



**REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, JUNE 18, 2013**

SUBJECT **DEVELOPMENT VARIANCE PERMIT FOR LOT 61, SECTION 1, RENFREW DISTRICT, PLAN 24755**

ISSUE

A request has been made for a development variance to reduce the required front yard setback from 6 m to 3.68 m, to reduce the required rear yard setback from 6 m to 3.92 m, and to reduce the required exterior side yard setback from 4.6 m to 0 m for the purpose of bringing the siting of an existing dwelling into conformance with the Port Renfrew Comprehensive Community Development Plan, Bylaw No. 3109 and to allow the construction of an attached garage.

BACKGROUND

The 688 m² property is located at 16957 Tsonoqua Drive in Port Renfrew (Appendix 1) and is zoned Community Residential 1 (CR-1) in the Port Renfrew Comprehensive Community Development Plan, Bylaw No. 3109. The property fronts onto Tsonoqua Drive to the north and west, a residential property to the east, and Harris Cove Road to the south.

The applicant commenced construction on an addition to an existing single-family dwelling by excavating for the foundation prior to the issuance of a building permit. The applicant then requested an inspection to check the excavation work, but was advised that that all zoning requirements must be addressed and a building permit issued prior to any further construction, including excavation. A Stop Work Order was sent via letter on March 6, 2013, to ensure that no further work would occur.

The site plan showing existing buildings and structures (Appendix 2), which was submitted as part of the building permit application, shows that the existing dwelling does not conform with the siting requirements of the Port Renfrew Comprehensive Community Development Plan, Bylaw No. 3109. However, since the building was constructed prior to the adoption of the bylaw, it is considered “legally non-conforming”.

The plot plan for the proposed addition shows that it would encroach 0.58 m into the Ministry of Transportation and Infrastructure’s (MoTI) public highway right-of-way (Appendix 3). A development variance permit is required to reduce the required exterior side yard setback from 4.6 m to 0 m. At this time, the applicant also wishes to resolve the existing non-conformities by including them in this application.

The Ministry has no objection to the proposed encroachment onto Tsonoqua Drive and has issued a *Permit to Authorize Structures Constructed Within the Right-of-Way of a Provincial Public Highway*.

ALTERNATIVES

1. Approve the development variance permit to vary Port Renfrew Comprehensive Community Development Plan, Bylaw No. 3109, Part IV, Section 22.2(g), to reduce the required front setback from 6 m to 3.68 m, to reduce the required rear setback from 6 m to 3.92 m, and to reduce the required exterior side setback from 4.6 m to 0 m for the purpose of legalizing the siting of an existing dwelling and to allow the construction of an attached garage.
2. Deny the development variance permit and require the structure to not further encroach into required yard setbacks.

3. Refer the application back to staff for more information.

LEGISLATIVE IMPLICATIONS

The Port Renfrew Comprehensive Community Development Plan, Bylaw No. 3109, establishes front, rear and exterior side yard setback requirements. Since the applicant wishes to construct an addition to an existing single-family dwelling within the exterior side yard setback and bring the siting of the existing dwelling into conformance with the bylaw, a development variance permit is required.

Since the applicant wishes to construct the proposed addition within the MoTI right-of-way, a *Permit to Authorize Structures Constructed Within the Right-of-Way of a Provincial Public Highway* is required.

PUBLIC CONSULTATION IMPLICATIONS

Pursuant to the *Local Government Act*, Section 922(4), if a local government is proposing to pass a resolution to issue a development variance permit it must give notice to each resident/tenant within a given distance specified by bylaw. Capital Regional District Bylaw No. 3110, Fees and Procedures Bylaw, states that the Board at any time may refer an application to an agency or organization for their comment. In addition, it states that a notice of intent must be mailed to adjacent property owners within a distance of not more than 500 metres. Any responses received from the public will be presented at the June 18, 2013 Land Use Committee meeting.

LAND USE IMPLICATIONS

The applicant has submitted a building permit application for an addition to an existing single-family dwelling. The proposed plot plan indicates that the addition will be sited 0.58 m inside the public road right-of-way, which is owned and managed by MoTI. In support of this application, the applicant has obtained a *Permit to Authorize Structures Constructed Within the Right-of-Way of a Provincial Public Highway*.

