove agricultural land currently utilized for irrigated forage from production and potentially disrupt irrigation systems on DL 111. As such the Commission believed that an alternate routing adjacent to the highway and along the westerly edge of the field was more appropriate;
4. Portions of the right of way contain railway ballast rock, and as such have little agricultural potential. However, much of the right of way is undisturbed and has very good capability for agriculture. Adjoining landowners have improved and/or planted portions of the right of way to tree fruits and forage/pasture;
5. Fencing exists in some areas, but not in others. The Commission believed that in some cases fencing could hinder agricultural production, particularly if located on the edge of the right way. Currently some landowners are enjoying the benefits of agricultural production on right of way lands which they do not own. and the benefits of fencing to prevent trespass might not outweigh the loss of productive land;

IT WAS

MOVED BY: Commissioner J. Dyson

SECONDED BY: Commissioner B. Miles

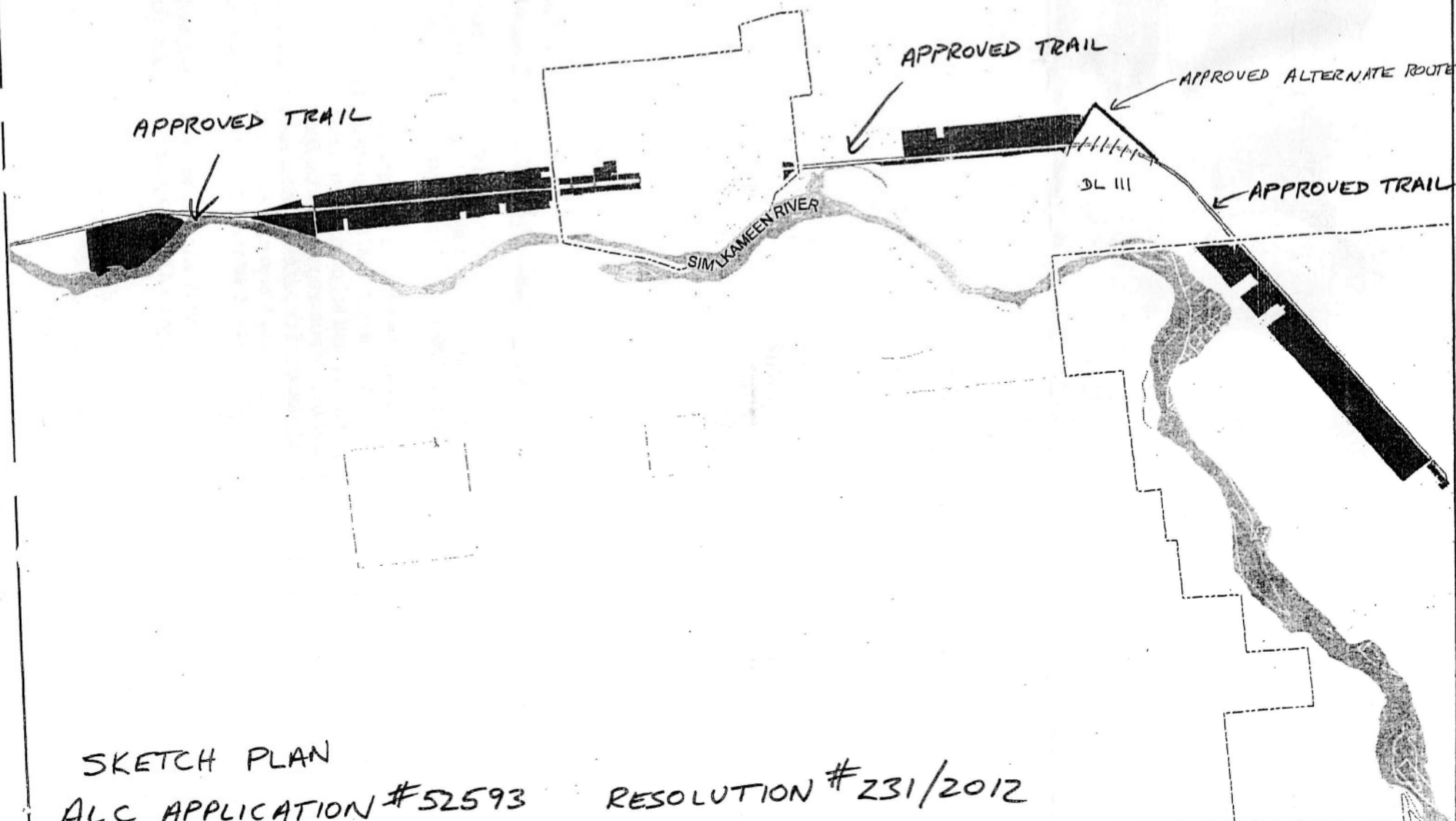
THAT the application for a recreational trail use of the abandoned railway right of way be allowed, subject to the following conditions:.

