

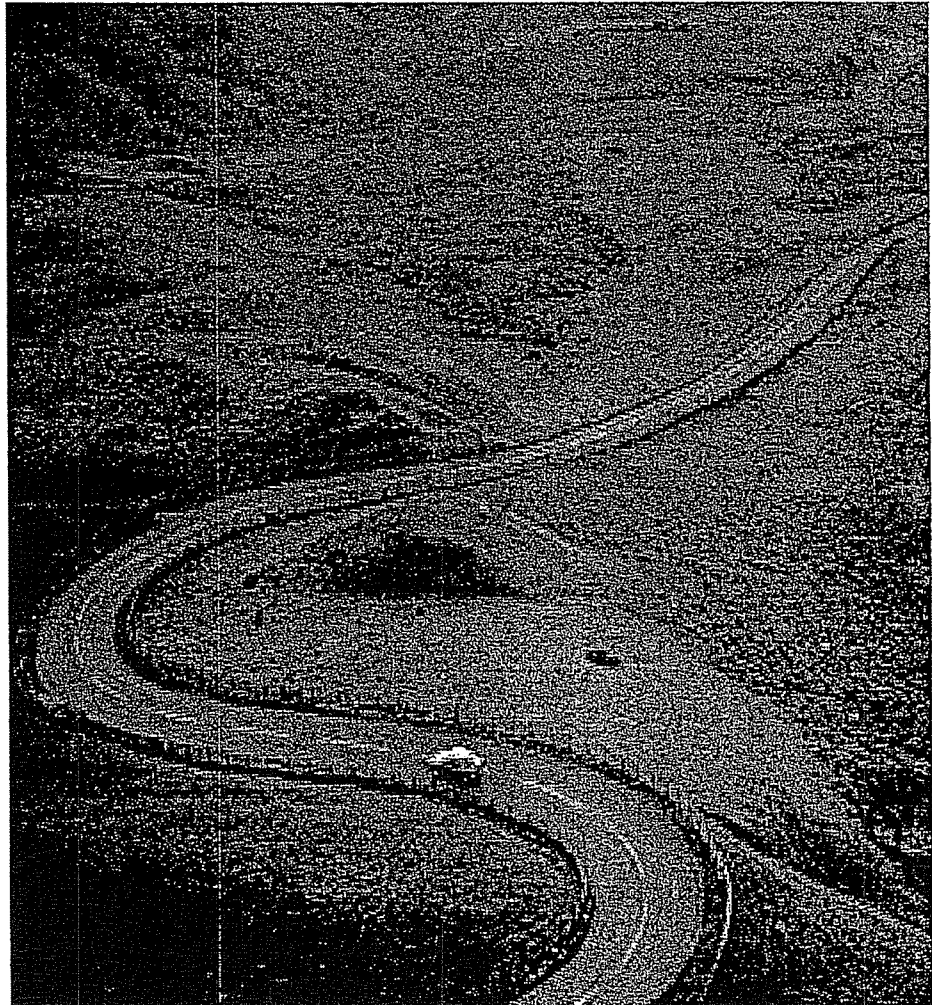
THE LONG AND TRAVELLED ROAD

BC Expropriation Association -
2010 Fall Seminar
October 29th & 30th, 2010

*Deborah Miller
Senior Manager Expropriation Services
Partnerships Branch
Ministry of Transportation and Infrastructure*

*Ann Wilson and Fran Crowhurst
Legal Counsel
Legal Services Branch
Ministry of Attorney General*

*Tony Capuccinello
Assistant City Solicitor
Legal Services Division
City of Surrey*



OVERVIEW

1. What is a highway?
2. Gazette Notice
3. Section 107, *Land Title Act*
4. Public roads under the *Land Act*
5. Section 42, *Transportation Act*
6. “Lot X”

WHAT IS A HIGHWAY?

❖ *Transportation Act*, section 1:

"highway" means a public street, road, trail, lane, bridge, trestle, tunnel, ferry landing, ferry approach, any other public way or any other land or improvement that becomes or has become a highway by any of the following:

- (a) deposit of a subdivision, reference or explanatory plan in a land title office under section 107 of the *Land Title Act*;
- (b) a public expenditure to which section 42 applies;
- (c) a common law dedication made by the government or any other person;
- (d) declaration, by notice in the Gazette, made before December 24, 1987;
- (e) in the case of a road, colouring, outlining or designating the road on a record in such a way that section 13 or 57 of the *Land Act* applies to that road;
- (f) an order under section 56 (2) of this Act;
- (g) any other prescribed means;

TITLE AND JURISDICTION

- ❖ There is no indefeasible title raised for highway
section 99(1)(f) *Land Title Act*
- ❖ Under the *Transportation Act*, the Province is responsible for:
 1. Highways outside municipalities
 2. Highways within municipalities which are designated as “arterial” highways

WHY DOES IT MATTER THAT ROAD IS CREATED PROPERLY?

