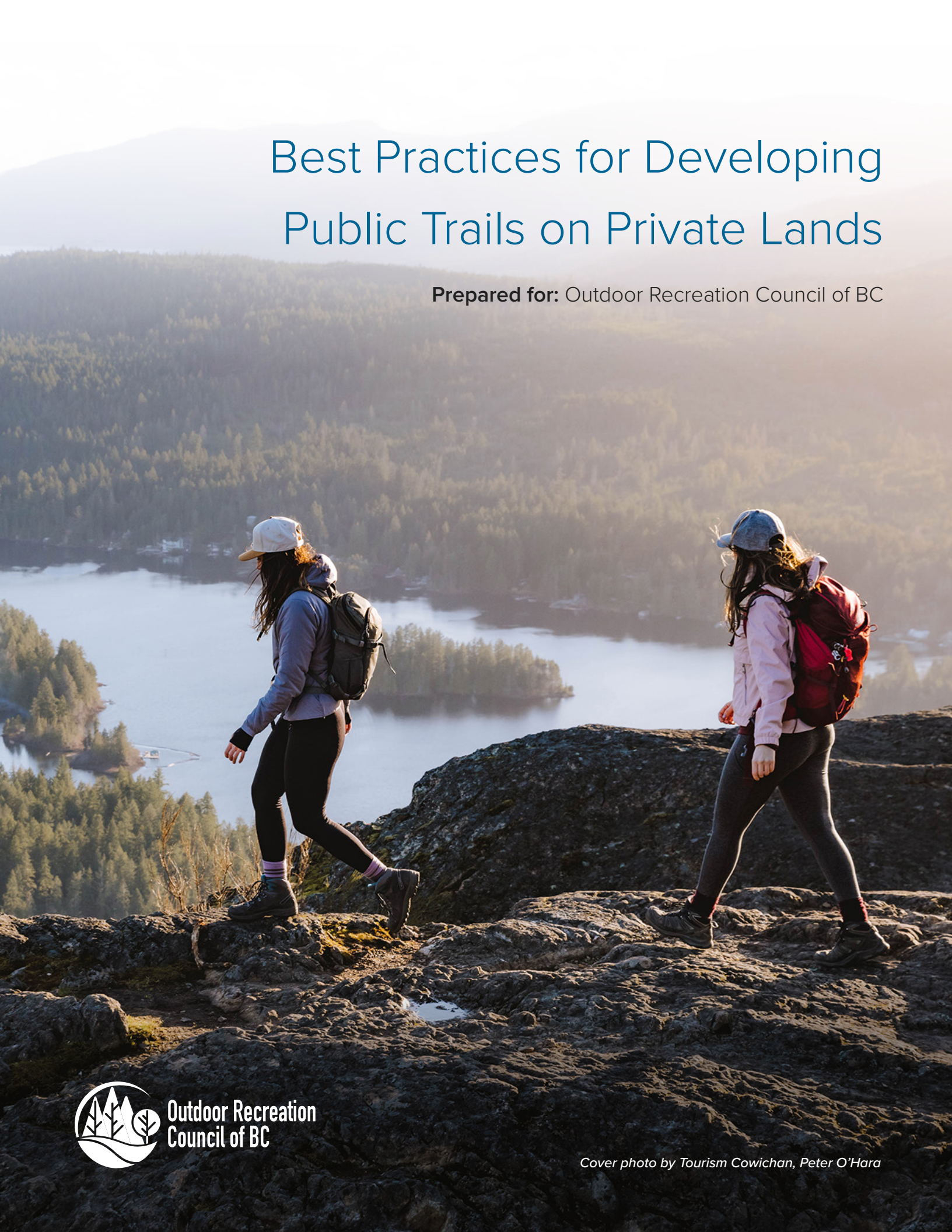


# Best Practices for Developing Public Trails on Private Lands

Prepared for: Outdoor Recreation Council of BC



Outdoor Recreation  
Council of BC

*Cover photo by Tourism Cowichan, Peter O'Hara*



# Contents

<b>Section 1.0</b>	
<b>Understand the Land Base and Ownership</b>	<b>4</b>
<hr/>	
Identify Land Ownership	4
Understand the Property Classification and Landowner Responsibilities	6
<b>Section 2.0</b>	
<b>Legal Obligations and Liabilities</b>	<b>7</b>
<hr/>	
The Occupiers Liability Act and the Law of Negligence	7
Trespass	8
Transportation Act and Transportation Act Regulation	9
<b>Section 3.0</b>	
<b>Get Permission – In Writing</b>	<b>11</b>
<hr/>	
Written Agreements	11
Reporting	12
<b>Section 4.0</b>	
<b>Risk Management</b>	<b>13</b>
<hr/>	
Trail Classification, Standards and Design	14
Liability Insurance	15
Other Insurance	16
<b>Section 5.0</b>	
<b>Maintain Relationships</b>	<b>17</b>
<hr/>	
References	18
Appendix A: Template Trail On Private Land Licence Agreement	

## Disclaimer:

This handbook is intended as a source of general information to support the development of recreational trails on private land in BC. It does not constitute legal advice for any landowner, trail organization, land manager, or any other party involved in the development, maintenance, and management of recreational trails on private land. In general, we recommend engaging qualified legal counsel early in the process of developing recreational trails in order to ensure trail longevity and to minimize risk.



Destination BC, Dave Heath

## Introduction

British Columbia's total land base comprises approximately 94% provincial Crown land, 5% private land and 1% federal Crown land<sup>1</sup>. While the vast majority of the land base "is managed to maximize and sustain the flow of benefits to British Columbians,"<sup>2</sup> the significantly smaller proportion of private land is often what causes trail and recreation organizations the most challenges in designing and managing trail systems. Identifying and building relationships with many different landowners, understanding the landowners many responsibilities and costs associated with owning the land, and a complex legal landscape all present real challenges to developing public trails on private land.

BC Crown lands reserve rights for overlapping uses, including a wide range of activities such as industry, agriculture, roadways, parks and protected areas, and recreation. BC's *Land Act*, *Forest and Range Practices Act*, and provincial policies regulate and protect the access rights of British Columbians to this great natural resource.

### First Nations lands and reservations

First Nations reserve lands are part of the Crown land volume. Private First Nation ownership is growing outside of Indian reserve lands, which are under Federal jurisdiction. First Nations engagement and consultation is always a best practice and often a statutory requirement for the Province when it comes to land and resource use on Crown land. The Outdoor Recreation Council of BC produced a best practices guide - "**Working in a Good Way**" – for engaging and working with Indigenous Peoples on trails and outdoor recreation projects in British Columbia.



