

This Act is current to 30 November 2016.

## **MINING RIGHT OF WAY ACT**

[RSBC 1996] CHAPTER 294

### Contents

- 1 Definitions
- 2 Power to take necessary right of way on private land
- 3 Acquisition of right of way on Crown land
- 4 Approval of minister
- 5 Deemed ownership
- 6 Industrial use of access road
- 7 Nonindustrial use of access road
- 8 Consent to connect
- 9 Limited liability
- 10 Power to use existing road
- 11 Not highway

### Definitions

#### 1 In this Act:

"access road" means a road built on Crown land as a facility under this Act;

"Crown land" has the same meaning as in the Land Act, but does not include land owned by an agent of the government;

"deemed owner" means, subject to section 5, the owner of facilities placed in a right of way acquired across Crown land under this Act;

"facilities" means linear developments and related improvements that may be placed in a right of way acquired under this Act, and includes a road, railway, aerial, electric or other tramway, surface or elevated cable, electric or telephone pole line, chute, flume, pipeline or drain and related improvements;

"forest officer" has the same meaning as in the Forest Act;

"forest service road" has the same meaning as in the Forest Act;

"free miner" has the same meaning as in the Mineral Tenure Act;

"gold commissioner" means a gold commissioner appointed under the Mineral Tenure Act;

"locate" has the same meaning as in the Mineral Tenure Act;

"mineral title" has the same meaning as in the Mineral Tenure Act;

"minister" includes a person designated in writing by the minister;

"private land" means land other than Crown land, but does not include land owned by an agent of the government;

"Provincial forest" has the same meaning as in the Forest Act;

"recorded holder" has the same meaning as in the Mineral Tenure Act and includes the holder of a Crown granted 2 post claim;

"regional manager" has the same meaning as in the Forest Act;

"right of way" means an interest in land required for the purpose of constructing, maintaining and operating a road, railway, aerial, electric or other tramway, surface or elevated cable, electric or telephone pole line, chute, flume, pipeline, drain or other linear facilities, or any right or easement of a similar nature;

"road" has the same meaning as in the Industrial Roads Act;

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

Power to take necessary right of way on private land

2 (1) Despite any other Act, a recorded holder who desires to secure a right of way across, over, under or through private land for the purpose of constructing, maintaining and operating facilities necessary for the exploration, development and operation of a mineral title, or for the loading, transportation or shipment of ores, minerals or mineral bearing substances from a mineral title, or for the transportation of machinery, materials and supplies into or from a mineral title may take and use private land for the right of way without the consent of the owner of the land or of a person having or claiming an estate, right, title or interest in, to or out of the land.

(2) The power of a recorded holder to take and use land for a right of way under subsection (1) does not include the power to take and use existing facilities or other improvements in a right of way except that a recorded holder may, subject to section 10, use an existing road.

(3) If private land is taken under subsection (1) without the consent of the owner of the land or of a person having or claiming an estate, right, title or interest in, to or out of the land, the Expropriation Act applies.

Acquisition of right of way on Crown land

3 (1) With the written consent of or a permit from the minister responsible for Crown lands or, if the land is within a Provincial forest, from the minister responsible for the administration of the Ministry of Forests and Range Act, a recorded holder may use Crown land for a right of way for the purposes referred to in section 2.

(2) Before giving written consent or a permit under this section, the minister responsible for Crown lands or the minister responsible for the administration of the Ministry of Forests and Range Act may do one or more of the following:

- (a) require a copy of the plan, particulars and information provided to the minister under section 4;
- (b) require additional plans, particulars and information;
- (c) exercise the same powers as the minister under section 4 (3);
- (d) require other modifications in the plan.

Approval of minister

4 (1) The power to take or use land for a right of way under this Act must not be exercised unless the recorded holder first

(a) files with the minister a plan showing the land proposed to be taken or used, with particulars and information that the minister may require, including particulars and information on the location, design, construction, operation, maintenance and abandonment of the facilities to be placed in the right of way and costs of the facilities and related environmental information, and

(b) obtains written approval of the plan, particulars and information from the minister.

(2) The width of a right of way taken under this Act must not exceed the width reasonably required to accommodate the facilities to be constructed, including any side slopes and ditches, and any sidings, bunkers or other structures incidental to loading, transportation and shipment purposes.

(3) The minister may require modification of the width of the right of way proposed by the recorded holder after reviewing the plan, particulars and information filed by the recorded holder under subsection (1).

(4) If proceedings under the Expropriation Act have the effect of amending a plan that has previously been approved by the minister under subsection (1), those proceedings take precedence, but the recorded holder must submit an amended plan, with information and particulars, to the minister, and must obtain approval for the amended plan from the minister before taking and using land for a right of way under this Act.

Deemed ownership

5 Unless the written consent or permit required for a right of way on Crown land under section 3 provides otherwise, the recipient of the written consent or holder of the permit is deemed to be the owner of the facilities placed in the right of way until the earlier of the date when

- (a) the written consent or permit expires,
- (b) the facilities revert to the government as a result of default in respect of the conditions contained in the written consent or permit, or
- (c) by subsequent mutual agreement between the government and the recipient of the written consent or holder of the permit, the facilities revert to the government before the expiration of the written consent or permit.

