



## PERMIT TO CONSTRUCT, USE, AND MAINTAIN ACCESS TO A PROVINCIAL PUBLIC HIGHWAY

### PURSUANT TO TRANSPORTATION ACT AND/OR THE INDUSTRIAL ROADS ACT AND/OR THE MOTOR VEHICLE ACT AND/OR AS DEFINED IN THE NISGA'A FINAL AGREEMENT AND THE NISGA'A FINAL AGREEMENT ACT.

#### BETWEEN:

The Minister of Transportation and Infrastructure  
Penticton Area Office  
102 Industrial Place  
Penticton, BC V2A 7C8

("The Minister")

#### AND:

Marco Paoella  
5645 – 199<sup>th</sup> Street  
Langley, BC V3A 1H9

("The Permittee")

#### WHEREAS:

A. The Minister has the authority to grant permits for the auxiliary use of highway right of way, which authority is pursuant to both the Transportation Act and the Industrial Roads Act, the Motor Vehicle Act, as defined in the Nisga'a Final Agreement and the Nisga'a Final Agreement Act;

B. The Permittee has requested the Minister to issue a permit pursuant to this authority for the following purpose:

**The installation, operation, and maintenance of one (1) six metre wide residential access within the unconstructed and unmaintained right-of-way known as 5<sup>th</sup> Street, to serve property legally described as PID 011-631-082, Lot A, District Lot 128, YDYG, Plan 39821, located at 110 – 6<sup>th</sup> Street, Tulameen, BC, as shown on OpenSpace Architecture drawing No. 21-07, Sheet A1.03 dated July 13, 2022 (attached).**

C. The Minister is prepared to issue a permit on certain terms and conditions;

ACCORDINGLY, the Minister hereby grants to the Permittee a permit for the Use (as hereinafter defined) of highway right of way on the following terms and conditions:

1. The Minister shall designate an official ("the Designated Ministry Official") who shall act as the Minister's agent in the administration of this permit in the manner hereinafter set out.
2. The Use shall be carried out according to the reasonable satisfaction of the Designated Ministry Official.
3. The Permittee will at all times indemnify and save harmless Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Transportation and Infrastructure, and the employees, servants, and agents of the Minister from and against all claims, demands, losses, damages, costs, liabilities, expenses, fines, fees, penalties, assessments and levies, made against or incurred, suffered or sustained by any of them, at any time or times (whether before or after the expiration or termination of this permit) where the same or any of them are sustained in any way as a result of the Use, which indemnity will survive the expiration or sooner termination of this permit.
4. The Permittee shall make diligent attempts to determine if there are other users of the right of way in the vicinity of the Permittee's location whose use may be affected. It shall be the responsibility of the Permittee to contact any such users before exercising any of the rights granted hereunder and to attempt to reach an accommodation.
5. The Minister shall take reasonable care to do as little damage or interference, as possible, to any Use authorized by this permit in the carrying out of the construction, extension, alteration improvement, repair, maintenance or operation of any work adjacent thereto, but the Minister shall not be responsible for any damage regardless.
6. The Minister at the absolute discretion of the Minister may, at any time, cancel this permit for any reason upon giving reasonable notice; provided, however, that in the case of default by the Permittee or in the case of an emergency no notice shall be necessary. The Minister shall not be liable for any loss incurred as a result of permit cancellation.



