

1.3 Road Establishment

1.3.1 Road Status

Preparing Road Status Requests

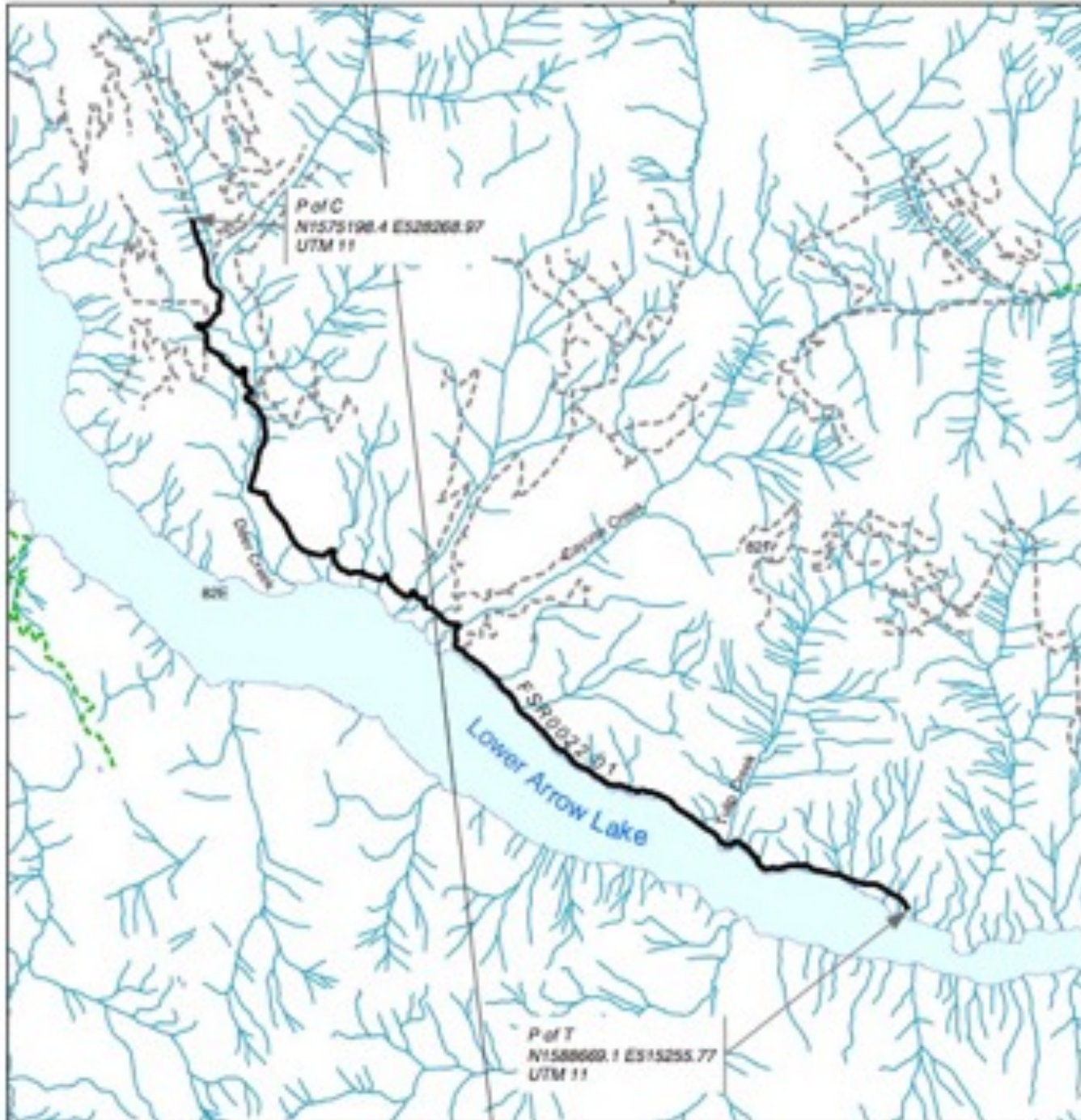
When a new FSR or road permit road is required, or when an existing non-status road is to be established as an FSR or road permit road, some basic information is needed to move the decision forward to implementation. To identify what interests or rights that may exist and to establish a registered interest over the land, carry out a road status (adjudication report). The status or clearance width for both FSRs and road permit roads **must** be 75 m (37.5 m each side of the proposed centreline of the road), which is also the width of the FSR right-of-way and the width of the Road Permit. When preparing a status request, ensure that:

