

# NATURAL RESOURCE ROAD ACT PROJECT

DISCUSSION PAPER, NOVEMBER 2011



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## Overview:

Currently, resource roads<sup>1</sup> in British Columbia are administered through provisions found in up to 11 different laws, many of which regulate a specific industry or activity. Often resource roads are built for a specific purpose but used by multiple industries as well as businesses, First Nations and the public.

The B.C. government is revisiting the existing legislative framework with the intent to better serve the current and future needs of all resource roads users. It intends to consolidate resource road legislation into a single act – the Natural Resource Road Act (NRRA). The Act will provide common requirements and responsibilities regarding construction, maintenance and use of resource roads in a manner that is reasonable and fair for all concerned with due consideration for the public interest and the environment.

Resource roads may be developed or maintained to access resource tenures, remote communities or properties, or may be used for recreational purposes. The NRRA will require that the overall footprint of the road network is considered when making decisions to approve new resource roads or to use existing resource roads.

In 2008, government introduced the Resource Road Act (Bill 30) to consolidate resource road legislation. Although the Resource Road Act did not proceed, feedback from stakeholders has helped shape the approach and focus of the NRRA.

The goal of this paper is to explain the proposed principles and key policies being used to develop the NRRA, and to invite feedback to government through the NRRA website <http://www.for.gov.bc.ca/mof/nrra/>. Feedback will be accepted until **Dec. 15, 2011**.

Government is committed to sound environmental stewardship while improving industrial competitiveness, supporting rural economic sustainability and reducing the administrative cost borne by taxpayers. The NRRA supports these goals by streamlining administrative process; clarifying and standardizing rights, obligations and environmental objectives; and integrating decision-making in ways that will provide greater certainty for new and existing businesses.

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<sup>1</sup> see scope of Resource Roads page 6

# The Policy Framework

## Part 1: Framework Principles

The following principles will guide the development of this new legislation. They will act as filters or lenses through which all policy challenges and ideas will be viewed.

### a. Decision making under the NRRA will be integrated with related authorizations.

*What this means:* If a person requires multiple authorizations that logically fit together, the NRRA will be structured to allow the approval processes for each authorization to take place at the same time by the same decision-maker.

### b. The regulatory framework is predictable, fair and consistent.

*What this means:*

**Predictable:** The Act is provincial in scope, creating a single administrative regime that applies to all resource roads.

**Fair:** The Act is impartial regardless of use or sector.

**Consistent:** The Act will treat similar activities in similar circumstances the same, irrespective of who is undertaking the work.

### c. The Act will require that all roads be located, built and maintained with due consideration for the environment.

*What this means:* Roads are to be managed to mitigate unacceptable environmental impacts ranging from geophysical (siltation of streams, landslides, loss of productive land) to biophysical (such as invasive plants, fish passage, species at risk and ungulate winter range).

### d. Use of roads and control of use shall be commensurate with rights and authority.

*What this means:* The Act will provide the authority required to carry out obligations (i.e. the ability to restrict traffic to protect the road, to mitigate unacceptable environmental impacts or to maintain user safety). The Act will ensure a person has the right to access the information needed to assess the road's ability to meet their specific access needs.

### e. Construct and maintain for intended use to allow for operational differences relating to scale/frequency and needs/impacts of that use.

*What this means:* While roads will be built and maintained to meet a wide range of uses, vehicles and traffic densities, the required outcomes will always be the same – the road must be safe for the intended use and meet legislated requirements to mitigate unacceptable environmental impacts.

### f. Any road lacking a designated maintainer may be subject to deactivation.

*What this means:* Where there is no designated maintainer, government may determine that the risk to users or the environment is too great to allow the road to continue to remain open.

#### g. Reflect existing road safety principles for public roads.

*What this means:* The safety principles for the NRRA will be aligned with the rules on public highways and will apply to all users whether industrial, recreational or other. The NRRA will include requirements for licensing and insurance and other appropriate sections of the *Motor Vehicle Act*. Both drivers and employers may be held accountable for con-compliance.

The NRRA will reflect a “use at your own risk” approach that will limit third-party liability to misfeasance on the part of the designated maintainer.

The NRRA will provide for some roads to be managed specifically for off-road vehicles.

## Part 2: The Framework Policies:

This suite of policies reflects input from government, industry and/or the public regarding challenges and opportunities related to resource roads in BC.