---

<sup>1</sup> Province of British Columbia (gov.bc.ca)

<sup>2</sup> Province of British Columbia (gov.bc.ca)



Private land, on the other hand, is much more complex and owners have discretion to restrict access to their private properties. Restricted access is easy to understand when passing a fenced yard in an urban environment, but more difficult to manage with large tracts of privately-owned forests. Further, private land is typically located near and around communities, towns and cities with populations interested in recreation. Crossing private land may be the only way for recreational users to access trails on Crown land.

This document is intended to help landowners and trail organizations understand the complexities of developing public trails on private lands and embrace best practices. The following sections highlight the most critical topics for landowners and trail organizations to understand and consider when facilitating recreation on private land in BC:

1. Understanding the land base and ownership
2. Legal obligations and liabilities
3. Getting permission
4. Risk Management
5. Maintaining relationships

We use **“Trail Organizations”** in this document to reference any organization that has an interest in trail management, development or maintenance, whether it be a not-for-profit club, an individual or another entity.

Throughout this document are some case studies of British Columbian organizations that have previous experience in developing and maintaining trails on private land.

This document does not provide direction or best practices for acquiring permission to develop trails on Crown land. Information on trail development on Crown lands can be found [here](#).

# Steps to Establishing a Trail System

*Patience is a form of wisdom. It demonstrates that we understand and accept the fact that sometimes things must unfold in their own time. – Jon Kabat-Zinn*

The process of acquiring permission to construct and maintain trails on private land may be quick, or it may be very drawn out. Patience, understanding and a spirit of collaboration (not entitlement) will be critical to long-term success.



**1** Understand who owns the land and what the owner's or manager's rights and responsibilities are.

- Federal or Provincial Crown Land
- Private Land



**2** Consider Indigenous cultural, spiritual, and archaeological values.

- While private land may not be considered for land accommodations or treaty settlements, large areas of forested private land would not have been used or treated differently prior to contact.



**3** Have flexibility, patience and understanding

- Before planning, building, or maintaining trails, understand the land ownership. If there are areas identified as private land or heavily constrained Crown land, consider alternative locations, or be willing to invest time and resources to collaborate with the landowners or interest holders.
- Do not assume that a public trail will be permitted.



**4** Conceptually design the trail system, considering use and access.

- Prior to committing to any trail development, first, create a map of where trails may be developed. Categorizing land tracts to indicate whether they'll be easy, difficult, or impossible to get permission to develop trails on. Factor in whether the process to get permission will be quick or take a longer period of time.
- Once the land base is mapped for land ownership and interest overlaps, the process of designing trail layouts can commence and maps or geospatial files showing the various overlaps can be produced.



**5** Get permission to construct or maintain trails.

- Crown land permissions follow the process set out in the introduction.
- For private land, contact the landowner for permission to use their land. *Section 1.0 Understand the Land Base and Ownership* outlines a few ways to research who owns private land if the community network is not fruitful.
- Work with the landowner to reach a signed legal agreement for use of the private land. *Section 3.0 – Get Permission in Writing* covers the basics of a typical land access agreement.

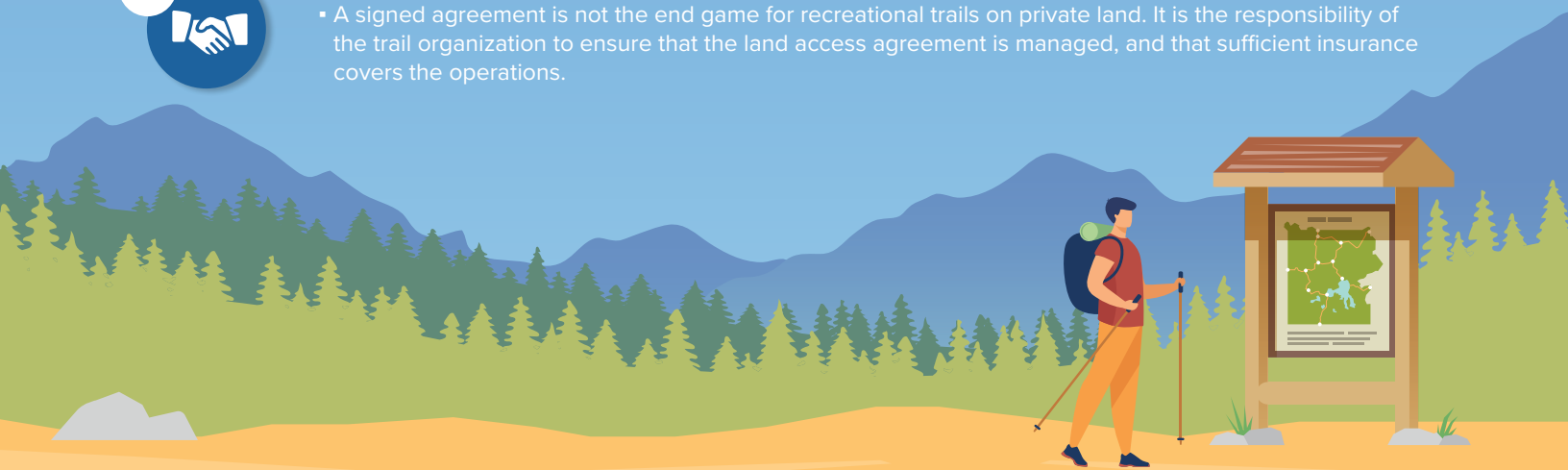


**6** Construct the trails.



**7** Be a good partner.

- A signed agreement is not the end game for recreational trails on private land. It is the responsibility of the trail organization to ensure that the land access agreement is managed, and that sufficient insurance covers the operations.





## Section 1.0

# Understand the Land Base and Ownership

Typically, there are two scenarios in which trail organizations formally establish trails:

1. **New construction** – the community identifies the need for a new trail or trail system and looks for the appropriate area(s) to develop the system, or
2. **Existing unauthorized trail or network** – a trail exists on the landscape and has been identified as an important community resource that needs to be protected.

For many reasons, scenario 1, above, is preferred. In this scenario, the trail organization can consider land ownership concerns prior to committing a trail line to a map or the ground. However, trail organizations often inherit legacy trails that cross private land, and permission must be acquired from the landowner to ensure the trail can remain part of the public system.