- the proposed or actual road has been plotted on the area reference map and an Exhibit "A" sketch produced;
- a status of the route shown on the Exhibit "A" sketch has been performed and all file or other reference numbers recorded;
- each file or other reference number has been investigated to determine if any tenures have been issued;
- copies of all tenure documents have been obtained and examined to determine if a conflict between the tenure rights and the proposed road location exists; and
- negotiations with tenure holders have been conducted and the agreement of the tenure holder obtained before road use or construction begins.

Figure 1-1 Exhibit "A" sketch

Province of British Columbia Land District: Kootenay		Ministry of Forests		 Exhibit 'A' Date:	
Forest Region: Southern Interior Forest District: Arrow Boundary		Map of: Forest Service Road 0022 Section 01 (Dear Creek) Shown As: 		Drawn by: LKadar Revised by Date: Jan. 13, 2006	
U.T.M. Zone 11	NAD 83	ORCS#:	ODM ID:	Inventory Region:	Compartment Number:
Management Unit Type: U Number: 01		Timber Supply Area: Arrow		Pulpwood Agreement:	Compartment Letter:
				Casasola East: X West:	BCOS Map-sheet: 082090, 082F001, 041 Scale: 1:100,000 Area: 23 Kilometres

Tenure width is 75 metres



Road Status & Resolving Road Status Conflicts

Road establishment involves identifying appropriate road location, “clearing” such road routes, and issuing appropriate authorization to physically construct the road. Appropriate status and clearance procedures are key to avoiding conflicts, including possible legal action with other authorized tenure holders.

Expand All | Collapse All

Status Procedure

The status process involves plotting the selected road route and file reference number on a digitized reference map. This updates the reference map so that other potential tenure holders are aware of the **prior rights** of the applicant. It also provides a report of existing tenures on or within 37.5 m each side of the centreline of the road.

Clearance Procedure

The adjudication report is actually a report of file numbers and legal descriptions related to tenure and other land use activities assigned by various resource agencies. In order to complete the clearance process, research all file numbers and legal descriptions in the land information systems [e.g., Tantalus (Gator)] to determine whether any conflicts exist and, if so, their nature. Determine whether a tenure has been issued or is pending, and whether the tenure area and tenure rights conflict with those about to be granted to the road applicant. Where conflicts do exist, resolve them before the road is constructed and used. Conflicts may arise with SUPs, mineral claims, Indian Reserves, leaseholds and private property.

Resolving Conflicts with Mineral Claims

Where pits and quarries are identified for the purposes of Forest Service Road (FSR) building and maintenance, establish a Forest Act map notation or Land Act reserve (plus a mineral staking reserve in the case of rock quarries, or placer staking reserve in the case of gravel pits located in placer mining areas) to prevent future tenures being issued under the Mineral Tenures Act (Sec. 22). The first step is to consult the regional Gold Commissioners and Coal Administrators to check for recently issued mineral tenures or to request a mineral staking reserve.

If proposed operations are to take place adjacent to a mineral, placer, or other tenure – and so possibly interfere with the tenure holder’s rights – consult the tenure holder before operations take place.

