

# Timber Lakes Property Owners Association

## Excavation Permit Policy

The Timber Lakes Property Owners Association (TLPOA or the Association) does ordain that an excavation permit policy is added to our policies as follows:

### 1. Definitions

- 1.1. APPLICANT - means any Person who makes application for a permit.
- 1.2. BUSINESS – means any place in the Association in which there is conducted or carried on principally or exclusively any pursuit or occupation for the purpose of gaining a livelihood.
- 1.3. ASSOCIATION – means TLPOA, a non-profit corporation of the State of Utah.
- 1.4. ASSOCIATION ROADS DIRECTOR – means the Member of the Association’s Board of Directors responsible for Roads, or his/her authorized representative.
- 1.5. EMERGENCY – means any unforeseen circumstances or occurrence, the existence of which constitutes an immediate danger to persons or property, or which causes interruption of any utility or public services.
- 1.6. FAILURE – means a Work Site Restoration which fails to meet Association Specifications, or which results in a deteriorated or substandard condition within the duration of the warranty period. Failure may be settlement of surfaces, deterioration of materials or other surface irregularities.
- 1.7. INFRASTRUCTURE PROVIDER – means a Person providing to another, for the purpose of providing Utility services to customers, all or part of the necessary System which uses the right-of-way.
- 1.8. OPERATOR - means any Person who provides service over a Utility System and directly or through one or more affiliates owns a controlling interest in such System, or who otherwise controls or is responsible for the operation of such a System.
- 1.9. PERMITTEE – means any Person which has been issued a permit and thereby has agreed to fulfill the requirements of this Policy.
- 1.10. PERSON – means and includes any natural Person, partnership, firm, association, Provider, corporation.
- 1.11. PIPE DRIVEWAY – means a driveway approach which uses a pipe or other means to bridge the gutter.
- 1.12. PROPERTY OWNER – means any Person or Persons who have legal title to property and/or equitable interest in the property; or the ranking official or agent of a company having legal title to property and/or equitable interest in the property.
- 1.13. PROVIDER – means an Operator, Infrastructure Provider, Reseller, System Lessee, or Public Utility

- 1.14. PUBLIC UTILITY COMPANY – means any company subject to the jurisdiction of the Utah State Public Service Commission, or any mutual corporation providing gas, electricity, water, telephone, or other utility product or services for use by the general public.
- 1.15. COMMON WAY – means and includes all Common right-of-way and easements, Common footpaths, walkways and accesses, Common streets, Common roads, Common highways, Common alleys, and Common drainage ways. It does not, however, include utility easements not within Common Ways of the Association.
- 1.16. PRIVATE DRAIN LINE – means a pipe installed solely for the transmission of water collected or generated on private property such as drainage, spring, or storm water, or condensate into the Common drainage system.
- 1.17. RESELLER – refers to any Person that provides service over a System for which a separate charge is made, where that Person does not own or lease the underlying System used for the transmission and does not install any System in the rights-of-way.
- 1.18. RESIDENT – means the Person or Persons currently making their home at a particular dwelling.
- 1.19. STORM DRAIN – means a dedicated pipe, conduit, water way, or ditch installed in a right-of-way or easement for the transmission of storm and drainage water. This term does not include Private Drain Lines.
- 1.20. SYSTEM LEASEE – refers to any Person that leases a System or a specific portion of a System to provide services.
- 1.21. TELECOMMUNICATIONS SYSTEM or SYSTEM – means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and Appurtenances owned, leased, or used by a Provider located in the construction, ownership, operation, use or maintenance of a Telecommunications System.
- 1.22. WORK SITE RESTORATION – means and includes the restoring of the original ground or paved hard surface area to comply with Engineering Regulations, and includes but is not limited to repair, cleanup, backfilling, compaction, and stabilization, paving and other work necessary to place the site in acceptable condition following the conclusion of the work, or expiration or revocation of the permit.

## **2. Permit Required; Basis for Issuance**

- 2.1. Any person desiring to perform work of any kind in a Common Way within Timber Lakes Estates, shall make application for a permit. The decision by the Association to issue a permit shall include, among other factors determined by the Association, the following:
  - 2.1.1. The capacity of the Common Way to accommodate the facilities or structures proposed to be installed in the Common Way;

- 2.1.2. The capacity of the Common Way to accommodate multiple wire in addition to cables, conduits, pipes or other facilities or structures of other users of the Common Way, such as electrical power, telephone, gas, sewer and water;
- 2.1.3. The damage or disruption, if any of common or private facilities, improvements, or landscaping previously existing in the Common Way;
- 2.1.4. The public interest in minimizing the cost and disruption of construction from numerous excavations of the Common Way.