As shown on the attached site plan, there are also a number of existing encroachments into the front and rear yard setbacks. All parcel lines under consideration for a variance as part of this application are common to either the right-of-way for Tsonoqua Drive or Harris Cove Road. Despite these encroachments, the maximum parcel coverage specified by the bylaw has not been exceeded.

The main impact on adjacent land uses is anticipated to be the traffic travelling on Tsonoqua Drive. Since the applicant has obtained the necessary permit from the MoTI, and since the direct impact on the use of the neighbouring parcel is anticipated to be minimal, staff recommends approval of the requested variance, subject to public notification.

CONCLUSION

The applicant is requesting variances to reduce the front yard setback from 6 m to 3.68 m, the rear yard setback from 6 m to 3.92 m, and exterior side yard setback from 4.6 m to 0 m in order to bring the siting of the existing dwelling into conformance with the Comprehensive Community Development Plan for Port Renfrew, Bylaw No. 3109, and to allow construction of a proposed addition. Since the applicant has obtained approval of a *Permit to Authorize Structures Constructed Within the Right-of-Way of a Provincial Public Highway*, and since the existing and proposed encroachments will not directly affect the use of neighbouring properties, staff recommends approval of the variance request subject to public notification.

RECOMMENDATION

That the Land Use Committee recommends to the Capital Regional District Board:

1. That Development Variance Permit VAR-05-13 for Lot 61, Section 1, Renfrew District, Plan 24755 to vary the Comprehensive Community Development Plan for Port Renfrew, Bylaw No. 3109, Part IV, Section 22.2(g), to reduce the required front setback from 6 m to 3.68 m, to reduce the required rear setback from 6 m to 3.92 m, and to reduce the required exterior side setback from 4.6 m to 0 m, in accordance with the attached site plan, prepared by JE Anderson and Associates, dated February 26, 2013 (Attachment 2), and the Plot Plan prepared by West Coast Design, dated May 21, 2013 (Attachment 3), for the purpose of bringing the siting of an existing dwelling into conformance with Bylaw No. 3109 and to allow the construction of an attached garage, be approved.

****ORIGINAL SIGNED****

Iain Lawrence
Planner

June Klassen, MCIP
Manager, Local Area Planning
Concurrence

Marg Misek-Evans, MCIP
Acting General Manager
Planning and Protective Services
Concurrence