- ❖ Land title records up to date
- ❖ The public has a common law right of passage
- ❖ Public authorities have a common law obligation to maintain public highway
- ❖ Exemption from *Builders Lien Act* – section 1.1
- ❖ Exemption from remediation obligations
Environmental Management Act – section 46
- ❖ Licensing and insurance requirements under
Motor Vehicle Act

TORRENS SYSTEM OF LAND REGISTRATION

- ❖ 1870: Province adopted registration system
- ❖ Four principles of land registration

1. Indefeasibility
2. Registration
3. Abolition of Notice
4. Assurance

*“A title that is indefeasible cannot be defeated, revoked or made void.
The person who has title has a right, good against the world to the
land”*

Exception to the principle of indefeasibility:
Section 23, *Land Title Act*: parts (e) & (f) specifically apply to highway

GAZETTE NOTICE

- ❖ Published prior to December 24, 1987 under section 6, *Highway Act*
- ❖ Defined by either:
 - SRW/Reference Plan
 - Highway Plan (H-Plan/R-Plan)
 - Metes and Bounds description
- ❖ Legally establishes a highway
 - ❖ No statutory requirement for the Province to file the Gazette Notice and up date the LTO records

LEGAL NOTATION

RE: CLAUSES (E) AND (F) OF SECTION 23(1) LAND TITLE ACT

- ❖ Notification that part/all of the title is affected by a highway
- ❖ Highway has **NOT** been excluded from the legal description

(section 23, Land Title Act)

FORM 12 PROCESS

- ❖ The Province deposits Form 12 pursuant to section 115, *Land Title Act*
- ❖ Supported by SRW or H-Plan/R-Plan
- ❖ LTO updates the title defining the highway as an exception to the legal description
- ❖ LTO deletes the legal notation
- ❖ LTO notifies the registered owner

NO LEGAL NOTATION ON TITLE

- ❖ **The owner's title does not demonstrate the existence of the highway**
 - Owner is unaware of the Gazette Notice and subsequent highway dedication
 - Province follows the Form 12 process
 - Registered owner is notified by LTO
 - Risk managed by the conveyancing community

Deposited in the Land Registry
Office at Nelson, B.C. this 23rd
day of February, 1955.

Office at Nelson, B.C. this 23rd day of February, 1955.

A. H. [Signature]
Deputy Registrar.

30-FOOT ROAD REGISTERED ON PLAN 785-B

298 297 296

PLAN 785-B

PLAN 785-B

PLAN 785-B

NELSON AND FORT

PLAN

N 51° 57'

NOTICE is given pursuant to section 8 of the Highway Act, that the following described road advance is hereby established as a public highway, namely:—

All those portions of Blocks 296 to 307, inclusive, in 783a; Block 311 and 312, Plan 783b; Lots 1 and 3, Plan 742j; and Lots 1, 3, and 4, Plan

~~Trail-Salis-Nelson Highway~~

NOTICE: The following information is being furnished to you for your information only. It is not intended to be used for any other purpose.

All those portions of Blocks 286 to 307, inclusive, Plan 785A; Blocks 311 and 312, Plan 785B; Lots 1 and 3, Plan 3421; and Lots 1, 3, and 4, Plan 1933, all of District Lot 1236, Kootenay District, as shown outlined in red on plan prepared by I. O. S. Hurd, R.C.L.S., and deposited in the Land Registry Office at Nelson, B.C., and there numbered "Plan No. R 123-".

A copy of the said Registered Plan No. R 159 is deposited in the Provincial Department of Public Works, Victoria, B.C., under "Road Surveys 725-20."

P. A. GAGLIARDI

Director of Public Works

Department of Public Works.

Permanent Employees

Walter, E.C. April 1st, 1953.

FILED
F.W. Feb 28 1960

4012-0014

[illegible]

Folio:

TITLE - KR88305

NELSON

LAND TITLE OFFICE

TITLE NO: KR88305
FROM TITLE NO: XF27084

APPLICATION FOR REGISTRATION RECEIVED ON: 24 SEPTEMBER, 2001
ENTERED: 25 SEPTEMBER, 2001
TITLE CANCELLED: 18 JULY, 2008

REGISTERED OWNER IN FEE SIMPLE:

JENNIE CRAWFORD, RETIRED
PO BOX 128
FRUITVALE, BC
VOG 1L0
CRISTIE TIFFANY LAVERY, BANKER
SS #1
SITE 1 COMP 6
FRUITVALE, BC
VOG 1L0
ALONA JEAN CRAWFORD, BUSINESSWOMAN
11852 OXNARD STREET
NORT HOLLYWOOD, CALIFORNIA
91606
USA
AS JOINT TENANTS

TAXATION AUTHORITY:

NELSON TRAIL ASSESSMENT AREA
BEAVER FALLS WATERWORKS DISTRICT

DESCRIPTION OF LAND:

PARCEL IDENTIFIER: 016-032-543
LOT 297 DISTRICT LOT 1236 KOOTENAY DISTRICT PLAN 7858

LEGAL NOTATIONS: NONE

NO LEGAL NOTATION ON TITLE

CHARGES, LIENS AND INTERESTS:

NATURE OF CHARGE
CHARGE NUMBER DATE TIME

RESERVATION

V18721
REGISTERED OWNER OF CHARGE:
THE NELSON & FORT SHEPPARD RAILWAY COMPANY
V18721
REMARKS: SEE DD 3839 INTER ALIA

"CAUTION - CHARGES MAY NOT APPEAR IN ORDER OF PRIORITY. SEE SECTION 28, L.T.A."

DUPLICATE INDEFEASIBLE TITLE: NONE OUTSTANDING

TRANSFERS:

2008-07-18 NO TITLE
ALL.....LB218814

*** CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN ***

30 APR 2010 11 33

LB382611

LB382613

LAND TITLE ACT
Form 12
[SECTION 115(2)]

Filer: Misc
Hwy: Trail-Fruitvale Hwy

CERTIFICATE AS TO HIGHWAY IN STATUTORY RIGHT OF WAY PLAN

To: Registrar
Kamloops (Nelson) Land Title Office, British Columbia

I CERTIFY that the land (Or part described in this certificate) in Highway Right of Way Plan No. R139 and containing 0.51 acres, more or less, has been established as a highway and the title vested in the Crown under the Highway Act by gazette notice dated April 16, 1953 (if this certificate relates to part only of the land in the Highway Right of Way Plan, describe the part to which this certificate applies).