### **3. Permit Application Requirements.**

- 3.1. Application for a permit shall be filed with the Association Roads Director on a form or forms to be furnished by the Association. Property owners and/or tenants for whom work is being done shall be responsible for obtaining the permits, provided, however, contractors may obtain the permit in the contractor's name.
- 3.2. Excavation permits are to be issued between May 1 and October 15 inclusively. The work within the right of way must be completed by October 15.
- 3.3. A Person shall not be eligible to apply for or receive permits to do work within the Common Ways of the Association, save and except the following:
  - 3.3.1. Contractors licensed by the state as general contractors;
  - 3.3.2. Providers;
  - 3.3.3. Property owners installing, replacing, or maintaining driveway approach or other work approved by the Association Roads Director, upon a portion of the Common Way adjacent to their residence;
  - 3.3.4. Persons offering a service which requires occupation of the Common Way, such as scaffold or staging, staging of a crane, installation or maintenance of electric signs, glass, awning, and painting or cleaning of buildings or sign boards or other structures.
- 3.4. The Association Roads Director may deny the issuance of permits to contractors, utility companies, or other permit Applicants who have shown by past performance that in the opinion of the Association Roads Director they will not consistently conform to requirements of this Policy.
- 3.5. When necessary, in the judgment of the Association Roads Director, to fully determine the relationship of the work proposed to existing or proposed facilities within the Common Ways, or to determine whether the work proposed complies with this Policy, the Association Roads Director may require the filing of engineering plans, Specifications and sketches showing the proposed work in sufficient detail to permit

determination of such relationship or compliance, or both, and the application shall be deemed suspended until such plans and sketches are filed and approved.

- 3.6. It shall be deemed trespassing for any Person to commence work upon any Common Way until the Association Roads Director has approved the application and until a permit has been issued for such work, except as specifically approved to the contrary in this Policy.
- 3.7. The disapproval or denial of an application by the Association Roads Director may be appealed by the Applicant by filing a written notice of appeal within ten days of the action of the Association Roads Director. The Association' Board of Directors shall hear such appeal, if written request therefore be timely filed as soon as practicable, and render a decision, if possible, at the next Board of Director's meeting.
- 3.8. In approving or disapproving work within any Common Way, or permits therefore, in the inspection of such work; in reviewing plans, sketches or Specifications; and generally in the exercise of the authority conferred upon him/her by this Chapter, the Association Roads Director shall act in such manner as to preserve and protect the Common Way and the use thereof, but shall have no authority to govern the actions or inaction of Permittees and Applicants or other Persons which have no relationship to the use, preservation or protection of the Common Way.
- 3.9. A permit is not required from the Association Roads Director for hand digging excavations for installation or repair of landscaping within the non-paved areas of the Common Way. However, conformance to all Association Specifications is required. This paragraph conveys no approval or authority to violate the State Ban on outside watering in Timber Lakes Estates.

#### **4. Emergency Work.**

- 4.1. Any Person maintaining pipes, lines or facilities in the Common Way may proceed with work on existing facilities without a permit when Emergency circumstances demand the work be done immediately; provided a permit could not be reasonably obtained beforehand.
- 4.2. In the event that Emergency work is commenced on or within any Common Way of the Association during regular business hours, the Association Roads Director shall be notified within one-half hour from the time the work is commenced. The Person commencing and conducting such work shall take all necessary safety precautions for the protection of the public and the direction and control of traffic, and shall insure that work is accomplished according to this Policy and other applicable laws, regulations, or generally recognized practices in the industry.
- 4.3. Any Person commencing Emergency work in the Common Way during other than business hours without a permit shall immediately thereafter

apply for a permit or give notice during the first hour of the first regular business day on which Association offices are open for business after such work is commenced. A permit for such Emergency work may be issued which shall be retroactive to the date when the work was begun, at the discretion of the Association Roads Director.

**5. Bond.**

- 5.1. The Association shall require and the Permittee shall pay prior to issuance of the permit, a bond to insure compliance with the permit and all related TLPOA policies and regulations.
- 5.2. The Association Board may waive the permit bond if it determines that such permit pertains to an encroachment on the Common Way involving a beautification project which furthers specific goals and objectives set forth in the Association's strategic plan, master plans, or other official documents, including decorative street lighting, building façade lighting, flower and planter boxes, and landscaping.
- 5.3. Additional charges to cover the reasonable cost and expenses of any required engineering review, inspection, and Work Site Restoration associated with each undertaking may be charged by the Association to each Permittee, in addition to permit fee.
- 5.4. The bond amount shall be \$5,000 if the project involves an asphalt road or \$1,500 if the project involves a dirt road.
- 5.5. The bond amount is refundable after one (1) winter cycle IF there is no damage to the road and/or common area easement.

