



# Land Owner Rights

Forest Service Road Right-of-Way Access



## Introduction

Providing access to Crown land for approved logging operations is an important responsibility of the Ministry of Forests. Legal forest access is provided in accordance with the *Forest Act*, with consideration being given to long-term fibre flow, employment, revenue for the Crown, and sustainable management of the province's forest resource. The ministry seeks to provide access for timber harvesting via the route that best satisfies environmental, regulatory and socio-economic expectations.

In exploring various route alternatives, one of the key factors taken into account is that of land ownership. The objective of the ministry in this regard is to locate Forest Service roads so they do not conflict with private property.

*A Forest Service road (FSR) is a road constructed, modified or maintained by the Ministry of Forests under provisions of the Forest Act or is*

*declared as a Forest Service road. FSRs are used to provide access to provincially managed forests on Crown land.*

While most FSRs do not impact private land, there are situations where a road must cross private property because of geophysical restrictions or road design requirements. When this occurs, the ministry establishes a FSR right-of-way.

*A right-of-way is a strip of land on which a FSR exists or will be constructed to provide access for approved logging operations.*

## Legal Access

The process for securing legal access to Crown forest land through private land right-of-way is guided by the *Forest Act* and other forest management priorities of the Crown. Under the Act, regional or district Forests staff, in consultation with ministry engineering personnel, select the most appropriate route to access Crown timber. There are two main alternatives for gaining legal access:

- 1.Right-of-way agreements for temporary access through means of a contractual agreement with the land owner.
- 2.Dedication of right-of-way, which means that the Ministry of Forests acquires ownership of the private land or a portion thereof. Under section 121 of the *Forest Act*, this option provides permanent access through the Crown's negotiation for ownership of the land.

## Temporary Access:

There are different options under contractual right-of-way agreements, where temporary access is required and the land is retained by the owner. A key aspect of these alternatives is the length of time for which temporary access is required. In situations where the agreement for temporary access is for three years or longer, the agreement must be registered with the Land Title Office. Agreements for less than three years of access do not normally require registration.

An agreement for temporary access of three years or longer is one of two types. According to the specific situation, an agreement may require use of only a portion of the land. In these situations, a survey is required to identify the area to be used and access is limited to the surveyed area. In other situations, the right-of-way agreement allows use of various parts of the entire property and no legal survey is required.

Temporary access for less than three years falls into two categories. One category applies in a situation where there is no existing road and the volume of timber typically is small. In these instances, a legal survey is not required and the ministry arranges the agreement with the property owner. The other situation applies when there is an existing road and a Small Business Forest Enterprise Program (SBFEP) agreement is in place. The small scale private sector operator can arrange the contractual agreement with the land owner, using a ministry contract form.

Another alternative for access involves situations where the land

is owned and retained by a well-established corporation, with the expectation that corporate ownership will be retained for a long time. The ministry can arrange a right-of-way agreement with the owner, with no obligation for a legal survey or registration in the Land Title Office.

Temporary Access Alternatives	
Access for three years or longer	
<div>1A</div> <div>legal survey</div> <div>right-of-way agreement on portion of property</div> <div>register in Land Title Office</div>	<div>1B</div> <div>no legal survey</div> <div>right-of-way agreement over entire property</div> <div>register in Land Title Office</div>
Access for less than three years	
<div>2A (no existing road)</div> <div>no legal survey</div> <div>right-of-way agreement</div> <div>no registration with Land Title Office</div>	<div>2B (existing road)</div> <div>SBFEP agreement</div>
<div>3</div> <div>Corporate Owner (land retained by corporation)</div> <div>no legal survey</div> <div>long-term right of way agreement</div> <div>no registration with Land Title Office</div>	

## Acquisition by Dedication

When the most appropriate route to access Crown timber crosses private land because no other viable alternative exists, the district and regional managers may authorize right-of-way acquisition to facilitate forest access.

The ministry determines the optimal method of securing access through analysis of many factors such as the urgency to gain legal access, length of time for which access is required, volume of timber to be accessed, volume of traffic on the road, secondary industrial users, potential for non-industrial use, funding, costs, legal access alternatives, licensee agreements, justification for the acquisition and the disposition or preference of the land owner. Consideration of these factors may direct ministry officials to request dedication of legal access.

### The Steps:

- After determining that a proposed Forest Service road may impact private property, the ministry notifies the property owner that further

investigations will be undertaken on the location of the proposed access.