## Identify Land Ownership

There are four different online government resources that can help identify land ownership.

1. **iMapBC** – This [online mapping portal](#) provides a great depth of information on land types, leases and tenures, and also allows users to upload or download information. Users can upload proposed trail lines to identify overlap or can download the property layers to another mapping service. The relevant private land ownership layers are found in the *Provincial Layers / Land Ownership and Status*.

### Best Practice in Action

**Where:** Rossland

**Who:** Kootenay Columbia Trail Society (KCTS)

**What:**

Rossland, BC is a mountain biking paradise – a large trail crew keeps hundreds of kilometres of trail tuned up for locals and visitors alike while new trail construction happens consistently and regularly. This seemingly effortless new trail construction and network maintenance is not a coincidence.

“After KCTS was established, the first five years were devoted to obtaining authorized access to the existing unauthorized trail network, which included learning the process and solutions through education, trial, and error. Recognizing diminishing returns for pursuing trail construction on private land where the landowner is resistant for any reason, the KCTS focused on identifying areas where access is possible to build trails and connectors.” Stewart Spooner, KCTS

This has resulted in a multi-year trail development plan, a maintenance standard and inspection schedule, and many agreements with private landowners, from small residential owners to larger forestry organizations, and a renowned trail network that provides a significant tourism draw.



*Destination BC, Kari Medig*

**2. BC Assessment** – [This portal](#) provides property search services by civic address. It identifies all private land and taxable Crown land (leases). While data cannot be imported or exported from this portal, detailed information on properties, such as the BC Land Titles Parcel ID (PID) and legal location description are available.

**3. Land Title and Survey Authority of BC (LTSA)**

– The [LTSA's ParcelMap BC portal](#) provides similar information and mapping to BC Assessment with a slightly more powerful and nimble tool, but does not provide an upload/download service like iMapBC. The LTSA does, however, allow for official searches of title and other registered interests, which can provide clarity around the identity of the registered owner(s) and any other people or entities that have a say over what happens on the property. The PID, legal location, or civic address is required to search for ownership. A lawyer or notary can generally assist with this process, and LTSA staff are often very helpful, too.

**4. Municipal or Regional District Government**

– Often municipal or regional district websites will have parcel maps and also provide additional information on zoning bylaws or land use restrictions.

If the government searches prove fruitless, sometimes the best way to establish who owns a parcel of land is through networking in the local community. Speaking with neighbours, town or district staff, sending a letter to the civic address, or reaching out to real estate agents may provide valuable information. It is usually a good idea, however, to conduct a title search of the property, as this document will give a full picture of who has a say over what happens on the property.

## Understand the Property Classification and Landowner Responsibilities

There are nine different classifications of private land in BC. Property classifications are all defined on BC Assessment's website, and they primarily impact the taxation levels of the land but can also provide information on management responsibilities for which the owners may be liable.

Beyond identifying the landowner and requesting permission, it is also critical to understand what their concerns and limitations may be for providing public access across their land. For example:

Class 7 "Managed Forest Land" is managed in accordance with the *Private Managed Forest Land Act*<sup>3</sup>. This Act places additional responsibility on the landowner to provide such services as reforestation, care of young trees, protection from fire and disease, and sound harvesting methods. If trails are authorized by the landowner to be developed on Class 7 land, they may need to be subject to seasonal closures for wildlife, occasional closures for harvest, or re-routes to protect valuable wildlife.

Class 9 "Farm" land must have qualifying agriculture use that generates revenues for the landowner. This class of land can be withdrawn if the farm does not meet the income requirements. Further, the landowner may have concerns about livestock or crop security and vandalism with public use.

*Clues to how a parcel of land is classified can be found on BC Assessment or with the LTSA; however, it is not publicly available information and must be requested directly from the landowner.*

### The nine classifications of private land include:

- Class 1: Residential
- Class 2: Utilities
- Class 3: Supportive Housing
- Class 4: Major Industry
- Class 5: Light Industry
- Class 6: Business and Other
- Class 7: Managed Forest Land
- Class 8: Recreational Property or Non-profit Organization
- Class 9: Farm

The balance of the classes may have fewer regulations, and ones such as Class 2 (Utilities) and Classes 4-6 (Industry and Business) may have significant liability or safety concerns.

Beyond the BC Assessment's land classification, most municipalities and regional districts also have zoning bylaws which further regulate the uses of private land and the responsibilities of landowners.

*The most important thing to understand about using any private land is that the landowner has every right to decline public use, and the best course is always to give them the time, information, resources, and space to make the decision that is right for them. Unlike Crown land, it is not a public right to access private land.*

---

<sup>3</sup> <https://www2.gov.bc.ca/gov/content/industry/forestry/forest-tenures/private-managed-forest-land>





## Section 2.0

# Legal Obligations and Liabilities

Landowners and trail organizations should be aware of several sources of legal obligations and potential liability. This section summarizes some of the most significant ones; however, it is not intended to be comprehensive, and a qualified legal professional should be consulted early in the development of a public trail on private land to confirm the full range of possible legal obligations and liabilities as well as their applicability.

### The *Occupiers Liability Act* and the Law of Negligence

The *Occupiers Liability Act* (OLA) creates a statutory duty of care held by occupiers of property towards users of that property. The OLA was extensively updated in 1998 to encourage more public recreational use of private land by limiting the content of this duty where certain criteria are present.<sup>4</sup> Where this limited duty of care applies, occupiers of property – which can include *both* the landowners and trail organizations at the same time – will owe a duty to trail users not to:

1. Create a danger with intent to do harm to the user or damage the user's property; or,
2. Act with reckless disregard to the safety of the user or the integrity of the user's property.

While the complexity of this area of law means that it is advisable to consult a qualified legal professional early in the process to minimize risk exposure, some initial considerations to keep in mind include:

---

<sup>4</sup> See subsection 3(3) and (3.2) of BC's *Occupier's Liability Act*.



Kootenay Rockies Tourism, Mitch Winton

- This limited duty will only apply where trail users do not pay compensation to an occupier for their use of the private land;
- This limited duty will only apply on certain “premises,” which includes “recreational trails reasonably marked as recreational trails” (i.e. it may not apply to something like an obstacles area, even if it is found in the same area as recreational trails); and,
- A trail organization can be found to have acted with reckless disregard where it has failed to follow an agreed-upon maintenance or inspection program, or constructed trails that are signed outside of, or do not follow, standard trail difficulty ratings.



