

# Application Decision

## Inter-City Bus (ICB) New Urgent Public Need Process

Application No.	<b>14804-22</b>
Applicant & Application Summary	<p><b>SWAISLAND, Savannah Marie</b> Trade Name(s): Grape Savvy Wine Tours, Grape Savvy Trolley Co.</p> <p><b>New ICBA Licence</b></p> <ul style="list-style-type: none"> <li>• New Special Authorization: Inter-City Bus Authorization (ICBA)</li> <li>• Operate the following routes on a reservation basis: Route 1: Penticton – Naramata</li> <li>• Seasonal Operation: May 1st to October 31st annually</li> </ul>
Board Decision	<ol style="list-style-type: none"> <li>1. The Board is satisfied that there is an urgent public need for the service proposed in this application.</li> <li>2. The application is approved in whole: <ul style="list-style-type: none"> <li>• The Special Authorization (Inter-City Bus Authorization) is approved</li> <li>• Terms and conditions are established as requested in the application summary</li> </ul> </li> <li>3. The Board has imposed a 10-month time limitation on this licence, after which the applicant will be required to submit a new, full ICBA application through the regular application process.</li> </ol>
Decision Date	April 14, 2022
Panel Chair	Carmela Allevato

### I. Introduction

The *Passenger Transportation Act* (the Act) regulates the licensing and operation of commercial passenger transportation vehicles and services in BC. Under the Act, the Passenger Transportation Board (Board) makes licensing decisions on applications relating to taxis, limousines and other small shuttle and tour vehicles. The operation of these vehicles requires a “passenger directed vehicle authorization.” The Board has the

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authority to consider and approve applications for new licenses as well as applications from existing licensees to change terms and conditions of their licences (including the addition of vehicles to their fleet), change rates to be charged for a service and request Temporary Operating Permits (TOPs). Since September 2019, the Board's mandate has included licensing decisions relating to Transportation Network Services, also known as ride-hailing services.

## II. Jurisdiction

This application is made under the Act. As required by section 26(1) of the Act, the Registrar of Passenger Transportation forwarded the application to the Board. Section 26(2) of the Act requires the Board to publish the application and consider written submissions on the application unless, further to section 26(3), the Board is satisfied that there is an urgent public need for the service proposed in the application.

Section 28(1) governs the Board's consideration of applications as follows:

- 28(1) The board may approve, in whole or in part, an application forwarded to it under section 26(1) after considering whether:
- (a) there is a public need for the service the applicant proposes to provide under any special authorization,
  - (b) the applicant is a fit and proper person to provide that service and is capable of providing that service, and
  - (c) the application, if granted, would promote sound economic conditions in the passenger transportation business in British Columbia.

Section 28(2) states that the Board must, if it approves an application, specify the special authorization that should be included in the licence, if issued by the Registrar.

Section 28(3) states that the Board may establish terms and conditions that apply to a special authorization included in a licence.

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### **III. Application**

#### **(1) Applicant**

The applicant, Savannah Marie Swaisland (“Swaisland”), is a sole proprietor. The applicant’s office is located in Penticton, British Columbia. Swaisland holds Passenger Transportation Licence 75186 which is a General Authorization (the “GA” licence) issued by the Registrar of Passenger Transportation under the Act. Under the GA, Swaisland operates under the trade names of Savvy Wine Tours and Grape Savvy Trolley Co..

The GA authorizes the operation of one or more motor vehicles as general passenger vehicles between points in the province, or any point in the province and beyond the British Columbia border or from the British Columbia border to any point in BC. The sole term and condition of the licence relates to the display of a GA vehicle identifier.

Under the legislative scheme of the Act, general passenger vehicles are all commercial passenger vehicles that are not passenger directed vehicles or inter-city buses and these are licensed by the Registrar of Passenger Transportation. Inter-city buses and passenger directed vehicles such as taxis, transportation network services (TNS or ride-hailing) or limousines, are licensed by decision of the Board.

As this is an application for a Special Authorization: Inter-City Bus (ICB) Authorization it is within the exclusive jurisdiction of the Board.

#### **(2) Applicant’s Request & Explanation**

The applicant seeks an ICB licence to operate two vehicles, “trolley” type of buses for a hop-on hop-off service providing a minimum of three trips per day between Penticton and Naramata with predetermined stops at various locations along the Naramata Bench of the Okanagan wine country area. The service would operate from May 1 to October 31.

