

## Surveyor General Division **POLICY and PROCEDURE**

### Disposing of provincial public highway through section 58 of the *Land Act*

#### **1. PURPOSE**

This document outlines a procedure for using s. 58 of the *Land Act* to dispose of road (technically being provincial public highway) that was created by Crown grant. For clarity, this procedure applies only to highways established pursuant to paragraph (e) of the *Transportation Act's* definition of "highway": "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".

Historically, s. 58 of the *Land Act* allowed the minister under that Act (as represented by FLNRO) to dispose of roads created by Crown grants. Following the enactment of the *Transportation Act* in 2004, the ability of FLNRO to use s. 58 to dispose of roads shown on Crown grant tracings was, in practice, eliminated.

The *Transportation Act* provides that provincial public highways are owned by the BCTFA and administered by MOTI. Provincial public highway includes roads created by Crown grant – the same roads which were formally administered by FLNRO. Because FLNRO no longer controls these roads, FLNRO can no longer dispose of them using s. 58.

Since the enactment of the *Transportation Act*, roads created by Crown grant are still disposed of by the Province, but the means used to dispose of them are administratively more cumbersome than the process provided by s. 58. However, s. 58 of the *Land Act* is not obsolete. The authority in that provision can still be used if BCTFA transfers ownership of roads created by Crown grant to MOTI and MOTI transfers administrative control of those roads to FLNRO.

Note that BCTFA and MOTI can transfer ownership and administration of road to FLNRO using an internal government transfer document. The transfer document was prepared by MJAG counsel and is titled: "Province of British Columbia (Transfer of Discontinued and Closed Provincial Public Highway Lands to the Minister Responsible for the Land Act)". A copy of the transfer document is appended to this document as Schedule A.

## 2. ABBREVIATIONS

“BCTFA” means the British Columbia Transportation Financing Authority.

“FLNRO” means the Ministry of Forests, Land and Natural Resource Operations.

“LTO” means the Land Title Office.

“MOTI” means the Ministry of Transportation and Infrastructure.

## 3. BACKGROUND

### *3.1 Section 58 of the Land Act: Disposal of road created by Crown grant*

Under s. 13 and s. 57 of the *Land Act*, roads can be created when land is Crown granted. Section 13 provides that in a disposition of Crown land, land which is designated as road in the granting instrument or on an attached map or plan (colloquially known as a Crown grant tracing) doesn't pass to the grantee. Similarly, s. 57 provides that if a map or plan attached to a Crown grant shows a road coloured, outlined or designated in a colour other than red, the road is excluded from the grant unless there is an express contrary provision otherwise.

Section 58 of the *Land Act* provides the minister under that Act with an efficient means of disposing of roads created by Crown grant. Section 58 provides that on application from a land owner, the minister may endorse a declaration that road shown on a Crown grant and coloured other than red is no longer needed by the government. The minister endorses the declaration by signing the plan accompanying the application. Depositing the endorsed plan in the LTO transfers to the land owner the road shown on the Crown grant which is coloured other than in red. Section 58 is reproduced below:

58(1) If doubt exists ... whether it is in the public interest that the part coloured other than in red need be retained by the government, a person proposing to subdivide may apply to the minister for a declaration of intention about that part.

(2) The application must be accompanied by a print of the proposed plan of subdivision.

(3) On receiving a plan certified by the registrar as being otherwise acceptable for deposit, the minister may, if the minister considers it advisable, endorse a declaration on the plan that the land is included in the grant or need not be retained by the government.

(4) The deposit in the land title office of an endorsed plan vests title to the land referred to in the declaration in the owner of the land covered by the plan without an instrument of transfer.

(5) If the title to the land contained in the plan is subject to a registered charge, the charge is deemed to be modified by including the land described in the declaration.

The minister has delegated to the Surveyor General this authority to endorse a plan. Although s. 58 refers to “a person proposing to subdivide” and “plan of subdivision”, s. 58 has not traditionally been limited to applicants who are subdividing. For the purposes of this section, the Surveyor General has also historically signed reference plans which consolidate the road coloured other than red with the other Crown granted land. After the Surveyor General endorses the reference plan and the plan is deposited in the land title office, the road vests in the land owner, and the land which was the road is consolidated with the land owner’s other property into a single parcel.