While the OLA addresses many of the legal obligations of landowners and trail organizations in relation to the use of trail by users, in some circumstances the higher standard of care, set out at subsection 3(1) of the OLA or under the general law of negligence, may apply. For this reason, it is worth reiterating that this area of law is complex, and it is generally recommended to consult qualified legal counsel early in the process.

Further, before any landowner permits recreational use of their private land, they should ensure that the trail organization has:

- The capability and resources to manage the trail to a reasonable and clearly stated (in writing) standard.
- Liability insurance that covers operations on private land and names the landowner as an additional insured.
- A written agreement with the landowner that puts all responsibility for trail maintenance and management on the trail organization.

## Trespass

In general, a person trespasses on the land of another when the enter, remain, or place an object upon that land without lawful permission. The law of trespass is relevant to public trails on private land for two main reasons.

First, where a trail organization has established a trail on private land without the permission of the landowner or another lawful occupier, that trail organization and all trail users would be trespassing and could be subject to legal action. This legal action could result in court orders ranging from an injunction against the trail organization and trail users – which would likely require the trail organization to remove itself and its property from the land – to an order for compensation to be paid to the landowner for any damage that was done.<sup>5</sup>

---

<sup>5</sup> A legal action in trespass in BC can be rooted in either BC's Trespass Act or the common law tort of trespass.

Second, where a trail organization has received permission to establish a trail on private land, it will be important to clearly delineate, with signage, where trail users can be and what activities they are allowed to undertake (e.g. a landowner may not be comfortable with the risks associated with motorized use on their land and may request that the trail organization limit use to non-motorized activity). This is to ensure that landowners and trail organizations do not inadvertently subject themselves to a higher standard of care in relation to trail users when those people access parts of private property they are not supposed to be on.

## ***Transportation Act and Transportation Act Regulation***

Section 42 of the *Transportation Act* stipulates that where “public money is spent on a travelled road that is not a highway, the travelled road is deemed and declared to be a highway.”<sup>6</sup> This, in effect, could suggest that trails on private lands are public highways, if public money is expended on their construction or maintenance, thus transferring the corridor of private land to the government. Both “public money” and “travelled road” do not have clear definitions in the *Transportation Act*. Public money is assumed to include funds or value from any level of government, including grants. A travelled road is assumed to be any public throughfare, not necessarily motorized corridors.

Despite the above, the *Transportation Act Regulation* and case law interpreting the *Transportation Act* and its predecessor the *Highway Act* suggests there is low risk that most recreational trails would be found to be a “travelled road” for the purposes of section 42 of the *Transportation Act*. Nevertheless, some risk mitigation strategies are worth implementing:



### **Signage**

Whether a particular route will be considered a recreational trail, a travelled road, or something else is a question of fact that is dependant on the circumstances. As such, signage that clearly indicates that a recreational trail is a recreational trail and that use of the trail is meant for recreational activities will help fend off any argument that it is a travelled road and therefore potentially subject to the effects of Section 42.

---

<sup>6</sup> BC Transportation Act - [https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/04044\\_01](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/04044_01)



*Northern BC Tourism, Abby Cooper*

## Contract Language

Any agreement entered into with a public entity or publicly-funded organization relating to the recreational trail – regardless of whether the agreement provides for funding, in-kind support, or something else – should include language that as explicitly as possible sets out that the parties agree that nothing in the agreement is meant to provide that the recreational trail may be deemed and declared a highway under Section 42 of the Transportation Act. Furthermore, it is recommended that any agreement between a landowner and a trail organization include language that requires the trail organization have similarly explicit language regarding the applicability of Section 42 in every agreement with a public entity or publicly-funded organization they enter into in relation to the landowner's land.

## Legal Advice

If there is any ambiguity about whether Section 42 may apply to some or all of a recreational trail project, seek legal advice from a qualified legal

professional before any public funds are expended on the project or agreement is entered into with a public entity or a publicly-funded organization. This is particularly relevant for trails to be used for off-road or motorized vehicles, where it may be possible to interpret the trail as both a road and a recreational trail.

## Entrance Roads to Recreational Trails

Where a road is needed to access a trailhead on private land (or some other feature of the trail), be extra cautious about how any public money is spent on the construction or maintenance of that road.

## Using Non-Public Funding

Trail organizations should consider using non-public funding (i.e. membership or sponsorship revenue) for any maintenance or construction on private land.



## Section 3.0

# Get Permission – In Writing

The process of getting permission to use private land may take months, years, or even decades, and should be started long before any work toward funding or design is completed.

A best practice is to approach the landowner for permission prior to any trail design. If the landowner is willing to consider a trail development, the next step is conceptual (desktop) design, followed by detailed on-the-ground flagging. The landowner should be engaged at all steps of the design process, including having the opportunity to walk the proposed alignment on the ground. The trail organization should be prepared to make many revisions to the various designs, from conceptual to detailed, prior to final approval or construction.

## Written Agreements

While there is ample written and case law to guide the public use of trails on private land, written agreements protect both parties on a number of levels. Written agreements should cover everything relevant to the situation and should be prepared with the guidance of qualified legal counsel.

Many of the concerns noted in previous sections of this report, including in relation to occupier's liability, negligence, trespass, and the *Transportation Act*, can be addressed with written agreements.

A template agreement is found in **Appendix A**.

### An agreement should include:

- Contact information for the parties involved.
- Legal description of the land and the trail, including maps and/or survey plans.
- Indication of expected volume of use and acceptable use limits.
- Compensation or consideration to be provided to the landowner.
- Language mitigating the risk of Section 42 of the *Transportation Act* applying.
- Agreements on the types of use permitted, and where these may take place.
- Agreement of general liability insurance coverage and limits for the parties involved.
- Agreement on the construction and maintenance standards that the trail organization will observe. This may include:
  - Trail construction standards.
  - Trail maintenance and inspections.
  - Waste management and disposal.
  - Seasonal or temporal access limitations or closures.
- Termination parameters and duration of the agreement.
- Non-compensation for use of the land by trail users.
  - Trail organization is responsible for all costs associated with maintenance, repair, and eventual reclamation
- Reporting and record keeping requirements.

## Reporting

As legislation relating to public use of private land requires certain responsibilities of both landowners and trail organizations, it's important that the trail organization be proactive in communications with the landowner to assure them that the agreement is being upheld. This communication frequency should be specified in the written agreement and should include:

- Maintenance or construction work completed, including sources of funding used for such work.
- Planned events or activities that either the trail organization or landowner is planning on the section of trail.
- Updated insurance coverages, clearly indicating the landowner as an additional insured.