The order of topics below is based on the overall policy construct and does not indicate importance.

1. **Scope of Resource Roads:** Includes roads utilized by motorized vehicles on Crown land, and any road on private land that has been authorized by government.

#### **Resource roads do not include:**

- Public roads (highway, municipal, federal)
- Roads covered by a *Mines Act* permit
- Private roads

*What this means:* The Act will include a common suite of rights, obligations, rules of use and a single compliance and enforcement regime. Such consistency will make it easier for everyone building, maintaining or using a road to know what to do and how to do it safely.

However, recognizing that vehicle types will vary from those licensed for public roads, to very large industrial equipment to very small off road vehicles, the rules for road use will need to reflect a greater diversity of traffic than that encountered on public roads. For example, some roads may be managed specifically for use by off-road vehicles, while others may be managed for industrial, commercial and public traffic that is not compatible with off-road vehicles while still others provide for all vehicle types. Some rules may apply to all roads. A subset of rules may apply only to a smaller number of identified roads. Unless there is a system, including signage, to communicate applicable rule variances, default rules must apply so drivers know what is expected, and to support training and enforcement. The NRRA and the proposed Off Road Vehicle Act will therefore need to be complementary to each other.

- 2. Planning:** Operational planning will reflect environmental values, user needs, and risks likely to be influenced by the road. A person seeking an authorization will not need to complete additional strategic planning under the NRRA.

*What this means:* NRRA decision-makers will rely on existing strategic land and resource plans that support the administration of resource roads. Those plans may influence the location of new roads, the design, construction and maintenance of those roads and restrictions of use.

A person intending to build, modify or maintain a resource road must ensure the road is managed to mitigate unacceptable environmental impacts. This may require the use of qualified professionals and the completion of site level assessments such as terrain stability, erosion hazard, stream classification and design of drainage structures (e.g. bridges, major culverts).

- 3. Road Use Objectives:** Government may define what condition the road must be in once its intended use has been concluded (if it is not to be deactivated) before the designated maintainer is relieved of their obligations (the designated maintainer may have the option to pay in lieu of the required work).

*What this means:* Before government can relieve a designated maintainer from maintenance obligations, government must first determine the ongoing road use objective for the road in question (e.g.: no further use, continued industrial/commercial use, off-road vehicle use). If use is to continue, consider any environmental risks that require mitigation must be considered, as well as who will hold the obligation to maintain the road. Based upon this information, government will communicate to the designated maintainer what conditions must be met before government will grant relief (e.g.: full deactivation, road left in typical active use condition, or something in between that aligns with the objective).

This policy will accommodate a process under which the decision-maker determines the ongoing road use objective well before the designated maintainer applies for relief.

- 4. Intended Use:** Design, build and maintain roads for intended use while mitigating unacceptable environment impacts and providing for the safety of intended users.

*What this means:* The builder or designated maintainer will be obligated to meet the same results to mitigate unacceptable environmental impacts and assure safety, regardless of whether the intended use involves ore trucks, pick-up trucks or off-road vehicles. Signage may be necessary to support any usage variances or restrictions in order to provide for safe use and to facilitate enforcement. Some standards will be provided, such as designs for drainage structures.

- 5. Open Roads:** Roads if open are available to everyone except as required to protect the road, to mitigate unacceptable environment impacts, and to provide for the safety of road users.

*What this means:* The designated maintainer cannot decide who is allowed to use the road. However, users must meet obligations, such as following road use rules, and those who do not may be subject to enforcement actions.

The designated maintainer will have the authority to temporarily close roads to everyone for maintenance activities or when conditions put the road, the environment or users at risk. For example, it may be necessary to restrict use or close the road temporarily due to timber falling operations next to a road, spring break-up, or maintenance activities such as bridge replacement.

- 6. Liability for Damage:** Anyone may be liable for the damage they cause to a resource road.

*What this means:* Any person found responsible for damaging a resource road will be subject to enforcement action, including liability for all costs associated with repairing such damage.

- 7. Safety Regime:** A safety regime must be created that applies to all resource roads and all their users including industrial, commercial and recreational vehicles.

*What this means:* The NRRA will be used to clarify government's expectations regarding resource road safety, and will include provisions for safe infrastructure and safe use of resource roads by all users. It will place appropriate responsibilities on designated maintainers and users, and will align closely with the safety regime that drivers are familiar with on public highways. The NRRA, the *Workers Compensation Act* and the proposed Off Road Vehicle Act will create a seamless and rational safety framework.