That part of
016-032-543 Lot 297, DL 1236, Kootenay District, Plan 7858 shown on Plan R139

(Supercedes)
(Delete words in brackets if not applicable)

Dated at Kamloops, British Columbia, this 16 day of April, 2010.


for DEPUTY MINISTER OF TRANSPORTATION
and INFRASTRUCTURE
Kevin Richter

NOTE:

Two extra copies of this form should be sent to the registrar, one of which the registrar will return after noting the action taken;
i.e.

- (a) Filed under No. _____
(b) Noted on Register (s.115(3)): Yes _____ No _____
(c) Notice sent to the registered owner in fee simple (s. 115(4)): Yes _____ No _____

Dated _____, 2010

REGISTRAR

PR/mh

Folio:

TITLE - LB218814

NELSON

LAND TITLE OFFICE

TITLE NO: LB218814
FROM TITLE NO: KR88305

APPLICATION FOR REGISTRATION RECEIVED ON: 10 JULY, 2008
ENTERED: 18 JULY, 2008
TITLE CANCELLED: 05 MAY, 2010

REGISTERED OWNER IN FEE SIMPLE:
DANIEL PETER ZARCHIKOFF, CHEMIST
SANJA ZARCHIKOFF, HOMEMAKER
1438 HIGHWAY 3B
FRUITVALE, BC
V0G 1L0
AS JOINT TENANTS

TAXATION AUTHORITY:
NELSON TRAIL ASSESSMENT AREA
BEAVER FALLS WATERWORKS DISTRICT

DESCRIPTION OF LAND:
PARCEL IDENTIFIER: 016-032-543
LOT 297 DISTRICT LOT 1236 KOOTENAY DISTRICT PLAN 7858

LEGAL NOTATIONS:

NOTICE OF ESTABLISHMENT AS HIGHWAY AND VESTING IN CROWN RECEIVED
2010-04-30, OF LANDS SPECIFIED IN THE NOTICE, SEE LB382611 AND
PLAN R139

CHARGES, LIENS AND INTERESTS:

NATURE OF CHARGE
CHARGE NUMBER DATE TIME

RESERVATION

V18721
REGISTERED OWNER OF CHARGE:
THE NELSON & FORT SHEPPARD RAILWAY COMPANY
V18721
REMARKS: SEE DD 3839 INTER ALIA

MORTGAGE

LB218815 2008-07-10 13:18
REGISTERED OWNER OF CHARGE:
BANK OF MONTREAL
LB218815

"CAUTION - CHARGES MAY NOT APPEAR IN ORDER OF PRIORITY. SEE SECTION 28, L.T.A."

DUPLICATE INDEFEASIBLE TITLE: NONE OUTSTANDING

TRANSFERS:

2010-04-30 NO TITLE
PART NOW ROAD PLAN R139.....LB382612
2010-05-05 NO TITLE
REM TO.....LB382613

*** CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN ***

LEGAL NOTATION
MENTIONS TITLE IS
AFFECTED BY
HIGHWAY, BUT
HIGHWAY HAS NOT
BEEN EXCLUDED
FROM LEGAL
DESCRIPTION

Folio: TITLE - LB382613

NELSON LAND TITLE OFFICE TITLE NO: LB382613
FROM TITLE NO: LB218814

APPLICATION FOR REGISTRATION RECEIVED ON: 30 APRIL, 2010
ENTERED: 05 MAY, 2010

REGISTERED OWNER IN FEE SIMPLE:
DANIEL PETER ZARCHIKOFF, CHEMIST
SANJA ZARCHIKOFF, HOMEMAKER
1438 HIGHWAY 3B
FRUITVALE, BC
VOG ILO
AS JOINT TENANTS

TAXATION AUTHORITY:
NELSON TRAIL ASSESSMENT AREA
BEAVER FALLS WATERWORKS DISTRICT

DESCRIPTION OF LAND:
PARCEL IDENTIFIER: 016-032-543
LOT 297 DISTRICT LOT 1236 KOOTENAY DISTRICT PLAN 785B EXCEPT PLAN R139

LEGAL NOTATIONS: NONE

CHARGES, LIENS AND INTERESTS:
NATURE OF CHARGE
CHARGE NUMBER DATE TIME

RESERVATION
V18721
REGISTERED OWNER OF CHARGE:
THE NELSON & FORT SHEPPARD RAILWAY COMPANY
V18721
REMARKS: SEE DD 3839 INTER ALIA

MORTGAGE
LB218815 2008-07-10 13:18
REGISTERED OWNER OF CHARGE:
BANK OF MONTREAL
LB218815

"CAUTION - CHARGES MAY NOT APPEAR IN ORDER OF PRIORITY. SEE SECTION 28, L.T.A."

DUPLICATE INDEFEASIBLE TITLE: NONE OUTSTANDING

TRANSFERS: NONE

HIGHWAY NOW
DEFINED AS AN
EXCEPTION TO
THE LEGAL
DESCRIPTION
ON TITLE

1911 GAZETTE

- ❖ Does not establish highway
- ❖ Defines width for existing highway established prior to 1911
- ❖ Limited case law

Gazette reads as:

NOTICE is hereby given that all Public Highways in unorganized Districts and all Main Trunk Roads in organized Districts are 66 feet wide, and have a width of 33 feet on each side of the mean straight centre line of the travelled road.