The applicant provided the following public explanation that was published in the Application Summary:

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*“A pioneer in Okanagan tourism, Grape Savvy Trolley Co. is aimed to be the most convenient and affordable way to experience Penticton and Naramata wine country. A hop-on, hop-off service which gives both locals and tourists alike responsible access to all breweries, cideries, and wineries as well as beaches, attractions, and small businesses in the heart of Penticton and the Naramata Bench. Grape Savvy Trolley Co. will be stopping at several preselected stops, operating on a continuous loop, allowing guests to access as many local attractions as desired during their day. Grape Savvy Trolley Co. aims to be a recognized, safe, and valued mode of transportation and experience in the region, with a focus on supporting the local wine industry as well as all local tourism related small businesses.”*

### **(3) Overview of Applicant Materials**

The applicant submitted application forms and other materials that meet Board application requirements. The applicant’s materials included a business plan and financial statements with details about the planned operation and information about the management team. The applicant also submitted copies of media coverage of the proposed service and 25 letters from individuals and business indicating that they would use the service.

### **(4) Procedural Matters**

Section 17 of the Act allows the Board to conduct written, electronic or oral hearings, or any combination as the Board, in its sole discretion, considers appropriate. This application is being conducted by way of a written hearing.

## **IV. Analysis and Findings**

I will first examine the matter of *urgent public need*. If I find that there is an urgent public need for the service, I will then consider the applicant’s fitness and whether approval of the application will promote sound economic conditions in the passenger transportation business.

### **(1) Is there is an urgent and public need for the service proposed in this application?**

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*Urgent* is relative to the public's need, not the applicants. When the Board is satisfied that an urgent and public need exists for a proposed service, it may proceed with the application and make a decision without publishing notice or considering submissions. Proceeding this way is an exception to the Board's public process for considering applications. When an applicant claims that there is an urgent and public need for its proposed service, the Board expects the applicant to demonstrate that there is a need which is both urgent and public.

In determining whether there is an urgent and public need, the Board may consider such things as:

- Whether other licensees are available to provide the service to the public
- Whether there is a real public demand for the service
- How the urgency came to exist
- Whether any of the urgency was due to the applicants' delay

If the Board accepts the applicant's claim and decides to proceed without publishing the application, it may set an authorization period of less than one year and require an operator to submit a new, full application that would proceed through the Board's regular application process.

As described above, the proposed service is a hop-on hop-off service on the Naramata Bench of the Okanagan wine country. The service would operate two trolleys, each with a capacity of 35 passengers, between Penticton and Naramata three times a day, stopping at various breweries, cideries, wineries as well as beaches, attractions and small businesses. The service would operate between May 1 and October 31. Passenger reservation would be online or by way of an app. Pick up and drop off points include Penticton and Naramata hotels and privately owned businesses. Drivers must have a class 1 or 2 BC Driver's Licence, a clean driving record, successful background and reference checks and pass a drug test. Drivers will be recruited by word of mouth, online advertising or by referrals.

In November 2021, Swaisland contacted the Passenger Transportation Branch (Branch) regarding the addition a new service, Grape Savvy Trolley Co. to the GA licence. In an email dated November 9, 2021, the Branch sent her an updated licence with the additional trade name of "Grape Savvy Trolley Co." and asked that she provide them ICBC insurance

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documents and commercial vehicle inspection reports as soon as possible. Swaisland submitted these documents on March 25, 2022.

Swaisland states that with the updated licence in hand she proceeded to purchase two trolleys, hire staff and invest a significant amount of money in advertising and received significant local media coverage about the start of her business on May 1, 2022.

The applicant states that there are no other services of this kind in the region. By that, the applicant means there are no other trolley style hop-on hop-off services operating between Penticton and Naramata and on the Naramata Bench.

The applicant has also provided supporting documents indicating that there is a public need for this type of service showing that there are persons that would use the service and businesses that would benefit from it. The application includes a news media story about the launch of the service which had some 100 positive comments and indications of support. Additionally, I have reviewed the emails from individuals and wineries that were submitted by the applicant all indicating support for the service and interest in using it. Some have already requested reservations for the service. It appears from the evidence that a significant amount of expectation has been created in the community around the launching of this service and that there is a market for this type of service in the community.