The disposal power provided by s. 58 has also been used as to facilitate the exchanging of land between the Crown and a land owner when both parties prefer that road be located elsewhere on the landowner’s property. As an example, suppose a Crown grant tracing shows a road that winds through the center of a parcel. Both the land owner and the Crown would rather that the road run adjacent to one of the parcel’s borders rather than through the middle. In the past, s. 58 has been used to achieve this land swap through the following process: First, a plan was prepared that (1) consolidated the road shown on the Crown grant tracing within the land owner’s property and (2) dedicated the new road in the desired location. Next, the Surveyor General would sign a certificate that conveyed ownership of the road shown on the Crown grant tracing to the land owner of the surrounding property. Finally, upon deposit of the plan in the land title office, the old road became part of the land owner’s property and the new road (technically called highway) was established.

### ***3.2 Enactment of Transportation Act***

In 2004, the *Transportation Act* was enacted. The Act has several defined terms related to highways, including “highway” and “provincial public highway”.

The definition of “highway” describes several ways in which a public way can become a highway, including by application of s. 13 or s. 57 of the *Land Act*. As defined by the Act, “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:

(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.

The term “provincial public highway” means any highway that is a rural highway (i.e. a highway outside of a municipality), an arterial highway or a highway referred to in s. 35(2)(f) of the *Community Charter* (land on which Provincial works are located). As derived from the Act’s definitions, provincial public highway includes road in rural areas that was created under s. 13 or 57 of the *Land Act*.

Thus, after the *Transportation Act* came into force, provincial public highways created by s. 13 or s. 57 of the *Land Act* are owned by BCFTA and under the administrative control of MOTI. The minister under the *Land Act* can no longer use s. 58 to dispose of a road shown on a Crown

grant tracing, unless ownership of the road is returned to government and administrative authority for the road is returned to the minister.

MOTI continues to dispose of roads, although the process that MOTI has historically used is more expensive and time consuming than dispositions using s. 58 of the *Land Act*. A land surveyor must be hired to prepare a plan to define the extent of the highway to be closed. Completing the survey is essentially a high transaction cost with no enduring value, as the highway to be closed will in almost all circumstances be consolidated with the surrounding property. Other expenses are associated with MOTI administering the land transfer process (e.g. raising title to the land under the closed highway and transferring the land).

#### **4. PROCESS: DISPOSING OF PROVINCIAL PUBLIC HIGHWAYS THROUGH SECTION 58 OF THE LAND ACT**

The following process outlines how s. 58 of the *Land Act* can be used to dispose of provincial public highway that was created by Crown grant.

**REMEMBER:** This process only applies to highways that were established through a Crown grant deletion as provided by paragraph (e) of the *Transportation Act's* definition of "highway": "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 ."

Section 58 of the *Land Act* can be used to transfer the subject highway to the surrounding property owner when a land exchange is desired (trading the old highway for highway in a better location through the property) and when simply the owner is to receive ownership of the subject highway and no land exchange is happening.

If the subject highway is part of a land exchange (value for value), BCTFA will usually accept that no compensation is payable. If the subject highway is being closed and transferred to an adjacent land owner without a land exchange, then BCTFA may request compensation. Discussions between BCTFA and a land owner about compensation will occur before a closed highway is transferred to FLNRO.

1. MOTI regional staff agrees to transfer the land under a highway to the owner of the subject parcel.
  - Alternatively, in the case of a land exchange, MOTI and the owner agree to exchange land for the purpose of moving the location of a highway.
2. District staff of MOTI consults with appropriate FLNRO regional or district staff regarding the desired transfer of the land under the highway or land exchange, as the case might be.
3. MOTI, FLNRO and the owner of the subject lands, as agreed between them, determine who will manage the transfer process and decide whether a lawyer or notary public needs to be retained to hold money in trust or to prepare any ancillary documents. Additionally, the parties will retain a land surveyor to conduct the appropriate survey and prepare the applicable plan as described below:
  - Where land is exchanged to move the location of a highway, the land surveyor will create a reference plan upon which the new highway is dedicated and the old highway is consolidated with the owner's property. This plan is prepared pursuant

to section 100(1)(b) and 107 of the *Land Title Act*, and a certificate pursuant to section 58 of the *Land Act* is included on this plan. For clarity, consolidating the old highway and dedicating the new highway can be accomplished using the same plan.

- Where land under the highway is transferred to the owner and no land exchange is occurring, the land surveyor will create a reference plan upon which the old highway is consolidated with the owner's property. This plan is prepared pursuant to section 100(1)(b) of the *Land Title Act*, and a certificate pursuant to section 58 of the *Land Act* is included on this plan.
- There may be cases where the owner is actually subdividing their property. In these cases the land surveyor will create a subdivision plan. The subdivision plan will contain a certificate pursuant to section 58 of the *Land Act* and can also dedicate new highway (and of course create new parcels).