SECTION 107, LAND TITLE ACT

- ❖ After December 24th, 1987
- ❖ Deposit of reference, explanatory or subdivision plan is required to dedicate highway
- ❖ All registered owners including charge holders (affected by the dedication) must execute the plan
- ❖ The title to the highway is cancelled

PUBLIC ROADS UNDER THE LAND ACT

- ❖ *Transportation Act*, section 1:

"highway" means a public... road... that becomes or has become a highway by any of the following:

...

(e) in the case of a road, colouring, outlining or designating the road on a record in such a way that section 13 or 57 of the *Land Act* applies to that road;

- ❖ *Land Act*, section 1:

"public road" means a portion of Crown land designated or indicated as a road on a plan of survey made under this Act, whether or not a road is constructed, and includes a road allowance or walkway allowance established under section 79.

DISPOSING OF CROWN LAND

- ❖ *Land Act*, section 1:

- "Crown grant" means an instrument in writing conveying Crown land in fee simple

- ❖ The Province uses a specific form of Crown grant (subject to exceptions and reservations set out in section 50, *Land Act*)
- ❖ Freehold Transfers are not utilized by the Province to convey the fee simple interest in Crown land
- ❖ Crown grant not used to "transfer" Crown land to the federal government
- ❖ The Province also disposes of interests, less than fee simple, by other "dispositions" made under the *Land Act*

HOW ARE PUBLIC ROADS DEALT WITH UNDER THE *LAND ACT*

13 (1) In a disposition of Crown land under this or a former Act in which a portion of the land is designated as a road in the instrument evidencing the disposition or in a map or plan attached to it, unless there is express provision in the instrument to the contrary, the road is deemed to be,

(a) in the case of a disposition made before January 3, 1977, 20.1168 m in width, being 10.0584 m on each side of the centre line of the travelled portion of the road, and

(b) in the case of a disposition made after January 2, 1977, 20 m in width, being 10 m on each side of the centre line of the travelled portion of the road.

(2) No part of the road referred to in subsection (1) passes to any person under the instrument.

57 If Crown land is disposed of by Crown grant and the map or plan attached to the grant shows a road coloured, outlined or designated in a colour other than red, no part of the road passes to the grantee, and, unless there is express provision in the grant to the contrary, the road is deemed to be, for a grant issued

(a) before January 3, 1977, 20.1168 m in width, and

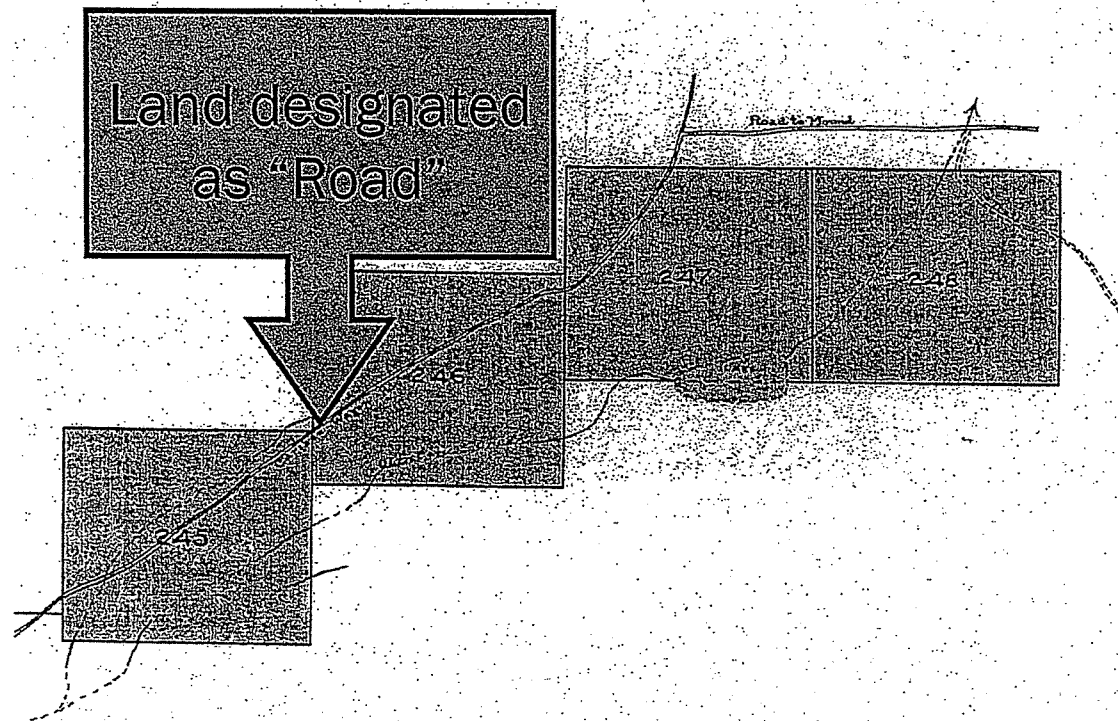
(b) after January 2, 1977, 20 m in width.