- 8. Use at Own Risk:** Liability to third parties will be limited to instances of misfeasance.

*What this means:* Unless a designated maintainer or the government has intentionally or negligently created a hazard that causes another user injury or vehicle damage, there will be no recourse compensation. This policy will encourage government to allow more roads to remain open for public use (instead of being deactivated) when the designated maintainer no longer requires the road. It is also intended to encourage safer behaviour on resource roads.

- 9. Road Suitability Assessment:** All users must assess the road to make sure it is suitable for their intended use.

*What this means:* Intended to ensure that users confirm the road (including bridges and culverts) is suitable for intended use before they start using it, and they also know who is responsible for maintenance. If the assessment confirms that upgrades are required to make the road suitable, then the person must make arrangements for those upgrades to occur, or modify their planned use to suit the existing road. If the assessment confirms that hazards exist, the user must notify the designated maintainer or government (if there is no designated maintainer).

Government may designate the user as the maintainer if one does not already exist.

- 10. Designated maintainers:** Any user may be assigned by government as a designated maintainer.

*What this means:* The party with the greatest need for a road (whether industrial, commercial, or other), can be designated as the maintainer, thereby ensuring their interests in the road are protected. There will only be one designated maintainer for each road or section of road at any given time. The Act will provide for separate agreements between the designated maintainer and other users regarding who actually does the work, as well as for temporary or permanent changes in designation title.

- 11. Limited Obligation:** Designated maintainers are not obligated to complete or pay for incremental work requested by other users. If appropriate, government may assign designated maintainer obligations to a user who requires a higher standard of maintenance.

*What this means:* Each user is responsible for determining what their needs are and letting the designated maintainer know about them. However, there will only be one designated maintainer at a time responsible for meeting legislated requirements. If an agreement cannot be reached between the designated maintainer and the user regarding a modification, government may temporarily or permanently transfer maintenance obligations to the other user. This would then allow the user to proceed with the incremental work they need.

- 12. Contributing to Maintenance:** Commercial or industrial users who use resource roads must contribute to maintenance.

*What this means:* Where multiple parties use roads for industrial or some commercial (yet to be defined) purposes, they will be obligated to contribute fairly to the cost of maintenance incurred by the maintainer.

Maintenance activities subject to cost-sharing include grading, brushing, minor culvert<sup>2</sup> replacement, signage, hazard mitigation, minor resurfacing, bridge curbs and running planks. The mechanism for determining the contribution a given user must contribute has yet to be developed. Capital cost recovery (new construction and major structure replacement, realignment, widening or other similar investments may be included if a policy mechanism can be developed that is simple, effective and fair).

- 13. Relief Conditions:** When a designated maintainer no longer requires use of a road, they may apply to government for relief from their maintenance obligations. Government, if satisfied that the designated maintainer's claim is valid, must provide relief from maintenance obligations, but may include conditions that need to be met before relief is granted.

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<sup>2</sup> Minor culverts are those with a capacity of less than 6 m<sup>3</sup> per second or less than 2,000 mm in diameter (or equivalent)

*What this means:* As resource roads on Crown land are public assets, the Act will require that a government decision-maker consider the future value of the road to the public good when setting relief conditions.

Government may require certain conditions be met before granting relief. Typically conditions would range from full deactivation to continued industrial use.

Ideally, relief conditions will be established by government before the application for relief is made, allowing the designated maintainer to meet those conditions and make a declaration at the same time as applying for relief.

**14. Deactivation:** Any road lacking a designated maintainer may be subject to deactivation.

*What this means:* Deactivation is the act of permanently mitigating environmental risk associated with the road. It generally requires the removal of bridges and stream culverts that will eventually fail if not maintained, as well as other measures to minimize sediment delivery to streams and the risk of landslides.

Continued use by vehicles is not an objective for a deactivated road, but may be possible depending on the associated risks to the environment.

While government recognizes that not all roads need the same level of maintenance, every road needs to have a person responsible for carrying out maintenance with other users contributing to maintenance costs. If a person commits to mitigating the environmental risk, government may not require deactivation. So if a road is important to a user, they need to let government know they are willing to accept an appropriate level of responsibility for helping mitigate environmental damage. The amount of responsibility will vary with the planned use, the environmental risk, and the capacity of the user.