### Best Practice in Action

**Where:** Fernie, BC

**Who:** Fernie Trails Alliance (FTA)

**What:**

The Fernie Trails Alliance (FTA) has an extensive network of trail inside and outside of the town limits and across farmland, forestlands, and other classifications of private land. The FTA learned “the hard way” how important it is to maintain good relationships with landowners and have accurate tracking and reporting of trail construction and maintenance. Miscommunication and misunderstanding over the location of property boundaries and a trail alignment led the FTA to conflict with a landowner and the shift of trail management for that landowner from the FTA to another trail management organization.

The FTA applied the following lessons from that experience to their broader system:

First, ensure there is a clear understanding of property boundaries and the location of trails and trail assets. The FTA now has an advanced GIS-based asset tracking and management system. This system is used to manage their trails and maintain relationships and reporting requirements to landowners.

Second, approach relations with landowners in a more conciliatory manner. Despite a long history of trail usage on a given landowner's parcel, it is imperative to recognize that access to that land is a privilege granted by the landowner.

Third, seek to protect access to trails through legal means to the degree possible. On nearly all of the trails the FTA manages, Land Use Agreements or partnership agreements are in place that protect the landowners, give the FTA authority to maintain the trails and outline the requirements of the agreement (e.g. reporting, requests for new trails, etc). Where possible, the FTA seeks to protect trails further using covenants or rights of way.



## Section 4.0

# Risk Management

Liability is defined as the state of being responsible for something, especially by law. A liability can be a debt owed to another person. It can also be the operation of a recreational trail or activity that could cause harm or damages. The liability is the cost to repair those damages – such as compensating someone for loss of work associated with a broken arm incurred while riding a mountain bike across a poorly maintained technical feature.

The first line in risk management is to try to protect against the liability resulting in a claim – essentially trying to create a situation in which loss is unlikely to occur. Trail organizations can mitigate their risk associated with a claim by ensuring they are using appropriate trail design, consistently applying a trail and feature classification system, and ensuring trail inspections and maintenance are set against a schedule and documented when complete.

Insurance is the asset set aside to protect against a liability claim or future occurrence. Insurance could simply be a large amount of money set aside in a bank savings account. To leverage economies of scale, insurance companies offer group insurance policies. These group policies have many parties pay a relatively small amount of money to a general “pot” that will cover any or all the contributing parties in the case of a claim. Insurance companies “play the odds” and use information such as the size of the organization, perceived risk of an activity, or volume of use to forecast the likelihood of claims and the size of the claims.

The structure of the insurance world involves both brokers and insurance underwriters. Brokers are the salespeople that act as the middle-person between individuals or organizations and the insurance underwriters. Insurance underwriters are the organizations that hold the financial resources and pay out for claims. The role of a broker is to help trail organizations or landowners find the best possible price and policy from an underwriter and provide advice or support on the insurance coverage. Trail organizations should take time to review their insurance policies, including the exclusions, and discuss these with their broker.





## Trail Classification, Standards and Design

Appropriate trail planning, design and classification is an organization's first line of defence – trail organizations must work hard to ensure all recreation infrastructure meets relevant industry standards or guidelines and best practices to demonstrate that the duty of care has been met. When an accident happens and a claim is filed, even if it is not successful, legal fees are likely to be incurred to defend against the claim. The trail organization may need to prove they met the duty of care.

To help reduce the risk and frequency of accidents, and to prove duty of care in the case of a claim, trail organizations should:

**Design trail systems intentionally with skill progression incorporated to trail layout.** All trail systems should have a variety of trails at different difficulty levels. More advanced or difficult trails should be located further from the trailheads or access points so that all riders must warm up or test their skills on easier trails before entering the advanced trails in a system.

**Follow recognized standards for trail rating/classification, construction, and signage.** There are many trail standards available, from ones produced by the International Mountain Bike Association (IMBA) to various developed by levels of government. Trails should be designed and constructed, in their entirety, to meet a specific difficulty level that is consistent with the chosen standards and the rest of the trail system. Signage should remain consistent with other parts of the network and meet recognized standards, including signage indicating the trail is a recreation trail.

**Establish and follow a trail inspection and maintenance program.** Trail organizations should have a documented trail inspection and maintenance plan; for example, trails will be inspected annually, and identified maintenance activities will be addressed as time and resources permit. Further, when trails are inspected or maintenance completed, trail organizations should document the details of this activity. It is generally recommended that organizations ensure that all commitments are reasonable for the capacity of



the parties involved and consider the level of use, setting of the trail, and type of infrastructure on the trail. Trails that the trail organization does not have the capacity to inspect or maintain should be clearly signed “unmaintained” or “closed.”

**A word of caution:** Trail organizations should not be overzealous when committing to inspection and maintenance programs, as failure to meet a documented inspection/maintenance interval may create unnecessary exposure. It is recommended that maintenance is triggered by inspections and that the inspection interval and maintenance response time interval be generous.

## Liability Insurance

Insurance is a trail organization’s or landowner’s last line of defence in a situation where a person has been hurt or killed on a trail. Liability insurance, or commercial general liability (CGL) insurance is what provides protection against a loss (injury, property damage, etc.) for trail organizations and landowners in case of a legal claim. This insurance is intended to cover the legal costs associated with dealing with the claim and any benefits that must be paid to the claimant if they’re successful.

Recreation Sites and Trails BC provides liability insurance coverage for their partnership agreement holders (typically trail organizations) for trails constructed on Crown lands and covered by the partnership agreements. However, this coverage does not extend to trails on private land (or any other lands outside of the partnership agreement), so trail organizations with any facilities – trails, parking lots, or other infrastructure - on private land should carry a separate CGL policy for those sections.



*Destination BC, Hubert Kang*

Liability insurance policies have few key components that trail organizations and landowners should be aware of:

### Limit of Coverage

The limit of coverage, or the maximum amount that the insurance company will pay out in case of a claim, is the biggest factor that influences the price of a policy. A lower limit of coverage (typically \$1 million) will cost less than the larger coverages; however, coverage of at least \$5 million is recommended, especially for higher risk activities like mountain biking or motorized use.

Coverage limits can be specified as per occurrence or as aggregate. The per occurrence limit is the maximum coverage per claim and the general aggregate is the maximum amount per year across all claims. Depending on your type of policy, the per occurrence limit may be your limit of coverage.