PUBLIC ROADS (SECTION 13) - CROWN GRANT

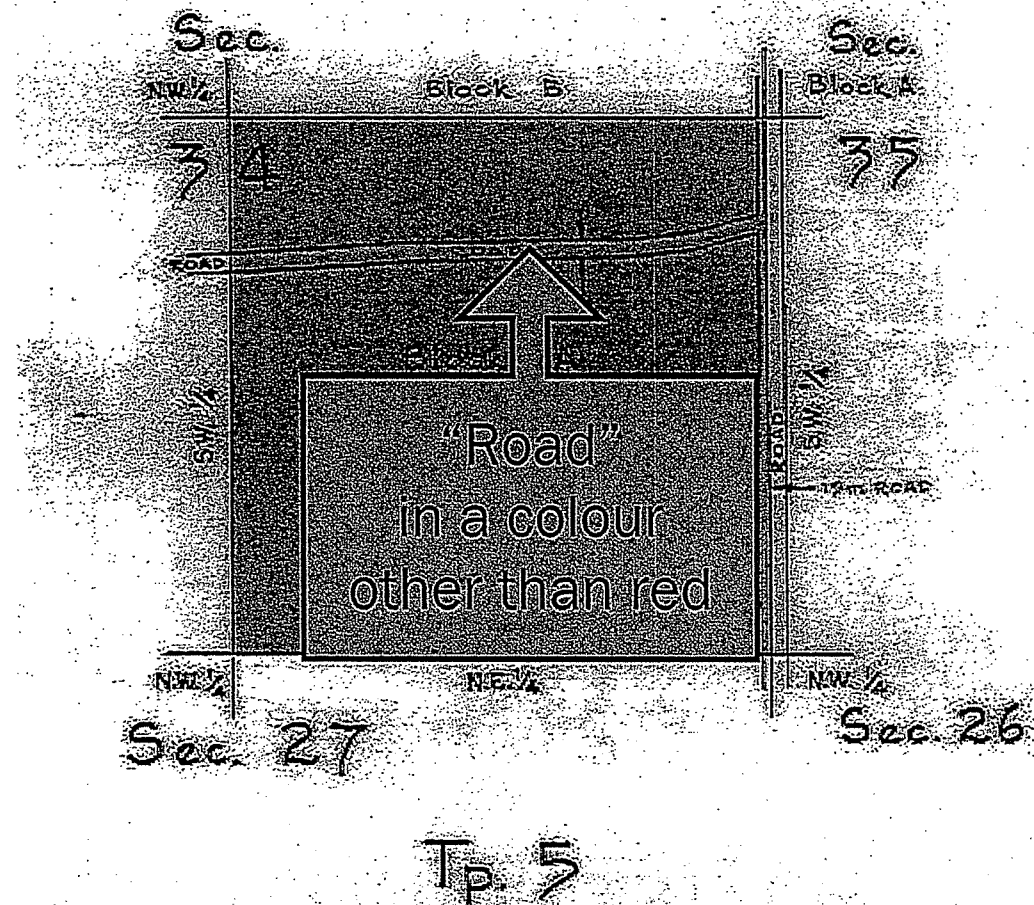
Lillooet District.

John Pollard.
Scale 20 chains = 1 inch.

C. G. 4324
7E



PUBLIC ROADS (SECTION 57) – CROWN GRANT



UNSURVEYED PUBLIC ROADS (SECTION 50)

- ❖ If road not shown on official plan or plan attached to the Crown grant, note section 50(1)(c) of the *Land Act*:

50 (1) A disposition of Crown land under this or another Act ...
 (c) conveys no right, interest or estate to highways, within the meaning of the *Transportation Act*, existing over or through the land at the date of the disposition.
- ❖ All Crown grants are subject to section 50 exceptions and reservations (one right reserved to the Province is the right to resume up to 1/20 of the granted land for a highway)

CONFLICT BETWEEN SURVEY AND LEGAL DESCRIPTION

❖ *LAND SURVEY ACT*

The official plan of survey of Crown land governs in all cases where the survey conflicts with the description of the land set out in the Crown grant or other instrument



SECTION 42, *TRANSPORTATION ACT* (FORMERLY KNOWN AS SECTION 4 OR 6 ROAD)

Travelled roads becoming highways

42 (1) Subject to subsection (2), if public money is spent on a travelled road that is not a highway, the travelled road is deemed and declared to be a highway.

(2) Subsection (1) does not apply to any road or class of roads, or to any expenditure or class of expenditures, that is prescribed by the regulations.

- ❖ Versions of provision have been in effect since 1905
(*Highways Establishment and Protection Act, 1905*)

THEMES

- ❖ Travelled by the public
- ❖ Expenditure of public funds
- ❖ Owner's intention to dedicate
- ❖ Once a road always a road
- ❖ Principles apply to both public and private land
- ❖ Width of the road is the road prism and road shoulders

TRAVELLED BY THE PUBLIC - EXAMPLES

- ❖ *Campbell v. Thomson* (BCCA 1990) – minimal travel sufficient when road used by neighbours on Saturna Island
- ❖ *Okanagan Similkameen Co-op v. Osoyoos* (BCSC 1994) – significant seasonal fluctuation in use not fatal to section 4 assertion, although defence of section 4 road unsuccessful on other grounds
- ❖ *Winskowski v. Coldstream* (BCCA 1997) – limited evidence of sporadic use sufficient
- ❖ *Kirkpatrick v. Parkinson* (BCCA 2002) – “the fact of free public use of the land as a road over a substantial period of time cannot however lead to an inference of dedication by the owner in this case” (BCSC)

PUBLIC FUNDS

- ❖ Funds must be expended AFTER the road is travelled
- ❖ If road existed before 1945, expenditure of money on part of the road made entire road public
- ❖ Expenditure must be by government for highway purposes – spending for commercial purposes (even by Crown corporations such as BC Hydro) not an expenditure of public funds (*BC v. Hilyn Holdings* BCCA 1991)