As the cost of survey and plan preparation can be a significant amount, all parties must agree upon the timing of the survey and plan preparation. In other words, it may be appropriate to complete Steps 4 and 5 before substantial survey work and plan preparation is completed.

4. MOTI closes the provincial public highway by a Gazette Notice with appropriate public notification where required by MOTI policy and/or *Transportation Act* statute. The Gazette Notice can refer to the tracing attached to the Crown grant.
5. Administration and control of the closed highway is transferred to FLNRO pursuant to section 106 of the *Land Act*.
  - Administration and control is transferred using the internal government transfer document titled: "Province of British Columbia (Transfer of Discontinued and Closed Provincial Public Highway Lands to the Minister Responsible for the Land Act)" attached hereto as Schedule A.
  - The document is signed by legal signing authorities for BCTFA, MOTI, and FLNRO. Signing the document has the following legal effect:
    - (i) Right and title to land under the closed highway is transferred from BCTFA to MOTI.
    - (ii) MOTI transfers administration and control of the closed highway to FLNRO.
    - (iii) FLNRO accepts administration and control for the close highway.

Once FLNRO accepts administration and control of the closed highway, the Surveyor General can convey it using section 58 of the *Land Act*.

6. The regional office of FLNRO provides an e-mail to the Surveyor General allowing him to sign a section 58 *Land Act* certificate on the plan prepared by the land surveyor.
7. The plan is submitted to the Surveyor General Division of the LTSA by the person identified in Step 3 to manage the transfer process. The Surveyor General or a Deputy signs the section 58 *Land Act* certificate on the plan.
8. The plan is registered in the LTO by the person identified in Step 3 to manage the transfer process. Depositing the plan has the following legal effects:

- Pursuant to s. 58(4) of the *Land Act*, title to the closed road vests in the owner of the consolidated property (or new properties if a subdivision is being conducted).
- If the transfer is for the purpose of a land exchange, the newly dedicated highway vests in the Crown pursuant to s. 107(1) of the *Land Title Act*.

## **SCHEDULE A – INTERNAL GOVERNMENT CLOSED ROAD TRANSFER DOCUMENT**

BCTFA and MOTI can transfer ownership and administration of closed highway to FLNRO using the internal government transfer document included in this Schedule.

Transfer Document No. **XX**

**PROVINCE OF BRITISH COLUMBIA  
(TRANSFER OF DISCONTINUED AND CLOSED PROVINCIAL PUBLIC HIGHWAY LANDS  
TO THE MINISTER RESPONSIBLE FOR THE LAND ACT)**

Whereas:

- a. By publication in British Columbia Gazette dated **XXXXXXXXXXXX** notice was published pursuant to section 60(2) of the *Transportation Act*, S.B.C. 2004, c. 44, discontinuing and closing that part of the provincial public highway forming part of **XXXXXXXXXXXX**, constituting surplus highway and more particularly described as follows:
- b. The Closed Road Lands have been depicted on **XXXXXXXXXX** which will be recorded in the Crown Land Registry or in the Land Title Office, as appropriate.
- c. The Closed Road Lands have been identified for **XXXXXX** purposes.

Now Therefore:

- 1. Any right and title of the BC Transportation Financing Authority in and to the soil and freehold of the Closed Road Lands is hereby transferred and disposed of to Her Majesty the Queen in Right of the Province of British Columbia as represented by the minister responsible for the *Transportation Act*, S.B.C. 2004, c.44.

**BC TRANSPORTATION FINANCING AUTHORITY  
by its authorized signatory:**

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**Svein Haugen, Director**

DATE

- 2. Administration of the Closed Road Lands is hereby transferred from the minister responsible for the *Transportation Act* to the minister responsible for the *Land Act*, R.S.B.C. 1996, c.245.

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**Svein Haugen, Director, Authorized Signatory for  
MINISTER OF TRANSPORTATION AND INFRASTRUCTURE**

DATE

- 3. The Minister of Forests, Lands and Natural Resource Operations accepts administration of the Closed Road Lands and will make the required entries in the Crown Land Registry in accordance with s. 7(4) of the *Land Act*.

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\_\_\_\_\_, authorized delegate of the  
**MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE  
OPERATIONS**

DATE