Robert Lapham, MCIP
Chief Administrative Officer
Concurrence

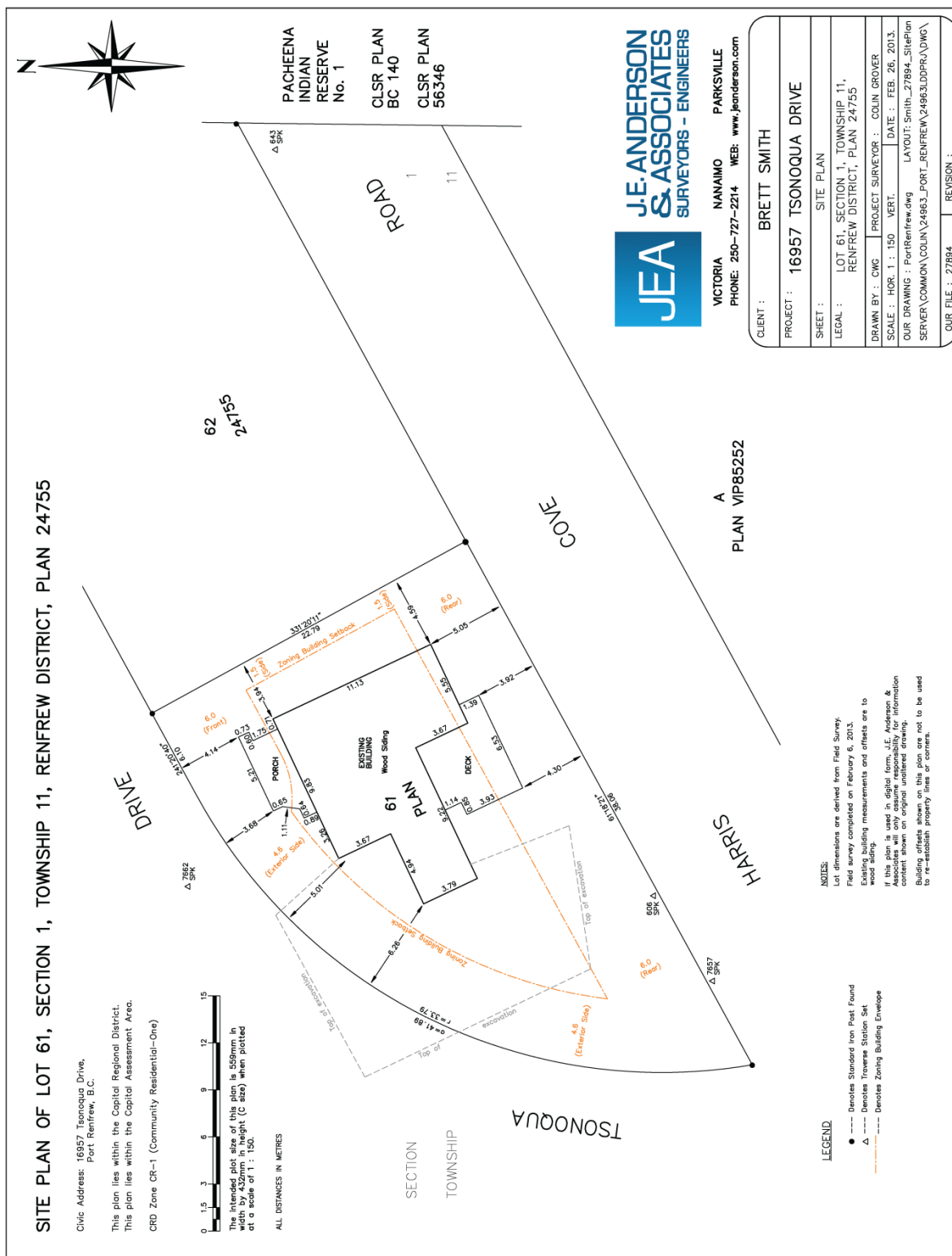
Appendices:

1. Subject Property Map
2. Site Plan prepared by JE Anderson and Associates, dated February 26, 2013
3. Plot Plan prepared by West Coast Design, dated May 21, 2013
4. Permit to Authorize Structures Constructed within the Right-of-Way of a Provincial Public Highway issued by the Ministry of Transportation and Infrastructure