OWNER'S INTENTION TO DEDICATE

- ❖ Conflicting case authority re need for, and extent of, evidence of owner's intention to dedicate to the public
- ❖ *Whistler Service Park v. Normway Industries* (BCCA 1990) – owner's intention not required
- ❖ *Okanagan Similkameen v. Osoyoos* – negotiations with owner negated intention, which must be proven
- ❖ *Brady v. Zirnhelt* (BCCA 1998) – owner's intention to dedicate inferred from unchallenged public use

OTHER CONSIDERATIONS

- ❖ “Once a road is public, it cannot return to private ownership by default” (*Brady v. Zirnhelt*)
- ❖ “A road is a highway whether it goes to a view, the foot of a mountain, or the seashore” (*Kehler v. Surrey* BCCA 1992)
- ❖ Some suggestions in cases pre *Transportation Act* that can owner and public authority can contract out of the effect of (then) section 4 (*Whistler Service Park v. Normway*; *BC v. Hilyn*)
- ❖ Role of BC Supreme Court

- ❖ “Lot X” is a fee simple title created in order to accommodate a registered charge that would otherwise be extinguished on dedication



BACKGROUND

- ❖ City of Surrey has expropriated pipeline SRW interests on several occasions. In all instances, a “Lot X” scenario was proposed and was unacceptable to the City.
- ❖ City Council’s refusal to accept “Lot X” was formalized in a general policy adopted by Council in 2002.

REASONS AGAINST “LOT X”

- ❖ Loss of exemption under section 8(2) *of the Occupiers Liability Act*
- ❖ Breach of contract as well as tort of negligence apply
- ❖ Statutory dispute resolution benefits affected
- ❖ Loss of flexibility and control
- ❖ Other utilities/commercial entities will demand “Lot X”
- ❖ Negatively affects the establishment of proper highway corridors
- ❖ Zoning and administrative considerations
- ❖ Environmental remediation exposure
- ❖ Increased pipeline relocation and upgrade costs

OCCUPIERS LIABILITY ACT

- ❖ 8 (1) Except as otherwise provided in subsection (2), the Crown and its agencies are bound by this Act.
- (2) Despite subsection (1), this Act does not apply to the government or to the Crown in right of Canada or to a municipality if the government, the Crown in right of Canada or the municipality is the occupier of
 - (a) a public highway, other than a recreational trail referred to in section 3 (3.3) (c),
 - (b) a public road,
 - (c) a road under the *Forest Act*,
 - (d) a private road as defined in section 2 (1) of the *Motor Vehicle Act*, other than a private road referred to in section 3 (3.3) (b) (iv) of this Act, or
 - (e) an industrial road as defined in the *Industrial Roads Act*.

POINTS OF NOTE

- ❖ Breach of contract as well as tort of negligence
 - Note: a Statutory Right of Way is a contract
- ❖ Statutory dispute resolution benefits affected
 - Note: *The Oil and Gas Activities Act* came into force on October 4, 2010
- ❖ Loss of flexibility and control
 - A municipality has many powers to regulate “highways”, a “Lot X” is not a “highway”
- ❖ Other utilities/commercial entities
 - A proliferation of “Lot Xs”

POINTS OF NOTE – CONTINUED

- ❖ **Negatively affects establishment of highway corridors**
 - Other entities have statutory right to occupy “highways”
 - Frustrates Province’s right of resumption under section 35(8) of *Community Charter*

- ❖ **Zoning and administrative considerations**
 - “Lot Xs” do not conform to zoning
 - Locations of “Lot X” to be tracked and terms of SRW’s reviewed on all occasions prior to work taking place within a “Lot X”

- ❖ **Increased environmental remediation exposure**
 - Remediation exemptions that apply to “highways” would be lost
 - Fee simple owner’s remediation exposure increased

INCREASED PIPELINE RELOCATION AND UPGRADE COSTS

- ❖ Under section 12, *Oil and Gas Activities Act General Regulation* a formula is in place regarding the sharing of pipeline costs. This applies when “highways” cross pipelines
- ❖ These costs are often substantial
- ❖ When crossing pipelines or conducting work over pipelines, approval should be obtained under section 76(1)(d) in order to obtain the benefit of the formula
- ❖ Under the formula a municipality is either 100% immune from pipeline costs or at most 50% liable (see subsections 12(4) & (5) of Regulation)

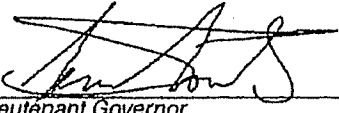
OIL AND GAS ACTIVITIES ACT - GENERAL REGULATIONS

❖ See copy of regulation provided

❖ *Thank you for this opportunity, are there any questions for the panel?*

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **595**, Approved and Ordered **SEP 23 2010**

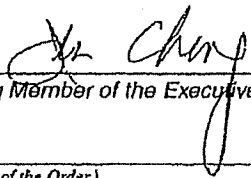

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective October 4, 2010,

- (a) sections 1 to 123, 125 to 130, 131 (a), (b) and (c), 143 (b), 144 to 151, 152 (a), (c) to (f) and (j), 153, 158 to 162, 164 to 170, 172, 173, 182 to 184, 186 to 189, 192 to 194, 195 (a), (c), (e) and (g) and 196 to 206 of the *Oil and Gas Activities Act*, S. B.C. 2008, c. 36, are brought into force,
- (b) sections 1 to 14 and 49 to 59 of the *Energy, Mines and Petroleum Resources Statutes Amendment Act*, 2010, S.B.C. 2010, c. 9, are brought into force,
- (c) the attached *Oil and Gas Activities Act General Regulation* is made, and
- (d) October 4, 2010, is specified as the date on which the *Environmental Protection and Management Regulation*, B.C. Reg. 200/2010, comes into force.