**6. Permit – Contents – Durations and Extensions.**

- 6.1. Each permit application shall state the starting date and estimated completion date. Work shall be completed within five days from the starting date or as determined by the Association Roads Director. Such determination shall be based upon factors reasonable related to the work to be performed under the permit. Such factors may include, in addition to other factors related to the work to be performed under the permit, the following:
  - 6.1.1. The scope of work to be performed under the permit;
  - 6.1.2. Maintaining the safe and effective flow of pedestrian and vehicular traffic on the Common Way affected by the work;
  - 6.1.3. Protecting the existing improvements to the Common Way impacted by the work;
  - 6.1.4. The season of the year during which the work is to be performed as well as the current weather and its impact on public safety and the use of the Common Way by the public;
  - 6.1.5. Use of the Common Way for extraordinary events anticipated by the Association.

- 6.2. The Association Roads Director shall be notified by the Permittee of commencement of the work within twenty-four hours prior to commencing work. The permit shall be valid for the time period specified in the permit.
- 6.3. If the work is not completed during such period, prior to the expiration of the permit, the Permittee may apply to the Association Roads Director for an additional permit or an extension, which may be granted by the Association Roads Director for good cause shown.
- 6.4. The length of the extension requested by the Permittee shall be subject to the approval of the Association Roads Director. No extension shall be made that allows work to be completed in the winter period without payment of winter fees.

**7. Permit – No Transfer or Assignment.**

- 7.1. Permits shall not be transferable or assignable, and work shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a Permittee from subcontracting the work to be performed under a permit; provided, however, that the holder of the permit shall be and remain responsible for the performance of the work under the permit, and for all bonding, insurance and other requirements of this Policy and under said permit.

**8. Compliance with Specifications, Standards, Traffic-Control Regulations; Site Permittee Identification.**

- 8.1. The work performed in the Common Way shall conform to the requirements of the Engineering Regulations, Design Standards, construction Specifications and traffic control regulations of the Association, copies of which shall be available from the Association Roads Director, kept on file in the office of the Association and be open to public inspection during Association office hours.
- 8.2. Where a job site is left unattended, before completion of the work, signage with minimum two inch high letters shall be attached to a barricade or otherwise posted at the site, indicating the Permittee's name, or company name, telephone number, and after hours telephone number.
- 8.3. All excavations shall be conducted in a manner resulting in a minimum amount of interference or interruption of street or pedestrian traffic. Inconvenience to Residents fronting on the Common Way shall be minimized. Suitable, adequate and sufficient barricades and/or other structures will be available and used where necessary to prevent accidents involving property or Persons. Barricades must be in place until all hazardous conditions are removed. The Association's Security Person and Wasatch County Fire Department shall be notified at least

24 hours in advance of any planned excavation requiring road closure or traffic detour.

**9. Relocation of Structures in Common Ways.**

- 9.1. The Association Roads Director may direct any Person owning or maintaining facilities, including but not limited to septic systems, drain fields or septic system reserves, or structures in the Common Way to alter, modify or relocate such facilities or structures as the Association Roads Director may require as set forth herein. Sewers, pipes, drains, tunnels, conduits, driveways, vaults, trash receptacles and overhead and underground gas, electric, telephone, Utility and communication facilities shall specifically be subject to such directives. The Person owning or maintaining the facilities or structures shall, at their own cost and expense and upon reasonable written notice by the Association, promptly protect, or promptly alter or relocate such facilities or structures, or part thereof, as directed by the Association. In the event that such Person refuses or neglects to conform to the directive of the Association, the Association shall have the right to break through, remove, alter or relocate such part of the facilities or structures without liability to such Person. Such Person shall pay to the Association all costs incurred by the Association in connection with such work performed by the Association, including also design, engineering, construction, materials, insurance, court costs and attorneys fees.
- 9.2. Any directive by the Association Roads Director shall be based upon the following:
  - 9.2.1. The facility or structure was installed, erected or is being maintained contrary to policy, or determined by the Association Roads Director to be structurally unsound or defective;
  - 9.2.2. The facility or structure constitutes a nuisance as defined under State statute or policy;
  - 9.2.3. The permit under which the facility or structure was installed has expired or has been revoked;
  - 9.2.4. The Common Way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction; or
  - 9.2.5. The grades or lines of the Common Way are to be altered or changed.
- 9.3. Any directive of the Association Roads Director under this Section shall be under and consistent with the Association's power to promote safety. Unless an emergency condition exists, the Association Roads Director shall make a good faith effort to consult with the Person regarding any condition that may result in a removal or relocation of facilities in the Common Way to consider possible avoidance or minimization of removal or relocation requirements and provide the