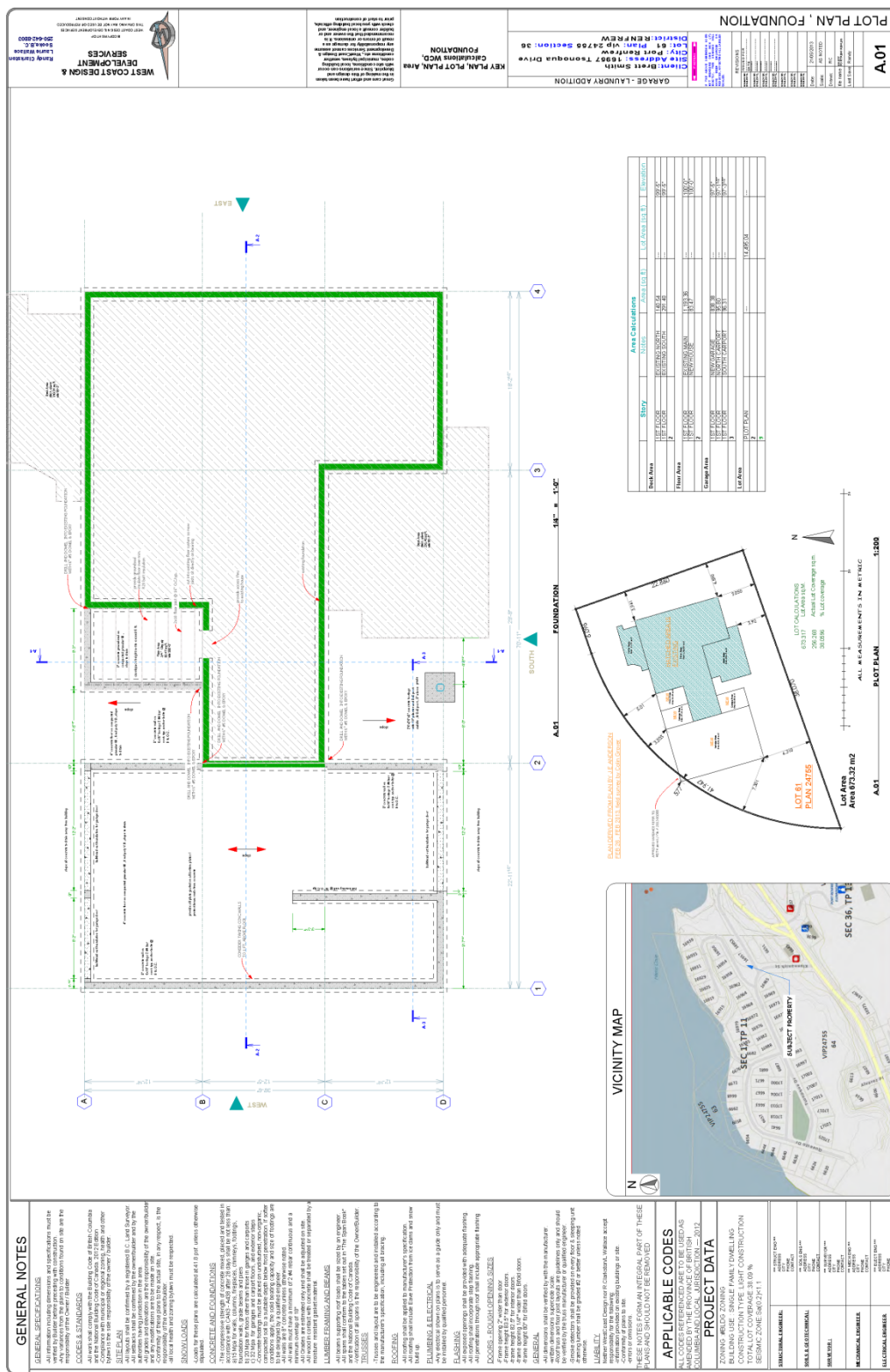
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Appendix 2: Site Plan



Appendix 3: Plot Plan



Appendix 4: MoTI Permit to Authorize Structures Constructed within the Right-of-Way



BRITISH
COLUMBIA

Ministry of Transportation
and Infrastructure

Permit/File Number: 2013-00388

Office: Saanich Area Office

**PERMIT TO AUTHORIZE STRUCTURES CONSTRUCTED WITHIN THE RIGHT-OF-WAY
OF 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

Saanich Area Office
240-4460 Chatterton Way
Victoria, BC V8X 5J2
Canada

("The Minister")

AND:

Brett Smith
PO Box 14
Port Renfrew, British Columbia V0S 1K0
Canada

("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:

To use and maintain the structure comprising of a standard garage in so far as they relate to the use of that portion (the "Encroachment Area") of the public highway, described as and located at 16957 TSONOQUA DRIVE, attached hereto as Schedule A. The structure is part of a legal lot described as Loy 61, Section 1, Township 11, Renfrew District, Plan VIP24755 (the "Property") adjacent to the Encroachment Area.
- 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. Except to the extent permitted herein, the Permittee will ensure that the Structure at all times conforms with all legislation applicable to the Structure with respect to the construction and maintenance of the Structure and all specifications by regulatory bodies having jurisdiction over the Structure.
- 2. The Regional Director, as appointed from time to time by the Minister, having jurisdiction with respect to the Encroachment Area, or such person as the Minister may from time to time designate must have full and free access at any and all times to inspect the Structure or for such other purposes as the Regional Director may consider necessary.
- 3. Where the Structure comes in contact with any bridge, culvert, ditch or other existing work (the "Existing Works") the Permittee will ensure that the Structure is properly maintained and supported in such manner as not to interfere with the proper functions of the Existing Works during the existence of the Structure.
- 4. The Permittee will at all times take every possible precaution to ensure the safety of the public, and if requested by the Regional Director ensure that the Structure and all excavations, materials, or other obstructions in connection with the Structure are fenced, illuminated, and guarded.