#### Industrial use of access road

6 (1) Subject to this section and to regulations made under the Industrial Roads Act, if an access road is deemed to be owned by a person, every person desiring to use the access road for the purpose of obtaining access to an existing mineral title, or for forest harvesting or another industrial purpose, is entitled to do so.

(2) A deemed owner of an access road may, in respect of the use of the access road under subsection (1), require a reasonable payment from that person in respect of the actual maintenance costs of the access road, and may also require

- (a) a reasonable payment to reimburse the deemed owner for actual capital costs incurred by the deemed owner in order to accommodate any special needs of that person, and
- (b) if the use by the other person results in the need for substantial capital expenditure on the access road by way of rebuilding to a higher standard, a reasonable payment by way of reimbursement for that capital expenditure.

(3) A deemed owner of an access road under subsection (1) may require the recorded holder to make or cause to be made a reasonable payment to reimburse the deemed owner for a portion of the actual capital costs incurred by the deemed owner in constructing the access road if use of the access road is for the purpose of establishing access to and from

- (a) a producing mine for which a mining lease has been issued under section 42 of the Mineral Tenure Act, or
- (b) a mineral title from which production of ore exceeds or will exceed 10 000 tonnes.

(4) If the deemed owner of an access road and a party proposing to use the access road under this section for an industrial purpose, after consultation with the gold commissioner, are unable to agree on the compensation to be paid under subsections (2) and (3), the surface rights board, on application by one of the parties, has jurisdiction to settle the issue.

(5) The terms of a settlement under subsection (4) are binding on the parties.

#### Nonindustrial use of access road

7 (1) Subject to this section and to regulations made under the Industrial Roads Act, if an access road is deemed to be owned by a person, it may be used for nonindustrial purposes by a person who has a specific legal interest in the land or resources in the region tributary to the access road, whether this interest was acquired before or after the access road was constructed.

(2) Subject to this section and to regulations made under the Industrial Roads Act, if an access road is deemed to be owned by a person, it may be used for nonindustrial purposes by a person if the minister is satisfied that the person who wishes to use it requires access for a commercial purpose and the minister gives written consent to its use by that person.

(3) Despite subsections (1) and (2), if use of an access road would likely cause significant damage to it or endanger life or property, the deemed owner may, with the consent of the minister responsible for Crown lands or the minister responsible for the administration of the Ministry of Forests and Range Act

- (a) close the access road by means of gates,
- (b) restrict or prevent the use of the access road by persons referred to in subsections (1) and (2) by posting a notice on the access road, and
- (c) at the expense of its owner, remove a vehicle or animal that is on the access road unlawfully.

(4) Despite subsections (1) and (2), the minister may, with the concurrence of the minister responsible for Crown lands or the minister responsible for the administration of the Ministry of Forests and Range Act restrict the use of an access road for nonindustrial purposes if the minister considers that the use may cause significant damage to the access road or endanger life or property, or if the minister considers that the restriction is necessary for the proper use of Crown land and resources.

(5) Employees and agents of the government may use and cross an access road and a right of way without paying compensation.

(6) Compensation must not be charged for the use of an access road for nonindustrial purposes.

Consent to connect

8 A person must not connect a road built under this Act to a forest service road without the consent of the regional manager or a forest officer authorized by the regional manager.

Limited liability

9 Except for misfeasance no action lies against any of the following:

- (a) the government, in respect of the condition of a road built under this Act;
- (b) a recorded holder who builds and operates a road on private land under this Act;
- (c) a deemed owner of an access road, in respect of the condition of the access road.

Power to use existing road

10 (1) A recorded holder who desires to use an existing road, whether on private land or Crown land or both and whether built under this or another Act, may use the road for the purposes referred to in section 2.

(2) A free miner who desires to use an existing road, whether on private land or Crown land or both and whether built under this or another Act, may do so in order to locate a claim and need not serve notice on the owner or operator of the road of the intention to use the road and need not pay compensation for its use, but is constrained by all lawful conditions that govern its use under this or any other Act.

(3) A recorded holder who wishes to use an existing road

(a) must serve written notice on the owner or operator of the road of the intention to use the road,

(b) if the road is an access road, must undertake use of the access road in accordance with the rights of the deemed owner and subject to payment of compensation in accordance with section 6,

(c) if the road was not built under this Act, must compensate the owner or operator of the road in an amount or manner agreed on or settled between the parties, and

(d) is constrained by all lawful conditions that govern the use of an existing road under this or any other Act.

(4) For the purposes of subsection (3) (c), in default of an agreement between the parties and on application of one of the parties, the surface rights board has jurisdiction to settle the issue of compensation and the terms of the settlement are binding on the parties.

Not highway

11 Despite the Transportation Act, a road built or maintained under this Act is not a highway within the meaning of the Transportation Act unless the Lieutenant Governor in Council orders that it is a highway within the meaning of that Act.

Copyright (c) Queen's Printer, Victoria, British Columbia, Canada