- Posting signs at points of entry to the trail informing trail users that they are passing through an agricultural landscape, and that spraying, irrigation and can be expected adjacent to the trail.
- Placing litter bins at regular intervals on the trail, particularly at entry points.
- Recreational trail use of the right of way though DL 111 is not approved as proposed. However, an alternate route by way of an easement (or other legal means) along the westerly and northerly edge of the field and then following the right of way's existing route adjacent to the highway is approved (as noted on the attached sketch plan).
- Fencing the edge of the right of way with a Schedule D fence is required only if requested by the adjoining landowner(s), provided a page wire fence does not already exist.

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

CARRIED

Resolution # 231/2012





March ____, 2017

s.22

Re: Unauthorized Removal of Materials from Provincially Owned Rail Corridor

As you may be aware, the BC Transportation Financing Authority ("BCTFA") owns an abandoned rail corridor in Cawston, BC, a portion of which (the "BCTFA Lands") runs adjacent to the northeast boundary of your property located at s.22

s.22 I confirm further that the Ministry of Transportation and Infrastructure ("MOTI") is responsible for the management and administration of the BCTFA Lands.

It has come to our attention that rocks, soil, and possibly other material have recently been removed from the BCTFA Lands without authorization from MOTI. I confirm that the removal of these materials and the depletion of the existing rail bed will undoubtedly result in increased cost and expense to MOTI.

If you have any information about this or any other unauthorized activity on the BCTFA Lands, we'd ask that you please contact me immediately. I may be reached by email at Curtis.Vogt@gov.bc.ca, or by telephone at (250) 387-2107.

I trust you will find this in order. If you wish to discuss this matter further, please do not hesitate to contact me.

Yours truly,

Curtis Vogt
Land & Property Administrator

Nov. 4 – **LIS 479-006** – This Portion of the VV&E railway bed was licenced to a farmer (Licence – Barrington Ranch -which is now expired), During the licence period, the farmer removed the existing railway ties and began to farm the licence area. This licence is now expired but the farmer continues to use the land. The RDOS leases the remainder of the corridor and would like to connect this portion as part of the process to complete the recreational trail. In 2012 the ALC ruled that non-farm uses are prohibited on this property. It stated in its ruling that the use of this property as a recreational trail would interfere with farming. However, the ALC ruling did approve the diversion of the proposed recreational trail to the north and west boundaries of Sparkford's parcel. Three proposals have been suggested by Sparkford Estates (The new owner of Barrington Ranch) and RDOS: 1) divert the trail around the farmer's lot boundaries via easement 2) Lease the expired section of the rail trail to the RDOS 3) Do a land swap with the farmer, trading the abandoned rail trail that runs through the center of the farmer's land for the proposed easement in option 1. BCTFA favors option 3.



Meeting Notes

Date: June 25, 2019, from 2:00 pm to 4:30 pm

Location: Village of Keremeos Town Offices

Subject: VVE Rail Trail Corridor (LIS 0479)

In Attendance:

Matthew Butterfield, Manager Property Development and Marketing, MOTI

Andrew MacKinnon, Land Project Manager, MOTI

Marg Coulson, COO, Town of Keremeos

Justin Shuttleworth, Parks Supervisor, Regional District of Okanagan Similkameen

Mark Woods, Manager, Parks, Regional District of Okanagan Similkameen

George Bush, Electoral Area Representative (field trip portion)

Regrets:

Kylee O'Dell, Transportation Planner, MOTI District

Meeting Notes

- Met with RDOS and Village of Keremeos representatives prior to visiting VVE trail
- Village of Keremeos is using portion of trail for semi-truck overnight parking
- Village of Keremeos has been approached by utility requesting use of the corridor for fibre optic cable
- RDOS met with John Hawkins of FLNRO and have focus on development of trail network
- RDOS two main issues: 1) encroachment on the trail by adjacent owners, and 2) repairing or replacing the missing parts of the trail
- RDOS staff will report to Board within a month (July 2019) to request support for Royal Dividend Fund grant proposal to resolved issues along VVE and proposed improvements.
- Site Visit to trail with RDOS and Electoral Area Representative commenced at 3:00 pm
- Tour of VVE started south of Town of Keremeos, along Highway 3.
- First stop: s.13; s.17 property which has removed the ballast. Trail rerouted along the boundary of this property on Section 8 road right of way to Highway 3. RDOS notes 2 fatalities have occurred along this portion of the Highway due to bicycle/vehicle accidents.
- Separate issue: farm labourers who are transient need safe transportation corridor.
- Keremeos Creek – ballast has been removed, and would require some form of bridge to cross. Final encroachment viewed was logging depot with concrete bases for large sign (ranch style) which are thought to be within the rail corridor right of way.
- Overall, the corridor ballast has been removed in several sections and the “trail” is not passable due to fences, buildings, driveways and other encroachments. RDOS recommends alternative

routing of the trail alongside the highway. This would take up to 9 feet of width of the 66 foot wide rail corridor.

- George Bush argued for a compromise with the encroaching landowners whereby the trail would be rerouted outside of existing improvements such as fences. The side of the highway has some issues with wet areas which would require ballast to be built up, in return for providing or paying for the construction, the landowners would receive the balance of the rail corridor lands which they are already occupying via encroachment.

Notes prepared by Andrew MacKinnon, July 8, 2019.

Page 116 of 126

Withheld pursuant to/removed as

s.13 ; s.14 ; s.17

From: Vogt, Curtis TRAN:EX
Sent: May 15, 2017 12:14 PM
To: 'Marg Coulson'
Subject: Request for sublicence over rail corridor

Hi Marg,

I write further to your letter dated May 8, 2017 regarding the Museum Society's request for a sublicence of Keremeos' current licence over BCTFA owned rail corridor property.

I confirm that the Museum Society's proposed use of this space does not fit within the definition of "permitted use" under the current licence, and as this is a transportation corridor we do not wish to amend the permitted use to allow for placement of structures and artefacts as proposed. Accordingly, I'm afraid we are unable to accommodate this request.

Please feel free to call me if you have any questions or wish to discuss this matter further.

Thanks,

Curtis

Curtis Vogt, Land & Property Administrator
Properties & Land Management Branch | Partnerships Department
BC Ministry of Transportation and Infrastructure
5A - 940 Blanshard Street | Victoria BC | V8W 3E6
Tel: (250) 387-2107 Fax: (250) 356-2112
Email: Curtis.Vogt@gov.bc.ca

From: Laurie Taylor <cao@keremeos.ca>
Sent: September 4, 2014 1:53 PM
To: Bell, Valerie J TRAN:EX
Attachments: File 0479-001 0479-000.pdf; File 0479-003.pdf; Regional Trail Through Keremeos.htm; Picture 4.jpg; Picture 5.jpg; Picture 6.jpg; P9010039.JPG; P9010041.JPG; P9010043.JPG

Hi Valerie

As you know the Regional District Okanagan Similkameen have a Licence of Occupation with BCTFA (File 479-000) for a regional trail system. A portion of that trail runs through the village. I have talked to you before about the issues we are having with the transient fruit pickers camping on the trail within the Village and the problems it is causing for our residents. The Village does not have the authority to evict them from the trail and the RDOS does not have the capacity to do it. In the last couple of week the problems have escalated. I have attached some pictures to show you the number of vehicles that are parked/camped in the area. Unfortunately they are now using the bushes located beside (south) the trail at the east end of the Village as washrooms (pictures attached).