- If the proposed operating area is in conflict with a mineral, placer, or other tenure and operations will still proceed, seek consent from the tenure holder to surrender rights to the proposed operating area. Document such consent (for amending a mineral or placer claim, confirmed with a quit claim from the mineral claim holder). Ensure that the tenure area is amended before operations begin. Protect operations in such amended areas by a staking reserve, as above.
- If consent cannot be obtained, relocate the gravel pit or quarry. If it is not possible to do this and the consent of the tenure holder cannot be obtained, consult with FLNR Forest Land Acquisitions for advice on arbitration procedures, as provided for in the *Mineral Tenure Act* or other relevant Acts.

1.3.2 Legal Access for FSRs

Through the planning process, decide whether the access requirements related to the establishment of an FSR are of a temporary or permanent nature (long term).

When acquiring legal access, ensure that FLNR Forest Land Acquisitions negotiates appropriate compensation for the land and improvements, which is based on fair market value.

To initiate the acquisition, complete a Right-of-Way Acquisition Request (FS 959A) form, and submit it using the Shana forms (or by pdf) located on the ministry's forms directory. Time is of the essence when requesting a right-of-way, as negotiating compensation and providing the legal survey can be time consuming.

Where access is required for a limited period of time, consider the use of a temporary statutory right-of-way agreement (Guidelines for Legal Forest Access). Secure permanent or long-term access with a dedicated right-of-way involving a legal survey and purchase of right-of-way from the landowner.

Obtain a junction permit from the Ministry of Transportation and Infrastructure where an FSR joins a public highway. Exercise care in choosing the best junction site possible – ideally, a T junction with ample sight distance – since relocating highway junctions can be difficult and expensive, particularly where private property is involved.

1.3.3 Right-of-Way Acquisition Compensation

The framework of the Ministry's compensation policy is based in the existing legislation. The *Forest Act* and the *Ministry of Forests and Range Act (Section 5)* provide the legislative authority to the Minister of Forests, Lands and Natural Resource Operations to acquire land for forestry purposes. The *Expropriation Act* and the *Financial Administration Act* both refer to the requirement of government to deal in terms of fair market value when acquiring land and other assets.

Ultimately, the fair market value for land, combined with a value determined for depreciated road improvements, and certain damages represents the compensation due to a property owner. This value may be capitalized to represent an annual fee for a short-term agreement or paid in full for long-term or permanent acquisitions. Road use fees or charges based solely on the volume of timber or the amount of use are not reflective of fair market compensation and do not serve the equitable interests of the property owner and the Province. However, volume and use charges may be applied to maintenance costs, provided they reflect the actual costs to maintain the road used.

Estimating the Value of Depreciated Road Improvements (DRIV)

Direct all matters regarding the acquisition of land and the application of the compensation policy to the Senior Land Acquisition Officer, FLNR Forest Land Acquisitions, Forest Tenures Branch (FTB). Acting on the advice and recommendations of Ministry forest land acquisitions staff, the Director, FTB, who is the only delegated signing authority for the Minister, reviews all land agreements to determine that the principles of fair market value have been applied, and signs off on the agreement.

It is recommended to involve and consult with ministry Forest Lands Acquisitions staff early in the process when considering entering into an agreement for the purchase [dedication] or rental [statutory right-of-way agreement] of land to become a forest service road. Forest Lands Acquisitions staff will assist in the determination of appropriate compensation.

Ministry engineering staff will be required to inspect or have inspected by individuals knowledgeable in road construction and costing, the current road condition and provide an estimate for the value of the road and associated improvements in its present condition. This value is referred to as the depreciated road improvement value [DRIV]. Forest Land Acquisition staff are not specialists in road cost estimating. A DRIV will need to be provided by ministry engineering staff to the Forest Land Acquisition Project Manager working on

each forest service road project. The DRIV will be used in the compensation negotiations and if necessary, where a mutually satisfactory agreement cannot be reached, in expropriation. Any DRIV calculation should be documented and supported by background preparation guidelines/policy/direction for provincial consistency. In the case of expropriation, the compensation estimate (DRIV) and methodology is required to be shared with the land owner per section 20 (1)(e) of the *Expropriation Compensation Act*.