7. Placing of speed arresters on the access or in the Permittee's property without the prior consent in writing of the Designated Ministry Official shall render the permit void.
8. The Permittee shall be responsible for replacing any survey monuments that may be disturbed or destroyed by the Use. Replacement must be by a British Columbia land surveyor at the Permittee's expense.
9. The Permittee shall remove any mud, soil, debris, or other foreign material tracked onto the highway from the access authorized herein. Such removal shall be at the Permittee's expense and shall be done at any time the material unduly inconveniences traffic and, in any event, daily.
10. The Permittee acknowledges that the issuance of this permit by the Minister is not a representation by the Minister that this permit is the only authority needed to carry out the Use. The Permittee shall give deference to any prior permission given for use of the right of way in the vicinity of the permit area, shall obtain any other permission required by law, and shall comply with all applicable laws regardless of their legislative origin.
11. At the end of the term of this permit, or when the permit is cancelled or abandoned, the Permittee shall, if so requested by the Minister, remove all installations and shall leave the site as near as reasonably possible in the condition it was in before this permit was issued or such other condition as shall reasonably be required by the Designated Ministry Official. If the Permittee refuses to comply with these obligations, the Minister may perform them as required and the Permittee shall be liable to the Minister for the costs of doing so.
12. The rights granted to the Permittee in this permit are not assignable without the consent of the Minister.
13. As a condition of this permit, the permittee unconditionally agrees with the Ministry of Transportation and Infrastructure that the permittee is the prime contractor or will appoint a qualified prime contractor, as described in Section 118 of the Workers Compensation Act, for the purposes of the work described by this permit, at the work location described in this permit, and that the permittee or designated prime contractor will observe and perform all of the duties and obligations which fall to be discharged by the prime contractor pursuant to the Workers Compensation Act and the Occupational Health and Safety Regulation.
14. The permittee is advised and acknowledges that the following hazards may be present at the work location and need to be considered in co-ordinating site safety: overhead hazards, particularly electrical or telecommunications lines; buried utilities, particularly electrical, telecommunication, and gas lines; traffic, danger trees, falling rocks, and sharp or infectious litter.
15. Any works within the Ministry right-of-way that fall within the scope of "engineering" under the Engineers and Geoscientists Act will be performed by a Professional Engineer and shall comply with this Ministry's "Engineer of Record and Field Review Guidelines". The Guidelines can be viewed on the Ministry's website at [http://www.th.gov.bc.ca/publications/Circulars/All/T\\_Circ/2009/t06-09.pdf](http://www.th.gov.bc.ca/publications/Circulars/All/T_Circ/2009/t06-09.pdf)
16. The permittee is responsible for preventing the introduction and spread of noxious weeds on the highway right-of-way as defined by the British Columbia Weed Control Act and Weed Control Regulation.
17. The Use shall be carried out according to the following drawings and specifications, which are attached and shall be considered to be part of this permit:  
N/A
18. (a) The rights granted under this permit shall not be exercised before **July 14, 2022**.  
(b) The Construction and Installations must be completed on or before **October 14, 2022**.
19. Any cutting, decking, and disposal of merchantable timber on the subject right-of-way are to be done pursuant to provisions of the Forestry Act, and authorization from the District Forestry Office must be obtained prior to the commencement of the permitted works. Right-of-way boundaries must be clearly marked by a qualified professional surveyor prior to inspection of the site by the Ministry of Forest personnel.
20. This permit in no way grants exclusive use to the permittee for any portion of the access on right-of-way.
21. Clause #3 on the face of this permit is to be considered applicable to the control and the effects of all surface drainage during and after construction of permitted works.
22. It is the Permittee's responsibility to obtain permission from the Ministry of Environment, pursuant to Section 11 of the Water Act, for works in or around any natural watercourse, as and if required.
23. The issuance of this permit shall in no way be construed as approval of any future subdivision for the subject property or any adjacent parcels.
24. All work to be done to the satisfaction of the District Official, Ministry of Transportation and Infrastructure. If works do not meet the satisfaction of the Ministry, remedial work may be undertaken by the Ministry at the cost of the Permittee.
25. This permit in no way relieves the owner or occupier of the responsibility from adhering to all other legislation, including zoning, and other land use bylaws of a municipality or regional district.



26. This permit authorizes construction of part of the access within dedicated road right-of-way that is not now maintained by the Ministry. Maintenance of such accesses is entirely the responsibility of the Permittee. Co-operation among neighbouring permit holders in maintaining such undeveloped roads is strongly encouraged. The Ministry shall only assume maintenance of such roads if constructed to current Ministry standards and specifications.
27. That while reasonable care will be taken on the part of the Provincial Government to do as little damage as possible to any private work in the carrying out of the construction, extension, alterations, improvement, repair, or maintenance of any public work adjacent thereto, the Provincial Government can accept no responsibility for any kind of such damage.
28. That the Ministry will not be responsible for grade changes on accesses caused by reconstruction of any Provincial highway.
29. Permittee is responsible for ensuring that all works are contained to the highway right of way. Any works located within private property must have the owner's permission.

A. LOCATION

30. PID 011-631-082, Lot A, District Lot 128, YDYD, Plan 39821, located at 110 – 6<sup>th</sup> Street, Tulameen, BC

B. CONSTRUCTION AND INSTALLATIONS:

31. The rights granted under this permit and certificate are for an indefinite period.
32. The access shall be graveled to an extent satisfactory to the Designated Ministry Official to prevent the tracking of mud and soil onto the highway surface.
33. The access shall be constructed with 400mm culvert pipe (if and when required) manufactured to CSA or ASTM standards and laid at ditch invert elevation. Maintenance and periodic cleaning of this culvert is the responsibility of the Permittee.
34. The profile of the access shall not exceed 2% grade from the ditchline for a distance of at least 15 metres as measured away from the highway along the centerline of the access.
35. The finished grade of the access at the ditch-line shall be 15 cm below the highway shoulder elevation.
36. Access to be constructed at 90 degrees to the highway for a distance of 6 metres from the highway shoulder.

C. AUTHORIZED ACTIVITIES

N/A

D. OPERATION AND MAINTENANCE

37. The Permittee will ensure that the works do not, impair, impede or otherwise interfere with;
- I. public passage on the Highways;
  - II. the provision of highway maintenance services by the Province, or by its servants, contractors, agents or authorized representatives of the Province in connection with the Highways; or
  - III. the operation of the Highways;
38. That where the said works are in the proximity of any bridge, culvert, ditch or other existing work, such work shall be properly maintained and supported in such manner as not to interfere with its proper function, and on the completion of the said works any bridge, culvert, ditch or other existing work interfered with shall be completely restored to its original condition.
39. That when necessary all excavations, materials, or other obstructions are to be efficiently fenced, lit, and watched, and at all times every possible precaution is to be taken to ensure the safety of the public.

The rights granted to the Permittee in this permit are to be exercised only for the purpose as defined in Recital B on page 1.

Dated at Penticton, British Columbia, this 14<sup>th</sup> day of July, 2022

On Behalf of the Minister of Transportation & Infrastructure