We have discussed this problem at length with the RDOS and they have now agreed that the Village should take over the License of Occupation for the portion of the BCTFA land that is within Village limits (see attached email from RDOS)

I have attached a couple of maps for you to show the scope of the lands in question. I got the file numbers from the copy of the LoO (File 479-000)

I would like to be able to discuss this matter with you and provide you with any other information that you may need. Please call me when you can.

Laurie

Laurie Taylor, Chief Administrative Officer

Village of Keremeos
702 4th Street, PO Box 160
Keremeos, BC V0X 1N0
Tel. 250-499-2711 Fax. 250-499-5477
Email: cao@keremeos.ca web: www.keremeos.ca



Healthy Living, Naturally

From: House, Kevin TRAN:EX
Sent: March 9, 2015 11:18 AM
To: 'Laurie Taylor'
Cc: Green, Dan B TRAN:EX
Subject: RE: Trail Agreement
Attachments: 0479 - KEREMEOS Recreational Trail Licence (DRAFT v.1).doc

Hi Laurie,

Apologies on the numerous delays. Here is the draft. Please review and let me know if there are any changes. The schedules in the back listing the properties will be added once s.22

Kevin

Kevin House

*NEW*Phone: (250)387-6048

E-mail: Kevin.House@gov.bc.ca

From: Laurie Taylor [mailto:cao@keremeos.ca]
Sent: Monday, March 9, 2015 9:25 AM
To: House, Kevin TRAN:EX
Subject: Trail Agreement

Good Morning Kevin

I hate to bother you about the new agreement for the trail within Village limits, but we have a council meeting next Monday and that would be a great time to get their approval on the document.

Have you had a chance to finalize it yet?

Laurie

Laurie Taylor, Chief Administrative Officer

Village of Keremeos

702 4th Street, PO Box 160

Keremeos, BC V0X 1N0

Tel. 250-499-2711 Fax. 250-499-5477

Email: cao@keremeos.ca web: www.keremeos.ca



Healthy Living, Naturally

From: Vogt, Curtis TRAN:EX
Sent: April 15, 2016 8:13 AM
To: Nicholls, Elizabeth TRAN:EX
Cc: House, Kevin TRAN:EX
Subject: FW: Minister's Office Request: Keremeos-Cawston Trail

Hi Elizabeth,

Further to my previous email, please see my email to Ms. Oliver-Bauer, and her response, below.

Curtis

Curtis Vogt, Land & Property Administrator
Properties & Land Management Branch | Partnerships Department
BC Ministry of Transportation and Infrastructure
5A - 940 Blanshard Street | Victoria BC | V8W 9T5
Tel: (250) 387-2107 Fax: (250) 356-2112
Email: Curtis.Vogt@gov.bc.ca

From: Eileen & Manfred [<mailto:mabauer@telus.net>]
Sent: Thursday, April 14, 2016 4:13 PM
To: Vogt, Curtis TRAN:EX
Subject: Re: Minister's Office Request: Keremeos-Cawston Trail

Good afternoon,

Thank you for your response, we appreciate being "kept in the loop" and are hopeful that some progress may occur this year. Thank you for your efforts,

Sincerely,

Eileen Oliver-Bauer

Treasurer

Similkameen Trails Society

From: [Vogt, Curtis TRAN:EX](#)
Sent: Thursday, April 14, 2016 8:23 AM
To: <mailto:mabauer@telus.net>
Subject: RE: Minister's Office Request: Keremeos-Cawston Trail

Hi Eileen,

I am writing with respect to your email below, which has been forwarded to my attention. I can confirm that we have been in discussions with RDOS about a possible land transfer with ! ^{s.13; s.17}, and we are under the impression that all parties are in basic agreement. We have reached out to ^{s.13; s.17} to see what we can do to help move this forward and are currently awaiting their response. I apologize for the delay in resolving this matter.

Feel free to let me know if you have any further questions.