- The owner is next provided with the results of an engineering road location survey. The survey confirms the road's location within the property, its proximity to buildings or other improvements and provides some indication of the impact of the road on the value of the property. A legal survey follows, which describes the position and extent of the proposed right-of-way in legal terms and provides a reference plan for land title registration purposes.
- Next, the reference plan is used by a property negotiator with the Ministry of Forests to estimate the impact of the road on the value of the property. This estimate includes the impact of any improvements on the property, such as buildings or roads, that cannot be successfully removed from the right-of-way. This estimate may involve property appraisals or other specialized studies.
- The next step occurs when the property negotiator contacts

the land owner to explain the acquisition process. At that time, the owner is provided with a copy of the reference plan and an estimate of compensation required to offset the effects of right-of-way acquisition on the utility and value of the property. The owner has the opportunity to seek clarification, ask questions of the negotiator, and can request an independent property appraisal.

There are three possible outcomes at this point:

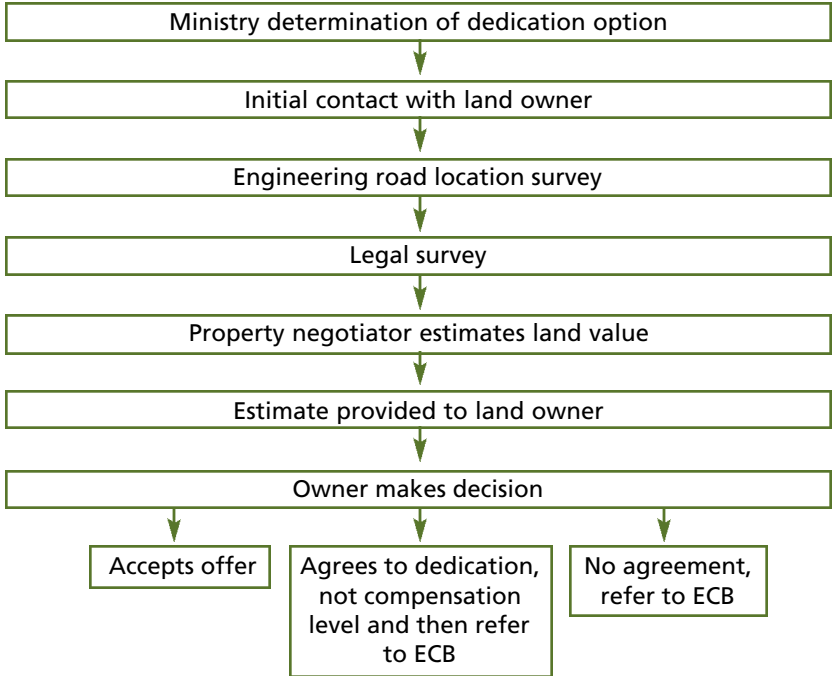
1. Owner agrees to offer: The offer letter and reference plan are signed by the owner and property negotiator. When the plan for the right-of-way is deposited in the appropriate Land Title Office, the owner's title to the land within the right-of-way is removed or extinguished and compensation is paid to the land owner.
2. Owner agrees to dedicate the land, but disputes compensation level: In this instance, the owner may enter into an agreement with the ministry that allows dedication of the right-of-way area, even though there is no agreement on compensation.

At the formal request of the owner, the matter of compensation amount will be determined by the Expropriation Compensation Board.

3. No agreement reached: If no agreement can be reached regarding dedication of the right-of-way and the compensation level, the ministry may expropriate or legally take possession of the land in the right-of-way pursuant to the *Expropriation Act*. Compensation will be determined by the Expropriation Compensation Board upon the formal request of the owner.

*Established in 1988, the Expropriation Compensation Board is an independent agency with authority under the Expropriation Act to determine the amount of compensation for expropriated land and costs to be paid if there is a disagreement on these issues during expropriation. Information about the board and the act can be obtained by calling (250) 387-4321 or visiting the board's website at <http://www.ecb.gov.bc.ca>*

## Dedication





## Frequently Asked Questions

The following questions are those most frequently asked by land owners affected by a right-of-way land compensation and/or expropriation situation.