**15. Integrated Decision-Making and Authorizations:** Authorizations from different Acts may be integrated into a single process and a single document.

*What this means:* If multiple authorizations are required (and one is under the NRRA), the Act could result in one adjudication or decision maker process, possibly with one authorization document rather than separate processes and documents for each. For example, to develop a commercial recreation lodge, a person may require a Licence of Occupation (*Land Act*), a Cutting Authority (*Forest Act*) and an NRRA authorization to construct a road to the lodge.

**16. NRRA Authorizations:** Authorizations will only be required for road construction or modification outside an existing right-of-way, or to construct “works” within the right-of-way.

*What this means:* No road use permit is required. Once a designated maintainer has been confirmed, no further documents need to be issued to other users unless another user is designated as the maintainer. An authorization would also be required if a person proposed to erect signs<sup>3</sup>, or to install a power line, water line

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<sup>3</sup> The designated maintainer may be allowed to install signs without decision-maker approval under prescribed circumstances

or similar type works within an existing right-of-way. The rights and obligations of other users will be contained in the Act and Regulations.

- 17. NRRA Orders:** Extend the use of orders to assign/relieve designated maintainer obligations (currently on Forest Service Roads only) to all resource roads.

*What this means:* Government will be able to assign, vary and relieve a person of obligations under the NRRA via a document called an order, which has the advantage of being a very efficient, low-cost method of confirming who is responsible for what. The person does not need to apply for an order or otherwise be granted an authorization for it.

This complements the policy of every road needing a designated maintainer. If the current designated maintainer leaves for some reason and there are other users, the decision-maker can issue an order assigning designated maintainer responsibilities to one of the remaining users so business can continue more or less uninterrupted. Decisions related to who is issued the order and its content needs to be reviewable and appealable, but the order will not be stayed during the review or appeal.

- 18. Results-Based:** The NRRA will reflect a results-based regime for road construction, modification, maintenance and deactivation, where appropriate.

*What this means:* The person carrying out an activity authorized under the NRRA is responsible for determining how to meet their own needs and the requirements of the law, rather than the law dictating how this must be done. For example, it is up to a person building a road to determine how to meet a legal requirement to maintain natural surface drainage patterns during and after construction. Demonstrating due diligence may require the use of qualified professionals.

- 19. Exceptions to Results-Based:** Enables government to enter into an agreement, where appropriate, to customize construction and designated maintainer obligations for individuals who cannot be expected to perform under a results-based regime (e.g. a non-industrial user).

*What this means:* Results-based regulations can work well for businesses and individuals with extensive knowledge or resources so they can plan and implement a program that ensures the desired result is achieved. This may not work well for some commercial or private individuals or groups. For these individuals, government may evaluate the applicant's capacity to undertake the work successfully, specify security, and set the construction/maintenance obligations in the agreement. While it reduces uncertainty for those who choose to go this way, it also reduces their choices.

- 20. Compliance and Enforcement:** Compliance & Enforcement (C&E) policy relating to resource roads is to reflect aspects of the *Forest and Range Practices Act* (FRPA), *Oil and Gas Activities Act* (OGAA), the Off Road Vehicle Management Framework and other existing legislation to make it more effective and efficient.

*What this means:* C&E actions will apply with greater uniformity and to a broader suite of rules of the road and obligations of those building, modifying and maintaining, and using resource roads than is currently the case.

- 21. Information Sharing and Reporting:** The NRRA will define information sharing and reporting requirements, and possibility of relief in limited circumstances.

*What this means:* There will be a consistent suite of reporting requirements for those planning, building, maintaining and using resource roads (e.g. records related to bridges and other structures). The information will be limited to that required for effective road administration, to show compliance with the Act, to maintain user safety, and to mitigate unacceptable environmental impacts.

- 22. Efficiencies:** Seek efficiencies that will reduce overall costs of road administration borne by industry and government by:

- a) ***Reducing, standardizing and streamlining administration.***

*What this means:* Instead of the multiple current processes, no matter who you are or why you are building a road, the process for obtaining approval to build or modify a road under the NRRA will be the same. Regardless of how many users there are on a road, only one will be the designated maintainer.