directive as far enough in advance of the required removal or relocation to allow the Person a reasonable opportunity to plan and minimize cost associated with the required removal or relocation.

- 9.4. This obligation does not apply to facilities or structures originally located on private property pursuant to a private easement, which property was later incorporated into the Common Way, if that prior private easement grants a superior vested right.
- 9.5. Any Person owning or maintaining facilities or structures in the Common Way who fails to alter, modify or relocate such facilities or structures upon notice to do so by the Association Roads Director shall be considered trespassing and creating a public disturbance. All costs of alteration, modification or relocation shall be borne by the Person owning or maintaining the facilities or structures involved.
- 9.6. The Association may, at any time, in case of fire, disaster or other emergency, as determined by the Association in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Common Way, in which event the Association shall not be liable therefore to a Person. The Association shall notify a Person in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this subsection.

#### **10. Impact of Excavation on Existing Improvements.**

- 10.1. If any access is blocked by excavation work, a temporary access shall be constructed or provided. Said temporary improvement shall be safe for travel and convenient for users, and consistent with standards for such.
- 10.2. Where excavations are made in paved areas, the surface shall be replaced temporarily with a temporary gravel surface until the permanent repairs are completed.
- 10.3. At any time a Permittee disturbs the yard, residence or the real or Personal property is returned, replaced and/or restored to a condition that is comparable to the condition that existed prior to the commencement of the work.
- 10.4. The costs associated with the disturbance and the return, replacement and/or restoration shall be borne by the Permittee. Further, a Permittee shall reimburse a Property Owner or the Association, for any actual damage caused by the Permittee, its subcontractor, or its independent contractor, in connection with the disturbance of such property. However, nothing in this Subsection shall require the Permittee to pay a subscriber or private Property Owner when that subscriber or private Property Owner requests that Permittee remove, replace or relocate improvements associated with the service provided by the Permittee to the Property Owner and when the Permittee exercises due care in the performance of that service, or when the subscriber or private Property

Owner provided false information to the Permittee on which the Permittee relied to its detriment.

## **11. Excavation Improvements and Alterations.**

### 11.1. Permit Required.

- 11.1.1. No person, firm, partnership, corporation, or entity of any kind shall open up, break, dig, excavate, construct, reconstruct, repair, alter a grade in or upon any common street, access, curb, curb cut, driveway, or gutter for any purpose or in any manner commence any construction in or upon any common street or access without first procuring from the Association Roads Director a permit for the specific construction or other work to be undertaken.
- 11.1.2. Any person, firm, partnership, corporation, or entity of any kind desiring to obtain a permit to construction, reconstruct, repair, alter, or grade any access, curb, curb cut, driveway, gutter, or street on the common streets of this Association shall meet the following requirements in order to obtain said permit, provided, however, that Association crews, engaged in any of the above activities while employed by the Association, shall be exempt from the permit required herein.
  - 11.1.2.1. Provide the name and address of the party obtaining the permit;
  - 11.1.2.2. Provide the name and address of the party doing the work;
  - 11.1.2.3. Provide the location of the work area;
  - 11.1.2.4. Attach a plan showing the details of the proposed alteration;
  - 11.1.2.5. Provide the estimated cost of the alteration;
  - 11.1.2.6. Provide a guarantee in an amount to be set by the Association Roads Director based on the extensiveness of the project and the estimated cost of the project;
  - 11.1.2.7. Have the party performing the work prequalify, using the forms provided by the Association Engineer as they may from time to time be changed;
  - 11.1.2.8. Pay a filing fee for the permit to cover the actual expenses incurred by the Association in inspecting the work and insuring compliance with the permit, the plans, and any applicable laws, such as the building code, fire code, etc. including compliance with the standards to be established by the Association Roads Director in order to insure safe and quality construction.