Thank you,

Curtis

Curtis Vogt, Land & Property Administrator

Properties & Land Management Branch | Partnerships Department
BC Ministry of Transportation and Infrastructure
5A - 940 Blanshard Street | Victoria BC | V8W 9T5
Tel: (250) 387-2107 Fax: (250) 356-2112
Email: Curtis.Vogt@gov.bc.ca

From: Eileen & Manfred [<mailto:mabauer@telus.net>]

Sent: November 1, 2015 1:56 PM

To: linda.larsen.MLA@leg.bc.ca; Misner, Colleen <Colleen.Misner@leg.bc.ca>

Cc: Bob Bergen s.22; Jennifer Roe s.22;
< s.22, Wilfred Mennell <wandsmennell@nethop.net>; Mark Woods
<mwoods@rdos.bc.ca>; jshuttleworth@rdos.bc.ca; Manfred Bauer <mayor@keremeos.ca>; George Bush
s.22; Jason Wiebe < s.22
s.22

Subject: Keremeos-Cawston Trail

Good afternoon MLA Larson,

On behalf of Similkameen Trails Society, I am writing to ask for your assistance with a problem preventing the development of a Keremeos-Cawston trail along the former Burlington Northern Railway.

Following is a brief history of this matter (Mark Woods of the Regional District of Okanagan Similkameen can provide complete information in this regard):

A few years ago, the Regional District of Okanagan-Similkameen acquired a lease from the Transportation Financing Authority to use the former rail bed for a trail. However, a portion of former railway bed, from Beck's road eastward, was removed by a lessee of s.13; s.17, and amalgamated into a hay field. Various negotiations went on through the Regional District, Similkameen Trails, the lessee of s.13; s.17 and the Agricultural Land Commission. The result was an informal agreement (that was to have been formalized) to allow the trail to proceed along the edge of the s.13; s.17 property beside Highway 3. Subsequently, the BC Transportation Financing Authority began negotiations with s.13; s.17 and they determined that a land swap for the portion of the former rail bed that bi-sects s.13; s.17 land for land adjacent to Highway 3 would be a better and final solution to the matter, rather than a lease.

Some years have now passed with no resolution, no land swap, and no access for trail users. At this time trail users must by-pass the disputed section of the trail and walk (or cycle/ride) along the shoulder of Highway 3 for approximately 400 metres. This location is along a sharp bend in the highway where the shoulder is narrow and unsafe for trail users. The upshot is that little progress on the development of a trail between Keremeos and

Cawston has happened for many years. Our Society is committed to making this happen - the land is in place, and the major stumbling block is this short disputed section of the trail.

We hope that you can help to make this trail a reality by contacting the BC Transportation Financing Authority and urging them to move ahead with a land swap with ^{s.13; s.17}

Thank you for your consideration, we would be most appreciative of your assistance.

Sincerely yours,

Eileen Oliver-Bauer

Treasurer

Similkameen Trails

attachment: List of STS Society Board of Directors

Copy: Mark Woods, Regional District of Okanagan-Similkameen

Regional Representatives Bush and Christensen

Mayor Bauer & Councillor Wiebe, Village of Keremeos

From: House, Kevin TRAN:EX
Sent: March 9, 2015 11:20 AM
To: 'Justin Shuttleworth'
Cc: Wood, Graham TRAN:EX
Subject: RDOS Trail License
Attachments: 0479 - RDOS Recreational Trail Licence (DRAFT v.1).doc

Hi Justin,

Here is the long promised draft. Apologies for the delays. Please review and let me know if there are any comments. The Schedules at the back will be updated once Dan is back next week.

Kevin

Kevin House (M.PL)

Manager, Property Development & Marketing
Properties & Land Management Branch, Partnerships Department
BC Ministry of Transportation & Infrastructure
5A- 940 Blanshard St.
Victoria, BC
V8W 9T5

***NEW*Phone:** (250)387-6048
Fax: 250 356-2112

From: Vogt, Curtis TRAN:EX
Sent: April 13, 2016 3:01 PM
To: Nicholls, Elizabeth TRAN:EX
Cc: House, Kevin TRAN:EX
Subject: RE: Minister's Office Request: Keremeos-Cawston Trail

Hi Elizabeth,

We have been discussions with RDOS about this land transfer for some time, and RDOS has been in discussions with s.13; s.17, the landowner. It seems as though all parties are in basic agreement, it is just a matter of getting the ball rolling and sorting out the finer details. In November of 2015, RDOS (who has been acting as facilitator) sent a letter to s.13; s.17 and asked them to contact me directly to discuss next steps, but I have not heard from them to date. I will follow up with them now and see what we can do to move this forward. I will also follow up with Ms. Oliver-Bauer and provide an update. Feel free to let me know if you need anything else in the meantime.