A determination that the application meets the UPN criteria means that a decision may be made without advance publication and thus denying others, including other competitors, the opportunity to be heard. When assessing urgency, the Board considers a number of factors including whether there are other licensees available to provide the service and whether any of the urgency was due to the applicant's delay. In this case, while there are other wine tour operators, there are not "trolley" type of inter-city bus service and based on the evidence, the delay does not appear to be due in any way to the applicant's conduct. The applicant proceeded on the basis that the updated GA licence granted in November 2021, and renewed March 2022 and incurred significant expenses for the launch, including expenses related to advertising and raising public awareness of the business. It appears that upon further review by the Branch that it was determined that the application required a Special Authorization ICB and not a GA, and by then the train, or trolley, had left the station so to speak.

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Based on the evidence noted above, I find that there is urgent and public need for the service proposed in the application. Publication of this application is not required. I am continuing with the consideration of evidence relating to section 28(1) of the Act.

**(2) Is the applicant a fit and proper person to provide its proposed service, and is the applicant capable of providing the service?**

The Board looks at this question in two parts:

- (a) is the applicant a *fit and proper person* to provide the proposed service; and,
- (b) is the applicant *capable* of providing the service?

First, with *fit and proper*, the *Oxford English Dictionary* defines *fit* as including “well adapted or suited to the conditions or circumstances of the case, answering the purpose, proper or appropriate ... possessing the necessary qualifications, properly qualified, competent, deserving.” Also, the dictionary defines *proper* as including “suitable for a specified or implicit purpose or requirement; appropriate to the circumstances or conditions; of the requisite standard or type; apt, fitting; correct, right.” When looking at whether an applicant is fit and proper, the Board does so in the context of the passenger transportation industry in British Columbia. This includes the regulatory system that grants businesses a licence which confers on them both the authorization they need to provide their service and an ongoing obligation to operate in accordance with proper standards of conduct.

Second, capability is generally understood to mean that an applicant has the ability or qualities necessary to skillfully and effectively meet its obligations and achieve the results it says it will achieve. When looking at capability, the Board reflects on whether the applicant has demonstrated that it has the knowledge and understanding of relevant regulatory requirements and policies that govern passenger transportation providers, and whether it is able to comply with those requirements. It also looks at whether the applicant has the background, skills and knowledge to manage its proposed service, and the financing to operate it. The Board expects an applicant to demonstrate its competence and ability by providing sound and realistic information in its business plan and financial statements that is consistent and compatible with the transportation service it proposes.

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The applicant has a National Safety Code Rating of Satisfactory—Unaudited which is acceptable to the Board. Swaisland signed the Disclosure of Unlawful Activity and Bankruptcy forms which raise no concerns for the Board. Swaisland has 20 years' experience in the wine industry and for the last three years she has operated Grape Savvy Wine Tours in the Penticton/Naramata Bench area. The Grape Savvy Wine Tours' Chief Administrative Officer also has decades of experience in various administrative management roles and for the last four years has operated a web design and bookkeeping business.

The financial information indicates that the applicant is financially capable of providing the service approved by the Board.

Based on the information and evidence above, I am satisfied that Savannah Marie SWAISLAND is a fit and proper operator, and has demonstrated that it has the knowledge, understanding and resources to be capable of providing the service.

**(3) Would approving the application promote sound economic conditions in the passenger transportation business in British Columbia?**

In considering sound economic conditions, the Board strives to balance public need for available, accessible and reliable commercial passenger transportation services with overall industry viability and competitiveness. The Board considers the issue from a wide-ranging perspective, which includes a consideration of harm to other industry participants. Generally speaking, it is the Board's view that the overall economic interests of the transportation business weigh more heavily than the economic and financial interests of any particular applicant or submitter.

The Board acknowledges that the tourism industry is picking up as the economy in the province emerges from the pandemic and the Board has found that there is a public need for the proposed service. The proposed service would improve convenience and fill a need for this type of service in the community and for visitors to the community.

However, as the matter is proceeding by way of urgent public need without giving the opportunity to other industry participants to comment on the potential impact of this service, in these circumstances I am going to exercise the Board's discretion ([Operational Policies II.2 UPN](#)) and authorize the service for a period of 10-months at which time the



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applicant will be required to submit a new, full ICBA application that would proceed through the Board's regular application process.