For example, in an incident where a trail organization has a per occurrence limit of \$5 million, and a general aggregate of \$25 million, there may be up to 5 claims of \$5 million in a year (or more if the claim is less). Whereas, with an aggregate policy of \$5 million, the first claim received would be paid out, then the 2nd, etc, until there are no additional funds left for subsequent claims.

### Named Additional Insured

The insurance policy holder, generally the trail organization, can include “additional insured” parties on their insurance policy. Additional insured parties are specific individuals or organizations that are also covered by the insurance policy. If a claim is made against the trail organization and the landowner, the trail organization’s insurance can indemnify the landowner under the same limits as the original policy holder. This allows the landowner to not have to carry a separate insurance policy for the associated trail-based recreational use of their land.

Insurance policies may also have co-insured parties. This is similar to additional insured, but co-insured parties have the right to change or alter the insurance policy without being the primary policy holder. It is generally not recommended to add co-insureds unless the policy is specific to only one section of trail on a private land parcel.

## Other Insurance

In addition to a general liability policy, trail organizations and landowners may want to consider additional types of insurance for full coverage:

### Directors and Officers Insurance (D&O)

This type of policy is normally a nominal premium on top of the general liability insurance policy. This coverage may protect the individual directors and officers of the organization (i.e. the board of directors) under a separate policy for decisions that they make individually or collectively if a member were to sue them. Without D&O insurance they could be held personally liable in the event of a claim. D&O insurance also protects the members of a club from each other in the event a disagreement occurs or if board member acts on their own, causing a loss.

### Property Insurance

Property insurance can cover the trail organization and landowners in case of theft, vandalism, flood, fire, or other damages. Generally, clubs hold this insurance to cover costs of replacing stolen tools or vandalized significant trail assets (i.e. bridges). Property owners carry this insurance to protect their personal belongings. These policies must be held separately by each group or individual, but it is important to check with the insurance provider to ensure that the coverage extends to private land, or public use of private land.

### Participant Accident Policy

This type of policy is an addition to a liability insurance policy. It can provide participants/users/volunteers enhanced accident/medical coverage without having to go through a liability claim or covering costs that may not be included in a CGL policy. This policy is ideal for trail organizations who host events and volunteer trail days where volunteers may not be a member.



## Section 5.0

# Maintain Relationships

Establishing the public use of a trail on private land is rarely a one-interaction relationship. Trail organizations should be proactive in maintaining and nurturing the relationship with the landowner. This may include:

### Reporting and Agreement Renewal

As the trail organization updates their insurance, the landowner should be notified and provided with a new copy of the certificate for their own records. This is often a great time to provide an update, including any planned maintenance on the trail, volume of use, or positive community benefits. Likewise, owners should also be notified of any incidents resulting in a loss – this may include things like signage vandalism, theft in parking lots, injury resulting in evacuation from the trail network, or a negative interaction with wildlife.

### Consideration of Closures

Occasionally, private landowners may need to close access to their land for wildfire, wildlife, or industrial activity reasons. The trail organization should work closely with the landowner to ensure that these closures are implemented and respected in the short and/or long term. Landowners should strive to keep the trail organization informed of their plans with as much notice as possible.

### Updated Contact Information

As land ownership transitions or volunteers and staff cycle through the trail organization, it is important to keep each party updated, so paths of communication remain open and easy.

### Best Practice in Action

**Where:** Cumberland, BC

**Who:** United Riders of Cumberland

**What:** The United Riders of Cumberland (UROC) was originally formed as an events club, responsible for organizing specialist mountain bike events for club members on the trails in Cumberland, BC. Much of the trail network in Cumberland is located on private land – large timber companies, municipal water resource land, and protected forest parklands – so UROC would proactively get permission for trail use for their events.

As the popularity of trails and recreation grew in Cumberland, the Village recognized that these trails were a great community asset and a reason why many residents of Cumberland chose to reside in the area. To formalize and provide a layer of protection for these trails, UROC and the Village of Cumberland, established a number of layers of formal legal agreements for trail development and use with the multiple landowners.

Continued positive communications has seen these agreements through changes and reorganizations. The Village values the trails as an important community resource, while the private landowners use the relationship as a positive example of their community engagement and management of high-volume trail usage.

# References

Province of British Columbia

<https://www2.gov.bc.ca/gov/content/industry>

iMapBC

<https://www2.gov.bc.ca/gov/content/data/geographic-data-services/web-based-mapping/imapbc>

BC Assessment

[www.bcasessment.ca](http://www.bcasessment.ca)

BC Assessment Property Classifications

<https://info.bcasessment.ca/Services-products/property-classes-and-exemptions/understanding-property-classes-and-exemptions>

Land Title and Survey Authority (LTSA) – Parcel Map BC

[www.ltsa.ca](http://www.ltsa.ca)

BC Transportation Act

[https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/04044\\_01](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/04044_01)

BC Transportation Act Regulation

[https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/13\\_546\\_2004](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/13_546_2004)

Occupiers Liability Act BC

[https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96337\\_01](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96337_01)

Trespass Act BC

<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/18003>

Private Forest Landowners Association – Megan Hanacek, Sue Handel

[pfla.bc.ca](http://pfla.bc.ca)