Minister of Energy, Mines and Petroleum
Resources


Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Oil and Gas Activities Act*, S.B.C 2008, c. 36, ss. 94 to 100, 102 and 207;
Energy, Mines and Petroleum Resources Statutes Amendment Act, 2010, S.B.C. 2010, c. 9, s. 60

Other: OIC 435/2010

September 1, 2010

R/93/2010/27

OIL AND GAS ACTIVITIES ACT GENERAL REGULATION

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Definitions

1 (1) In this regulation:

"Act" means the *Oil and Gas Activities Act*;

"collector" means the collector designated under section 6;

"director" has the same meaning as in section 1 of the *Petroleum and Natural Gas Act*;

"Crown land registry" means the Crown land registry continued under section 7 of the *Land Act*;

(2) In the Act and in this regulation:

Pipeline crossing distances

- 11 (1) In this section, “ground activity” means any work, operation or activity that results in a disturbance of the earth, including a mining activity as defined in section 1 of the *Mines Act*, but not including
- (a) cultivation to a depth of less than 45 cm below the surface of the ground, and
 - (b) a disturbance, other than cultivation referred to in paragraph (a), of the earth to a depth of less than 30 cm.
- (2) A ground activity is a prescribed activity for the purposes of section 76 (1) (b) of the Act.
- (3) The following distances are prescribed for the purposes of section 76 (1) of the Act:
- (a) 40 m, for any activity other than the prescribed activity referred to in subsection (2);
 - (b) 40 m, for the prescribed activity referred to in subsection (2).

Cost allocation for pipeline crossings

- 12 (1) In this section:
- “approval holder” means a person to whom an approval under section 76 (1) (d) of the Act has been given;
- “approved action” means the construction or activity approved by an order issued under section 76 (1) (d) of the Act;
- “specified approval holder” means an approval holder that is the government, a municipality, or the British Columbia Railway Company.
- (2) Subject to subsections (4) to (6), an approval holder is responsible for all costs incurred by the approval holder in carrying out an approved action.
- (3) Subject to subsections (4) to (6), an approval holder is responsible for any costs incurred by a pipeline permit holder as a result of the approval holder's carrying out of an approved action, including, without limitation, costs
- (a) to realign, raise or lower the pipeline;
 - (b) to excavate material from around the pipeline, and
 - (c) to add casing or other appurtenances that an official considers necessary for the protection of the pipeline.
- (4) Subject to an order issued under section 76 (6) of the Act and to subsection (5) of this section, a specified approval holder is not responsible for any costs incurred by a pipeline permit holder as a result of the carrying out of an approved action.
- (5) The costs referred to in subsection (4) must be shared equally between the specified approval holder and the pipeline permit holder if
- (a) the specified approval holder is a municipality, and
 - (b) the approved action is the construction of a new highway within the boundaries of that municipality on either an existing right of way or on a newly dedicated right of way.

- (6) The costs incurred by a pipeline permit holder as the result of the carrying out of an approved action must be shared equally between the approval holder and the pipeline permit holder if the approved action is the construction of a new road for a subdivision within a municipality.

Registry

13 The following information is prescribed for the purposes of section 77 of the Act:

- (a) the name of and contact information for each permit holder;
- (b) the permit number of each permit and a description of the conditions imposed, if any, on each permit;
- (c) a description of each amendment or transfer of each permit;
- (d) a description of each permit holder's compliance history;
- (e) with respect to each well,
 - (i) the name and location of the well,
 - (ii) the name of the drilling contractor, and
 - (iii) a description of the operational history of the well, including the dates of the start of production, completion, recompletion, workover, suspension and abandonment;
- (f) with respect to each pipeline,
 - (i) the name and location of the pipeline, including as-built drawings of the pipeline,
 - (ii) a description of the operational history of the pipeline, including the dates of the start of construction, pressure tests, leave to open, suspension and abandonment, and
 - (iii) the length, outside diameter, wall thickness, line specifications and maximum operating pressure of the pipeline;
- (g) with respect to each facility,
 - (i) the name and location of the facility and of each associated field,
 - (ii) the site number of and as-built drawings for the facility,
 - (iii) a description of the operational history of the facility, including the dates of the start of construction, pressure tests, leave to open, suspension and abandonment,
 - (iv) a statement of the facility's production or processing capacity, and
 - (v) the manufacturers' specifications for vessels, appurtenances and on-lease pipe associated with the facility;
- (h) with respect to geophysical activities,
 - (i) each project's name and a description of the area of geophysical activity for each project,
 - (ii) each project's start date, and
 - (iii) a description of the operational history of each project, including a description of each project's type of activity and energy source.

Pipeline crossings

76 (1) Subject to subsection (3), a person must not

(a) construct

(i) a highway, road or railway,

(ii) an underground communication or power line, or

(iii) any other prescribed work, or

(b) carry out a prescribed activity

along, over or under a pipeline or within a prescribed distance of a pipeline unless

(c) the pipeline permit holder agrees in writing to the construction or the carrying out of an activity prescribed for the purposes of paragraph (b), or

(d) the commission, by order, approves the construction or the carrying out of the prescribed activity.

(2) The commission, in an order issued under subsection (1) (d), may impose any conditions on the approval that the commission considers necessary to protect the pipeline.

(3) The commission must approve

(a) the construction referred to in subsection (1), and

(b) the carrying out of a prescribed activity

by the government, but may impose conditions referred to in subsection (2) in the approval issued under subsection (1).

(4) The commission, for the purposes of deciding whether to issue an order under subsection (1) or impose conditions under subsection (2), may require a pipeline permit holder to submit information regarding the pipeline permit holder's pipeline.