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5. The Permittee acknowledges that this Permit is granted only for such times as the Encroachment Area is within the jurisdiction of the Minister. This permit must not be construed as being granted for all time, and does not vest in the Permittee any right, title, or interest in or to the Encroachment Area. If the Encroachment Area becomes included within an incorporated municipality or city, this Permit is terminated unless the Highway on which the Structure is located is classified as an Arterial Highway pursuant to Section 45 of the Transportation Act.
6. This Permit may be cancelled at any time without recourse at the discretion of the Regional Director by 30 days notice in writing in the manner herein provided. Not later than 90 days after the date on which this notice has been given by or on behalf of the Minister, the Permittee must ensure that all work has been completed in connection the removal, moving or alteration of the structure in the manner required by any notice. All costs of removing, moving of altering the Structure must be borne by the Permittee.
7. Where any public works are contemplated the Permittee will cooperate with any person designated by the Regional Director in connection with any construction, extension, alteration or improvement of the public works involving the Encroachment Area.
8. The Permittee acknowledges that the Minister and any employees, agents or contractors of the Minister will not be responsible for any damage to the Structure or any property of the Permittee and the Permittee hereby expressly waives any claim for damages and forever releases and discharges all such persons with respect thereto.
9. The permission herein granted to the Permittee will be in force only during such time as the Structure is used, maintained and owned by the Permittee in strict compliance with this Permit. The Permittee will notify the Minister if the Property is offered for sale and inform any purchasers of the Property of this Permit prior to sale. The Permittee will remain liable to the Minister hereunder until such time as a subsequent permittee has agreed to assume the same liabilities and obligations with respect to the Structure.
10. This Permit is valid only for the Structure as described herein. The Permittee acknowledges that routine maintenance of the Structure is permitted but the Structure must not be expanded, increased, or its use changed in any way except as provided for in section 4 of this permit.
11. The attached plan, indicated as Schedule A, showing location or position of the Structure constitutes a part of this Permit and any change without prior consent of the Regional Director will forthwith render this Permit terminated subject to section 18 of this Permit.
12. The Permittee will notify the Regional Director of any damage done to the Structure. If in the opinion of the Regional Director the Structure is destroyed or damaged such that reconstruction within the encroachment area is unwarranted this permit is terminated. The Structure must not be replaced or reconstructed on the Highway or in the Encroachment Area.
13. The Permittee shall be solely responsible for all loss or damage arising or occurring out of any act or omission, including the use, possession, control and custody, or any of them, of the Encroachment Area, of or by the Permittee, or the heirs, executors, administrators, and assigns of the Permittee, and shall indemnify and save harmless the Minister, together with the employees, agents, and contractors of the Minister, from and against any and all losses, claims, liabilities, demands, damages, actions, causes of action, costs and expenses, fines, penalties, assessments, and levies that the Minister or any of the employees, agents or contractors of the Minister may sustain, incur, suffer or be put to at any time or times (whether before or after the expiration or sooner termination of this Permit).
14. The Permittee will not interfere with any Highway or public works without separate written permission issued by the Regional Director.
15. All notices required to be given hereunder by the Minister will be effectively given if sent by mail to the address of the Permittee shown below and must be deemed to have been given at 12:00 noon on the third day after mailing. Notices to be given to the Minister by the Permittee will be effectively given if delivered to the Regional Director and must be effectively given upon delivery.
16. No termination or cancellation of this Permit will relieve or abate the obligations of the Permittee contained herein arising prior to such termination or cancellation all of which must survive the termination or cancellation of the Permit and must constitute continuing obligations of the Permittee.
17. No variation or alteration of the Permit will be effective unless in writing signed by or with the authority of the Minister.



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18. The Permittee shall obtain and maintain during the term of this Permit and at the Permittee's own expense, liability insurance against third party claims arising as a result of the Permittee's possession, use, control and/or custody of the Encroachment Area shown in Schedule A.
- Such liability insurance shall have coverage limits of not less than ONE MILLION DOLLARS (\$1,000,000) for bodily injury, including death, and property damage and shall 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, together with the employees, agents and servants of the Minister, hereinafter referred to as the Additional Named Insured, is added as an Additional Named Insured.
- The policy shall contain a cross liability clause and a clause giving notice of cancellation or material alteration to the Minister
- The Permittee shall submit evidence satisfactory to the Minister that the above insurance has been obtained and remains in force and effect.
19. Any reference to a party includes heirs, executors, administrators and assigns.

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 Victoria, British Columbia, this 17 day of April, 2013

On Behalf of the Minister