- 11.1.2.9. To provide proof of insurance satisfactory to the Association consistent with coverage's and amounts required by the Association Construction and Development Standards. The Association may waive this requirement for property owners performing work as stated in section 3.4.3.
- 11.1.2.10. The expected project duration shall be identified by applicant. The Association Roads Director will evaluate the proposal project duration and approve or recommend an alternative completion date, and shall have the final say as to the project duration.
- 11.1.3. It is unlawful for any person having made an excavation in any street or access, whether by permit or otherwise, to fail, neglect or refuse for a period of (5) five days after notice, to restore or replace said street or access to its normal condition. The replacement of any street or access must be made to the specifications of the Association as determined by the Association Roads Director or other authorized person.
- 11.2. Barricades and Lights Required.
  - 11.2.1. It is unlawful for any person, by or for whom any excavation, construction, reconstruction, repair, or alteration made in any common street to fail to cause a barricade, rail or other sufficient fence to be placed so as to enclose such excavation, construction, reconstruction, repair, or alteration made in any common street, together with the dirt, gravel or other material thrown there from, and to maintain such barricade during the whole time for which excavation, construction, reconstruction, repair, or alteration is made in a common street, continues; and it is unlawful for any person to fail to have lighted lanterns or some other proper and sufficient lights fixed to parts of such barricade, or in some other proper manner over or near the excavation, construction, reconstruction, repair, or alteration is made in a common street, and over and near the dirt, gravel or other material taken there from, and so kept from the beginning of twilight through the whole of every night during all time such excavation, construction, reconstruction, repair, or alteration is made in a common street, exists. It is unlawful for any person maliciously or wantonly and without legal cause, to extinguish, remove or diminish said lights or to tear down or remove any rail, fence or barricade fixed in accordance with the provisions of this section.
- 11.3. Depositing Material on Streets or Right-of-Way Prohibited.

- 11.3.1. It is unlawful for any such person to throw, cast, put into, drop, leave, or track in or onto any street, right-of-way, storm drain, or common place any construction materials, stones, gravel, sand, coal, dirt, mud, snow, ice slush, manure, garbage, debris, leaves, lawn or hedge clippings, or rubbish of any kind.
- 11.3.2. Any persons violating subsection 11.3.1 shall be civilly liable for the cost of cleaning the subject street, right-of-way, storm drain, or common place. Trespassing proceedings under subsection 11.3.1 shall not be a condition precedent to a civil claim under this subsection 11.3.2. The Association may bring a claim under this subsection for reimbursement of any kind and all costs incurred in cleaning the subject property.
- 11.3.3. For any new construction, the construction, the contractor, shall be responsible for the acts of his/her subcontractors, suppliers, independent contractors, employees, or other person on the site or near the premises at the bidding or invitation of the contractor who violates any provision of subparagraph 11.3.1. Such contractor shall not be criminally liable, but shall be civilly liable and shall be subject to a work stoppage imposed by the Association building inspector or Association Engineer until such conditions are rectified. In the event of an immediate safety concern, the Association may proceed to clean up the debris or other items without notice, and bill the same to the contractor. The cost may be deducted from any bond or deposit posted by the contractor.
- 11.4. Right-of-Way Obstruction.
  - 11.4.1. It shall be unlawful for any person to place or deposit any construction equipment, construction materials, or other type of stone, gravel, coal, dirt, mud, snow, ice slush, manure, garbage, debris, leaves, lawn or hedge clippings, or rubbish of any kind or of a similar nature upon the right-of-ways within the Association.
  - 11.4.2. It shall be unlawful for any person to park construction equipment or personal vehicles over night in the Right-of-Way. It shall also be unlawful to leave unattended vehicles in Right-of-Way during the daytime period.
  - 11.4.3. It shall be unlawful to have portable toilets and construction dumpsters located on the Right-of- Way.
  - 11.4.4. Protection of Existing Improvements. The Contractor shall be responsible for the protection of any existing improvements on public or private property at the start of work or placed there during the progress of the work. Existing improvements shall include but are not limited to permanent surfacing, ditches, driveways, culverts, fences, walls, and landscaping. Any surface improvements damaged as a result of

construction shall be restored or replaced to an equal or better condition than before. This shall be accomplished in a timely manner.

11.4.5. Maintaining Existing Road Surfaces. The Contractor shall be responsible for maintaining existing road surfaces suitable for travel by the public. The Contractor shall be responsible for all dust and mud control and all claims and damages resulting from failure to maintain the construction area.

11.5. Violation – Penalty.

11.5.1. A person violating any provision of this Section shall receive a minimum mandatory fine of not less than \$250.00 per violation. Each day of a continuing violation shall be considered a separate violation.