(5) The commission may order a pipeline permit holder whose pipeline is the subject of an order issued under subsection (1)

(a) with the approval of the Lieutenant Governor in Council, to relocate the pipeline to facilitate the construction or prescribed activity approved by the order issued under subsection (1), and

(b) to take the actions specified in the order that the commission considers necessary to protect the pipeline.

(6) In relation to an order of the commission referred to in subsection (5), the Lieutenant Governor in Council

- (a) may order that a person other than the pipeline permit holder must pay the costs, or a portion of the costs, incurred in carrying out the commission's order, or
- (b) may approve the payment of any of those costs from the consolidated revenue fund.

Registry

- 77 The commission must maintain a registry containing the prescribed information about oil and gas activities.

Correction or clarification of a decision

- 78 (1) In this section, "**decision**" means any determination, declaration, order, finding or other decision made under this Act by the commission.
- (2) If the commission makes a decision, the commission may
- (a) correct a typographical, an arithmetical or another similar error in the decision, and
 - (b) correct an obvious error or omission in the decision.
- (3) If the commission corrects a decision under this section, the commission must notify the person who is the subject of the decision and the correction does not take effect until that notification is given.

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2010 Legislative Session: 2nd Session, 39th Parliament
THIRD READING

The following electronic version is for informational purposes only.
The printed version remains the official version.

Certified correct as passed Third Reading on the 6th day of May, 2010
Ian D. Izard, Q.C., Law Clerk

HONOURABLE BLAIR LEKSTROM
MINISTER OF ENERGY, MINES AND
PETROLEUM RESOURCES

BILL 8 — 2010
ENERGY, MINES AND PETROLEUM RESOURCES
STATUTES AMENDMENT ACT, 2010

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Agricultural Land Commission Act

1 Section 20 (3) (a) and (b) of the Agricultural Land Commission Act, S.B.C. 2002, c. 36, is repealed and the following substituted:

(a) the Surface Rights Board, or its predecessor, the Mediation and Arbitration Board, under the *Petroleum and Natural Gas Act*, the *Mining Right of Way Act* or section 19 of the *Mineral Tenure Act*; .

Coal Act

2 Section 3 (3) of the Coal Act, S.B.C. 2004, c. 15, is amended by striking out "Mediation and Arbitration Board" and substituting "Surface Rights Board" and by striking out "the relevant provisions of Part 3 of the Petroleum and Natural Gas Act apply" and substituting "Parts 16 and 17 of the Petroleum and Natural Gas Act apply".

3 Section 3 (4) and (5) is amended by striking out "Mediation and Arbitration Board" and substituting "Surface Rights Board".

"surface rights board" means the Surface Rights Board under the *Petroleum and Natural Gas Act*; .

13 Sections 6 (4) and 10 (4) are amended by striking out "mediation and arbitration board" and substituting "surface rights board".

Motor Vehicle Act

14 Section 1 of the Motor Vehicle Act, R.S.B.C. 1996, c. 318, is amended in the definition of "industrial road" by striking out "section 8 (1)" and substituting "section 139 (1)".

Oil and Gas Activities Act

15 Section 1 of the Oil and Gas Activities Act, S.B.C. 2008, c. 36, is amended

(a) in subsection (1) by adding ", other than Part 17 of that Act" after "Petroleum and Natural Gas Act",

(b) in subsection (2) in the definition of "authorization" by striking out "section 104 and Part 10" and substituting "sections 34, 39 (1) and 104 and Part 10",

(c) in subsection (2) by adding the following definitions:

"environmental measure" means an action a person must take or refrain from taking for the protection or effective management of the environment;

"facility" means a system of vessels, piping, valves, tanks and other equipment that is used to gather, process, measure, store or dispose of petroleum, natural gas, water or a substance referred to in paragraph (d) or (e) of the definition of "pipeline";

"government's environmental objectives" means the prescribed objectives of the government respecting the protection and effective management of the environment; ,

(d) in subsection (2) by repealing the definition of "flow line" and substituting the following:

"flow line" means a pipeline that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line; ,

(e) in subsection (2) in the definition of "land owner" by striking out

(2.1) A person must admit onto land or premises referred to in subsection (2) an official entering the land or premises under that subsection, and must provide the official with the means and assistance necessary for the purpose of the entry.

34 Section 72 (2) (b) is amended by adding "or 31 (6)" after "section 24 (1) (c)".

35 Section 75 (4) is amended by striking out "commission" and substituting "board".

36 Section 76 is amended by adding the following subsection:

(7) If there is an inconsistency between an order or an approval made under subsection (6) and a regulation made under section 99 (m), the order or approval prevails to the extent of the inconsistency.

37 Section 94 is amended

(a) in subsection (2) (a) by adding ", with or without directions on how the delegated power is to be exercised" after "person", and

(b) by adding the following subsection:

(2.1) The Lieutenant Governor in Council may make regulations establishing criteria that a person must use when exercising a discretionary or delegated power conferred on the person by a regulation under this Division.

38 Section 95 is amended by renumbering the section as section 95 (1) and by adding the following subsection:

(2) The Lieutenant Governor in Council may make regulations for the purposes of section 25 (1.1).

39 Section 99 is amended

(a) by repealing paragraph (b) and substituting the following:

(b) prescribing substances for the purpose of paragraph (e) of the definition of "pipeline" in section 1 (2) and prescribing exclusions for the purposes of paragraph (h) of that definition; , **and**

(b) by adding the following paragraphs:

(o) respecting surveying to be carried out with respect to an oil and gas activity;

(p) respecting information for the purposes of section 77.