Thank you,

Curtis

Curtis Vogt, Land & Property Administrator
Properties & Land Management Branch | Partnerships Department
BC Ministry of Transportation and Infrastructure
5A - 940 Blanshard Street | Victoria BC | V8W 9T5
Tel: (250) 387-2107 Fax: (250) 356-2112
Email: Curtis.Vogt@gov.bc.ca

From: Nicholls, Elizabeth TRAN:EX
Sent: Wednesday, April 13, 2016 11:08 AM
To: House, Kevin TRAN:EX; Haugen, Svein V TRAN:EX
Subject: Minister's Office Request: Keremeos-Cawston Trail

Good morning:
Could you please review the request below from the Minister's Office and advise?
Thanks,
Elizabeth

From: Clark, Nathan TRAN:EX
Sent: Wednesday, April 13, 2016 11:04 AM
To: Higgins, Catherina M TRAN:EX; Nicholls, Elizabeth TRAN:EX
Cc: Moy, Greg W TRAN:EX
Subject: FW: Keremeos-Cawston Trail

Good morning,

I was sent the below from my colleague in FLNRO. I understand that Kevin House in the ministry has already been contacted on the issue. Can this be brought forward again and it be determined if a resolution is possible or what the next steps may be?

Thanks,

Nathan

From: Eileen & Manfred [<mailto:mabauer@telus.net>]

Sent: November 1, 2015 1:56 PM

To: linda.larsen.MLA@leg.bc.ca; Misner, Colleen <Colleen.Misner@leg.bc.ca>

Cc: Bob Bergen s.22 Jennifer Roe <> s.22

s.22 Wilfred Mennell <wandsmennell@nethop.net>; Mark Woods <mwoods@rdos.bc.ca>;

jshuttleworth@rdos.bc.ca; Manfred Bauer <mayor@keremeos.ca>; George Bush <> s.22 Jason Wiebe

s.22; Elef Christensen <> s.22

Subject: Keremeos-Cawston Trail

Good afternoon MLA Larson,

On behalf of Similkameen Trails Society, I am writing to ask for your assistance with a problem preventing the development of a Keremeos-Cawston trail along the former Burlington Northern Railway.

Following is a brief history of this matter (Mark Woods of the Regional District of Okanagan Similkameen can provide complete information in this regard):

A few years ago, the Regional District of Okanagan-Similkameen acquired a lease from the Transportation Financing Authority to use the former rail bed for a trail. However, a portion of former railway bed, from Beck's road eastward, was removed by a lessee of s.13; s.17 and amalgamated into a hay field. Various negotiations went on through the Regional District, Similkameen Trails, the lessee of s.13; s.17, s.13; s.17, and the Agricultural Land Commission. The result was an informal agreement (that was to have been formalized) to allow the trail to proceed along the edge of the s.13; s.17 property beside Highway 3. Subsequently, the BC Transportation Financing Authority began negotiations with s.13; s.17 and they determined that a land swap for the portion of the former rail bed that bi-sects s.13; s.17 land for land adjacent to Highway 3 would be a better and final solution to the matter, rather than a lease.

Some years have now passed with no resolution, no land swap, and no access for trail users. At this time trail users must by-pass the disputed section of the trail and walk (or cycle/ride) along the shoulder of Highway 3 for approximately 400 metres. This location is along a sharp bend in the highway where the shoulder is narrow and unsafe for trail users. The upshot is that little progress on the development of a trail between Keremeos and Cawston has happened for many years. Our Society is committed to making this happen - the land is in place, and the major stumbling block is this short disputed section of the trail.

We hope that you can help to make this trail a reality by contacting the BC Transportation Financing Authority and urging them to move ahead with a land swap with : s.13; s.17

Thank you for your consideration, we would be most appreciative of your assistance.

Sincerely yours,

Eileen Oliver-Bauer

Treasurer

Similkameen Trails

attachment: List of STS Society Board of Directors

Copy: Mark Woods, Regional District of Okanagan-Similkameen

Regional Representatives Bush and Christensen

Mayor Bauer & Councillor Wiebe, Village of Keremeos