There are a number of ways that can be used to estimate the DRIV. One method is to estimate what the road would have cost to construct in the first place and subtracting the cost of repairs to bring it back to its original condition.

1. Inspect the road
2. Determine how much it would cost to construct the road today. Possible approaches to estimating value of the road and improvements include:
 - Detailed engineering cost estimate, Information from the appropriate appraisal manual
 - Use of comparable, recent road construction contract results
 - Application of local knowledge
 - Current value per unit rate
3. Determine the costs of any road failures, required upgrades and repairs to bring the existing improvements up to a new road standard [culverts, structures, ditching, surfacing, grading, brushing, etc. (some wooden bridges might have a negative value (require works to remove or other measures to make safe)].
4. Reduce the cost of [1] by the cost of [3] and you have the DRIV.

Assistance in developing road construction cost estimates can be obtained through the Engineering Branch, Engineering Group for the respective region.

Acquiring Right-of-Way for Railway Crossings

Crossing a railway right-of-way is costly and requires ongoing maintenance obligations. The type of crossing and required safety features are dictated by the railway authority. In cases where railway crossings cannot be avoided, obtain tentative approval in principle from local railway authorities and prepare a plan. Key steps in this process are:

- submit a formal application for approval by railway and federal or provincial transport agencies, including the plan and the following information:
 - whether the proposed road right-of-way is junior or senior to trackage;
 - who will pay for construction and crossing;
 - what the projected daily traffic count will be for all vehicles (public and industrial);
 - whether school buses will be using the crossing; and
- allow eight months from the time of application to the time the crossing permit receives final approval.

Legal Access for Utility Right-of-Way Crossings

Obtain interim approvals for the location of the crossing from local utility (power, oil/gas, and communications) field offices. Special considerations are involved if the utility is situated within private property.

Legal Access for Road Permit Roads

Where the status/clearance process has identified conflicts with a proposed road permit route, licensees are expected to resolve such conflicts themselves. If the permittee is unfamiliar with the steps necessary to resolve such conflicts, assistance can be obtained from the private sector. FLNR Forest Land Acquisitions can provide a list of firms and individuals providing this service.

Legal Access for Cutting Permit Roads

Since proposed harvest areas are statted and cleared before Cutting Permits are issued, a separate status and clearance procedure is not necessary for roads constructed within these areas. Because the permittee needs the flexibility to locate roads as best suits harvest operations, and as these roads are usually of a temporary low-order nature, their location is normally not specified in the Cutting Permit document itself.

Legal Access for Special Use Permit Roads

Under certain circumstances, roads within a provincial forest or wilderness area may be authorized by SUP, in keeping with the Provincial Forest Use Regulation [Sec. 7 (1)(a)].

These types of roads are normally issued to holders of rights authorized by the Coal Act, Geothermal Resources Act, or Mineral Tenure Act and may also be issued to Clean Energy Projects (CEP) proponents if they choose to apply for a road authorization under a SUP rather than under a Land Act Licence of Occupation, but in rare cases may be issued for other purposes.

SUP roads are normally mapped and statted in a process similar to that described for FSRs or road permit roads (described above). Like Road Permits, Special Use Permits authorize road construction and use only on unalienated Crown land. If tenure conflicts are identified during the status process, Special Use Permit holders are expected to resolve such conflicts before road construction and use. If the Special Use Permit holder is unfamiliar with the resolution process, this service is available from the private sector. FLNR Forest Land Acquisitions should be consulted for further information on private sector firms or individuals providing this service.

Road Junctions

Ensure that a TSM/District Manager authorizes any connection to an FSR using a Road Junction Requirements Form Letter (FS 1209)(DOC).

Note: A Road Permit, Cutting Permit and Timber Sale Licence incorporate an authorization for a junction of the road permit road to the FSR.

Before approving an application to connect, ensure that the location, sight distances and drainage are acceptable (see Road Design Criteria). Ensure that requests from landowners for variance from the established alignment conditions are accompanied by a Professional Engineer's recommendation.