Managed Forest Council

<https://www.mfcouncil.ca>

## Interviews

Kootenay Columbia Trails Society – Stewart Spooner

United Riders of Cumberland – Dougal Browne

Village of Cumberland - Kevin McPhedran

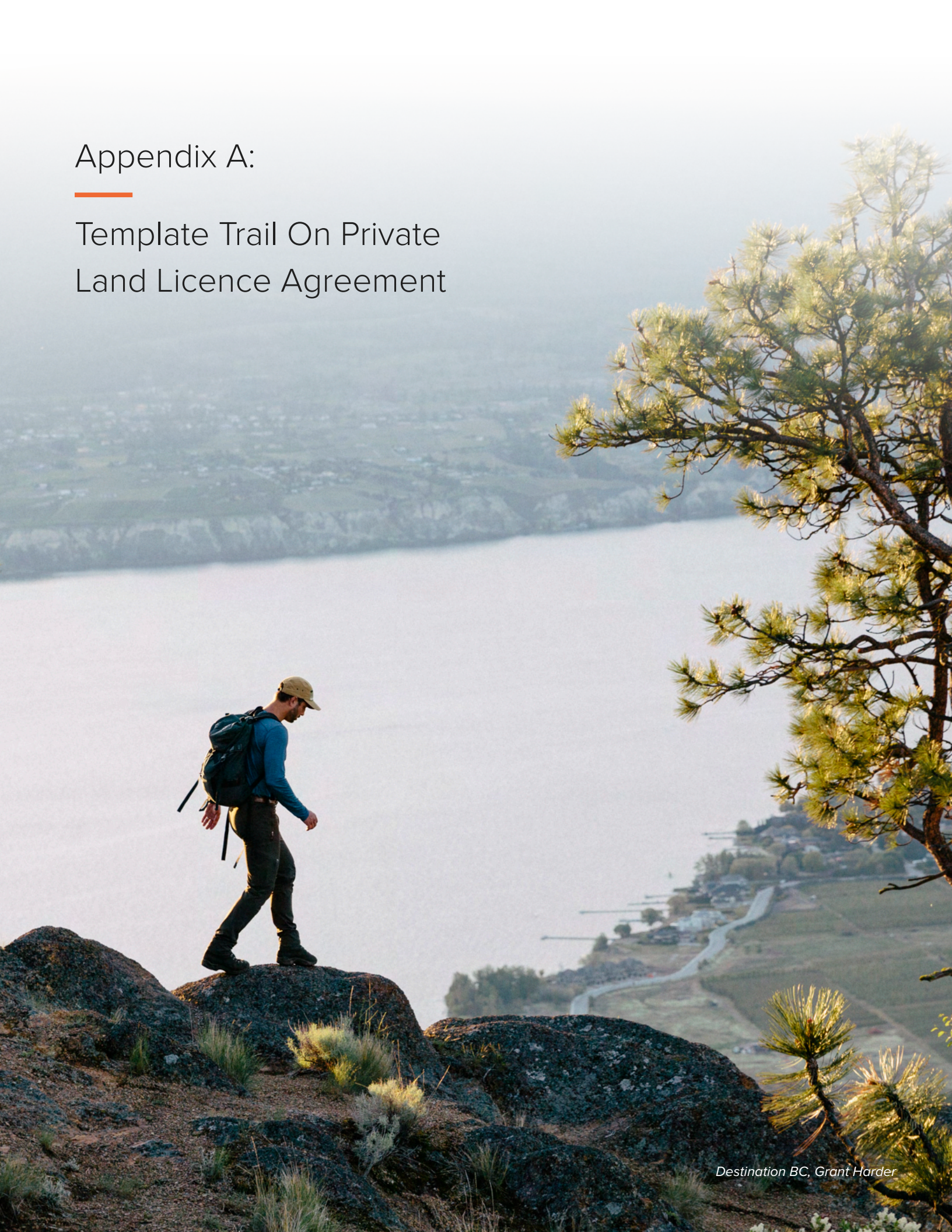
Fernie Trails Alliance – Todd Penke

CapriCMW Insurance - Rachela Pollock

Appendix A:

---

## Template Trail On Private Land Licence Agreement



WHEREAS:

A. The Owner is the registered owner of property with the civic address of [civic address] and legally described as:

[PID]

[full legal description]

(the "Property")

B. The Trail Organization is a society registered under the *Societies Act* (BC) with the purpose of [insert description of Trail Organization's purpose].

C. The parties wish to enter into this Agreement for the purpose of granting the Trail Organization a non-exclusive licence to develop and maintain the Trail within the Licence Area.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

SCHEDULES

1. Schedules – The following schedules form an integral part of this Agreement:

Schedule "A" – Map of Licence Area

INTERPRETATION

2. Definitions – In this Agreement:

(a) "End Date" means [date];

(b) "Licence Area" means the area marked as the "Licence Area" on Schedule "A";

(c) "*Occupiers Liability Act*" means the *Occupiers Liability Act*, RSBC 1996, c 337, as amended or replaced from time to time;

(d) "Specified Recreational Activities" means [activities that the Owner will allow the Licence Area to be used for];

(e) "Start Date" means [date];

(f) "Trail" means the [name of trail], as more clearly shown on Schedule "A"; and

(g) "*Transportation Act*" means the *Transportation Act*, SBC 2004, c 44, as amended or replaced from time to time.

3. Headings – The headings and section references in this Agreement are for convenience of reference only, do not form a part of this Agreement, and are not intended to interpret, define, or limit the scope, extent, or intent of this Agreement.

## LICENCE

4. Grant of Licence – The Owner grants the Trail Organization a non-exclusive licence to use and occupy the Licence Area for the purpose of:
  - (a) constructing, maintaining, and decommissioning the Trail; and
  - (b) inviting members of the public to use the Trail for Specified Recreational Activities,in accordance with the terms of this Agreement (the “Licence”).
5. Licence Conditions – The Licence is subject to the following conditions:
  - (a) the Trail Organization must construct, maintain, and decommission the Trail, including placing signage, in accordance with [insert name of third-party standard to which the Trail will comply] and its sole expense;
  - (b) the Trail Organization must post signage within the Licence Area, the design and placement of which is to be subject to the prior approval of the Owner, clearly indicating to members of the public who are invited to use the Trail:
    - (i) the location of the Trail, and
    - (ii) the Specified Recreational Activities that are allowed on the Trail;
  - (c) the Trail Organization must not receive any consideration of any form from any member of the public or any other invitee for use of the Trail;
  - (d) the Trail Organization must undertake waste management and disposal activities within the Licence Area in a manner to be agreed upon in advance of the Start Date by the Owner, acting reasonably;
  - (e) the Trail Organization may not remove any trees or other vegetation from the Licence Area without the prior written approval of the Owner, such approval may be unreasonably withheld; and
  - (f) [any other limits that the Owner wishes to include, including any seasonal or temporal access restriction that the Owner wishes to include].
6. Licence Fee – The Trail Organization will pay an annual fee of [amount] to the Owner, with the first payment due on the Start Date and each subsequent

payment due on the anniversary of the Start Date during the Term ("Licence Fee").