### **Q** How is the amount of compensation determined?

The value of the land taken is usually determined by estimating the market value of the owner's whole parcel of land before the dedication or taking, and the value of the land remaining after the taking. The difference is usually the amount of compensation offered, but in no case will the compensation be less than the average per acre value of the owner's land times the area of the right-of-way. The market value estimates are determined by

comparing the land owner's entire property with similar properties recently sold on the open market in the area.

Additional compensation may be offered for useable improvements contained within the right-of-way, such as buildings or roads, and/or the loss of utility of the remaining land.

### **Q** How does a land owner know if the offered compensation amount is fair value?

The ministry is committed to paying fair compensation for securing legal access. The ministry's property negotiators are fully accredited land appraisers and may also seek the advice of independent appraisers and other professionals to determine fair compensation. Land owners are encouraged to ask questions and request explanations on any



aspects that are not clear, and may also seek legal advice at their own discretion and expense.

If the land owner feels the ministry has not offered fair compensation, he/she may request that the acquisition proceed according to the requirements of the *Expropriation Act*. The ministry will make an advance payment based upon its compensation estimate, according to the Act's requirements. If the land owner is still unsatisfied, he/she may request a review of the matter by the Expropriation Compensation Board. If the board determines that a higher compensation is warranted, the ministry will be ordered to pay the additional amount specified. The board may also order that a part or all of the owner's costs associated with the appeal be paid by the ministry. Thus, the ministry undertakes to make a reasonable and equitable offer at the outset.

### **Will the owner be compensated for any timber in the right-of-way?**

This depends upon whether or not the timber was excluded or excepted from the original grant of land from the Crown. If it was

not excluded, the value of the merchantable timber may be included on the land appraisal.

### **Can the land owner harvest timber in the right-of-way? Are there conditions that apply to this logging?**

If the timber is private, the owner can harvest it until an agreement on compensation is reached. However, removing timber will reduce the amount of the offer. If the timber is to be removed by the land owner after the offer is accepted, the owner or his agent will have to apply to the appropriate Ministry of Forests district office for a timber mark and pay stumpage fees.

### **How much land is usually required for a right-of-way?**

A 20 metre wide right-of-way is considered to be the minimum requirement for proper road maintenance (i.e. cleaning out ditches, loose rock and slide material), future widening (possibly to public road standards) and the possible inclusion of future utilities (i.e. telephone or power lines) within the right-of-way.

## **Q Is a Forest Service road the same as a public road?**

A Forest Service road constructed or maintained under Section 66 of the *Forest Practices Code of British Columbia Act*, the *Forest Act*, or a former act, is not a public highway. Such a road may be open for public use, depending upon safety and environmental considerations determined by the ministry's district manager for the area. It is always open to residents requiring access to their property.

## **Q Is a permit needed to use the road?**

A permit is not required unless the road will be used for industrial purposes such as hauling logs, fuel, etc.

## **Q Who is responsible for road maintenance?**

Road maintenance is the responsibility of the industrial user(s) of the road. If the road is not being used for industrial purposes, it will be maintained to environmental and safety standards by the ministry under the Forest Practices Code regulations. This maintenance does not necessarily include snow ploughing.

## **Q Can an access road be built to join with the Forest Service road in the right-of-way?**

Yes – as long as a safe location can be found. It is necessary to secure the written consent of the ministry's district manager and engineering officer. Arrangements to connect to a Forest Service road can be made in the ministry's





original offer to purchase the right-of-way.

### **Q Can the property be subdivided and use the Forest Service road for access?**

Yes, on the conditions that:

- the subdivision meets all the criteria normally required by the provincial or other approving officer;
- the Forest Service road, from its junction with the public road system through to the subdivision, meets the requirements of *Land Title Act*, regulation 336/79, section 15, which requires a 7.5-metre or 9.0-metre wide running surface, and is certified as such by the ministry's regional engineering officer; and
- a safe location can be found to junction with the Forest Service road.

The Ministry of Forests regional engineering officer can only certify that the road meets the requirements of the *Land Title Act*, Regulation 334/79 (Highways Access Alternatives Regulation). For more information, property owners are encouraged to contact the district development technician of the Ministry of Transportation and Highways or municipal approving officer.

### **Q Can the land owner be held liable if there is an accident on a Forest Service road within the boundaries of the private land?**

The land owner is not legally responsible unless he or she is involved in or causes an accident. After the right-of-way is established as a Forest Service road and becomes the property of the Crown, certain sections of the *Motor Vehicle Act* come into effect.

**For more information, contact:**

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