Based on the evidence noted above, I find that approving the application for 10-months under the above noted time limitation, would promote sound economic conditions in the passenger transportation industry in British Columbia.

## **V. Conclusion**

For the reasons above, this application is approved for a 10-month time limitation, and I establish the requirements that follow in appendices to this decision:

- Appendix 1: Notices Respecting This Approval
- Appendix 2: Approved Terms and Conditions of Licence

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**SWAISLAND, Savannah Marie**  
Grape Savvy Wine Tours, Grape Savvy Trolley Co.

**Appendix 1: Terms & Conditions: Issuance of Licence with ICB Authorization**

**1. General:**

A Passenger Transportation Licence must be issued by the Registrar of Passenger Transportation under section 29 of the Passenger Transportation Act.

**2. Direction to the Applicant:**

Unless otherwise ordered by the Passenger Transportation Board, **SWAISLAND, Savannah Marie**, must, no later than June 14, 2022:

- a. post time schedules online and make available to the public online its reservation system to enable advance bookings.
- b. provide copies or links to the Registrar of Passenger Transportation.

**3. Notice to Registrar**

A licence that includes the Inter-City Bus Authorization approved by the Board in this decision may only be issued after the Registrar is satisfied that **SWAISLAND, Savannah Marie** has met requirements set out in 2(a) above.

**This licence expires 10-months from issuance, at which time the licensee must submit a new, complete Inter-City Bus Authorization application through regular Board processes.**

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## SWAISLAND, Savannah Marie

Grape Savvy Wine Tours, Grape Savvy Trolley Co.

### Appendix 2: Approved Terms and Conditions of Licence

<b>Special Authorization INTER-CITY BUS AUTHORIZATION (ICBA) Terms &amp; Conditions</b>	
Definitions	“Board” means the Passenger Transportation Board “Registrar” means the Registrar, Passenger Transportation
<b>A. Legislative Requirements</b>	
Vehicle Identifiers	Each motor vehicle operated under this authorization must display, at the times and in the form and manner required by the Registrar, a vehicle identifier that is: (a) issued to the licensee by the Registrar; or (b) authorized by the Registrar to be issued by the licensee.
<b>B. Services</b>	
Services	Transportation of passengers must be provided: (a) on a scheduled basis; and (b) in accordance with minimum frequencies and other terms and conditions of licence that apply to the routes and route points.
Schedules	The licence holder must publish, in a manner accessible to the general public, a schedule for each route with the time and location of each stop; and must carry in each vehicle a copy of the schedule that the vehicle is following.

Service Exception	<p>Routes may only be operated on a “pre-booked” or “reservation required” basis if the route points are:</p> <ul style="list-style-type: none"> <li>(a) designated as reservation required in the licence;</li> <li>(b) identified as pre-booked or reservation required in all current; published schedule information; and</li> <li>(c) available at all times for pre-booking or reservation on the licensee’s website.</li> </ul> <p>When these conditions are met and when no reservations have been received for pick up or drop off at one or more points on the route by the time service is scheduled to be provided, the licence holder has the option of not providing service to those points that would otherwise be required.</p>
<b>Route 1</b>	
Terminating Point 1:	<b>City of Penticton</b>
Terminating Point 2:	<b>City of Naramata</b>
Route Points	Minimum Frequencies
City of Penticton 402 Warren Avenue E	3 trips per day (each direction)
City of Naramata 3625 1 Street	3 trips per day (each direction)
Seasonal Operation	<p>Each year, service must:</p> <ul style="list-style-type: none"> <li>• start on the first day of May</li> <li>• cease operation on the last day of October</li> </ul>
<b>C. Other Requirements</b>	
Transfer of a licence	<p>This special authorization may not be assigned or transferred except with the approval of the Board pursuant to section 30 of the <i>Passenger Transportation Act</i>.</p>

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Liquor Control and Licensing Act Cannabis Control and Licensing Act	The licensee must at all times ensure passenger directed vehicles under their licence are operated in compliance with the <i>Liquor Control and Licensing Act</i> and the <i>Cannabis Control and Licensing Act</i> .
<b>UPN Time Limitation</b>	<b>This licence expires 10-months from issuance, at which time the licensee must submit a new, complete application through regular Board processes.</b>