## TERM AND TERMINATION

7. Term - The term of this Agreement is from the Start Date to the End Date, unless terminated earlier in accordance with this Agreement (the "Term").
8. Renewal – This Agreement may be renewed for an additional [period (e.g. "five-year period")], on the same terms and conditions, including this section 8, upon the Agreement of the parties.
9. Early Termination – This Agreement will be terminated in the following circumstances:
  - (a) where either party has provided a minimum of 90 days' written notice to the other of their intention to terminate this Agreement, on the date of termination set out in the notice;
  - (b) in the event the Property is sold or otherwise transferred to a new registered owner, on the day before the Property is transferred into the new registered owner's name, unless the new registered owner agrees in writing to assume the Owner's obligations under this Agreement; or
  - (c) in the event that the Trail Organization is found to not be in compliance with any of the terms and conditions of this Agreement and the non-compliance is not remedied within 14 calendar days of receiving a written notice of non-compliance from the Owner, on the date of termination set out in the notice.
10. Early Termination Obligations – If this Agreement is terminated before the End Date in accordance with subsection 9(a) or 9(b), the Trail Organization must be reimbursed a prorated share of the Licence Fee for the period of the year paid for that the Agreement will no longer be in force.
11. Termination Obligations – Upon the termination of this Agreement, early or otherwise, the Trail Organization must remove all its property from the Licence Area and remediate, at its sole expense, the Licence Area to the satisfaction of the Owner, acting reasonably.

## ANNUAL MEETING

12. Annual Meeting – The parties will meet [e.g. within the seventh month of the first year of the Term and annually within the same period thereafter] to



## TEMPLATE TRAIL ON PRIVATE LAND LICENCE AGREEMENT

### Purpose of this template agreement:

This template is meant as a starting point for private landowners and trail organizations to use to formalize an arrangement for the use of private land for the development, maintenance, and remediation of a publicly-accessible trail. Its effect is to grant a trail organization a non-exclusive licence to use a portion of a private lot for the trail. It provides options for addressing questions of liability, insurance, trail development and maintenance standards, and other matters that are usually considered in trail development. Most aspects of the template can be customized to fit the specific circumstances of a particular trail.

### Suggestions for use of this template agreement:

- Highlighted portions found within square brackets should be replaced with the information suggested within the square brackets.
- This is a template licence agreement that will work in some, but not all circumstances where a trail organization is working with a private landowner to develop a public recreational trail on private land. As a result, some of the information not within square brackets may need to be customized as well in order to address the particular circumstances of a situation.
- If using this template, it is recommended that the prospective parties to a particular agreement seek independent legal advice before finalizing and signing their particular agreement.

---

THIS AGREEMENT is dated for reference the [day] day of [month], [year].

BETWEEN:

[NAME OF REGISTERED OWNER(S)]

[Address of Registered Owner(s)]

(the "Owner")

AND:

[NAME OF TRAIL ORGANIZATION]

[Address of Trail Organization]

(the "Trail Organization")

discuss the success and challenges of this Agreement, including whether amendments should be made in accordance with section 26.

## LIABILITY

13. Indemnification – The Trail Organization indemnifies and saves harmless the Owner against any and all claims (except those arising from the Owner’s own fault or negligence)—including claims arising under the *Occupiers Liability Act* as well as all other damages, liabilities, expenses, and costs—arising directly or indirectly from:
- (a) this Agreement;
  - (b) the development, maintenance, and decommissioning of the Trail; or
  - (c) use of the Trail by members of the public and any other invitees of the Trail Organization.
14. Insurance – The Trail Organization will obtain, and maintain for the duration of the Term, a general liability insurance policy with respect to the Trail Organization’s use and occupation of the Licence Area, including coverage for all areas of potential liability to which the Trail Organization indemnifies the Owner under section 13, in an amount of not less than [e.g. \$5 million or a higher amount] and naming the Owner as an additional insured. Without limiting the foregoing, this insurance policy must provide coverage in the event of bodily injury (including death) and property damage arising out of use and occupation of the Licence Area under this Agreement.

## Miscellaneous

15. Transportation Act – Nothing in this Agreement is meant to suggest or provide that the Trail is to be deemed and declared a highway under section 42 of the *Transportation Act*. Without limiting the foregoing, the Trail Organization agrees to endeavour to include the following provision in any contract it enters relating to government or public funding that may assist it with exercising its rights or obligations under this Agreement:

The parties agree that nothing in this Agreement is meant to suggest or provide that the [name of Trail] is or will be deemed and declared a highway under section 42 of the *Transportation Act* (BC).

16. Dispute Resolution – The parties agree to attempt to amicably and in good faith resolve any disputes arising under this Agreement through informal

negotiation between themselves before seeking resolution through court action.

17. Notice – Any notices required by this Agreement will be provided using the contact information set out above or as otherwise provided by a party to this Agreement.
18. Waivers – The failure of a party to insist upon the strict performance of any term of this Agreement, or to exercise any right or remedy contained in this Agreement, will not be construed as a waiver or a relinquishment by that party for the future of that term, right, or remedy.
19. Assignment – Neither party may assign this Agreement without the prior consent of the other party.
20. Counterparts – This Agreement may be signed and executed in any number of counterparts, and each executed counterpart will be considered to be an original. All executed counterparts taken together will constitute one agreement.
21. Currency – All sums of money to be paid or calculated pursuant to this Agreement will be paid or calculated in Canadian dollars.
22. Entire Agreement – This Agreement constitutes the entire agreement between the parties and supersedes all prior verbal or written agreements between the parties concerning the subject matter described herein. The parties acknowledge and agree that there are no representations or warranties, express or implied, statutory or otherwise, and no agreements collateral to this Agreement other than as expressly set out or referred to in this Agreement.
23. Severability – If any term of this Agreement is determined to be invalid or unenforceable, in whole or in part, the invalidity or unenforceability will attach only to that term or part term, and the remaining part of the term and all other terms of this Agreement will continue in full force and effect.
24. Governing Law and Jurisdiction – This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The parties submit to the jurisdiction of the courts of British Columbia in the resolution of any dispute between the parties arising under or in connection with this Agreement.
25. Time – Time is of the essence in this Agreement.

26. Amendment – This Agreement may be amended only by a written agreement signed by each party.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date(s) set out below above.

By [FULL LEGAL NAME OF OWNER]:	[FULL LEGAL NAME OF TRAIL ORGANIZATION], by its authorized signatories:
Date: _____	Date: _____
Name (printed): _____	Name (printed): _____
Signature: _____	Signature: _____
Date: _____	Date: _____
Name (printed): _____	Name (printed): _____
Signature: _____	Signature: _____

SCHEDULE "A" – MAP OF LICENCE AREA

TEMPLATE



*The Outdoor Recreation Council of BC gratefully acknowledges the financial support of the Province of British Columbia through the Ministry of Environment and Climate Change Strategy.*



**Outdoor Recreation  
Council of BC**

*Destination BC, Kari Medig*