The rights and obligations of the builder, the designated maintainer and the other users will be consistent on every road. General rights, obligations and conditions will be contained in the legislation. The scope of conditions that may be added to authorizations by government will be limited to optimize consistency. There will be minimal process to amend documents (e.g. seek relief, reassign to a third party, add a new road).

- b) ***Creating a fair and efficient dispute settlement mechanism.***

*What this means:* Primarily this pertains to disputes regarding shared maintenance costs or changes in use that affect other parties. The current process (under the *Forest and Range Practices Act*) relies on a mutually agreed-to process or commercial arbitration, which may or may not be practical. Application of a similar process in the NRRA is under review.

### **Other NRRA Policy Issues:**

Although the following issues were not addressed in part 2 of this paper, they also require input from stakeholders before a policy is developed. New and emerging road-related issues will be added to this list as the Natural Resource Road Policy Project moves forward and as a result of feedback to this paper.

- 23. Public Watchdog:** Is there a need for an independent, third party with responsibility for ensuring that appropriate practices are followed in the construction, maintenance and use of resource roads? The Forest Practices Board, Office of the Auditor General and Office of the Ombudsperson are examples of entities that perform this type of function or a similar one. One of these could potentially be utilized to provide a “public watchdog” role in connection with resource roads. Alternatively, an entirely new body could be established to perform this function.

**24. Ownership and Control of Bridges:** How can public expectations be accommodated while respecting industrial independence when it comes to ownership and control of bridges? The public expects government will manage access in the public interest, and this requires the ability to control when and where to allow or prevent access. Designated maintainers and government have both developed business models that include retention of ownership and control of bridges. Three possible options include:

- a. The person who paid to have the structure installed owns the structure and controls if and when it is removed from the road.
- b. Once installed on Crown land, a structure forms part of the road and becomes a public asset. Control then transfers to the Crown.
- c. The person who paid to have the structure installed owns the structure, but control of when it can be removed lies with the Crown. If removed for any reason, the owner can then recover the structure and dispose of it at their discretion.

**25. Capital Cost Recovery:** Will the NRRA include provisions for capital cost recovery from other users for new construction and major structure replacement, realignment, widening or other similar investments? If so, how might it work?

**26. Noxious Weeds:** Roads often introduce noxious weeds to nearby rangeland. Range managers and users concerned about noxious weeds degrading rangeland would like the Act to include appropriate requirements for soil revegetation and weed management.

## Closing

The Natural Resource Road Act Project presents resource road users with an opportunity to influence the way resource roads are administered and used in B.C. Government's primary objective is to make improvements over what we have today. Success depends on informed policy development. Feedback on this paper is the first step in providing information to the project team.

The best way to provide feedback is via the Natural Resource Road Act Project website at <http://www.for.gov.bc.ca/mof/nrra/>.

All feedback will be considered and accepted until **Dec. 15, 2011**. Please confirm for the project team the proposed policies you support and why. Also let us know which proposed policies you do not support and why they concern you. Offer alternatives if you have them. Provide as complete a description of your ideas as you can. It will make a difference and is greatly appreciated.

Due to the large volume of feedback anticipated, the project team cannot commit to responding to individual submissions. But the project team does commit to considering all feedback received when formulating the legislation.

## Glossary

**Authorization** means any rights granted for the use of natural resources in British Columbia, including permits, tenures, licences, leases and agreements, notices of work, rights of way and many others.

**Crown land** means land, whether or not it is covered by water, or an interest in land, vested in the Crown. In British Columbia, it is generally land which has not been sold to private individuals or corporations or it has been returned to the Crown by completing the forfeiture process of non-payment of property taxes.

**Cutting authority** refers to the broad term that defines the right to cut and or harvest timber. It includes a cutting permit issued under a forest licence, a timber sale licence, a timber licence, tree farm licence, a community forest agreement, a community salvage licence, a woodlot licence, a forestry licence to cut, a timber sale licence that does not provide for the issuance of a cutting permit, a licence to cut, or a road permit.

**Decision-maker** means an individual, or designate, with statutory authority to make decisions about provincial land or resources, and who is responsible for ensuring appropriate and sufficient consultation and accommodations. This is the person who ultimately signs off on an authorization under the legislation applicable to their agency.

**Designated maintainer** means the person assigned by government with the obligation to maintain a specified resource road. It can be government or any other user as stipulated in statute.

**Licence of Occupation** means an authority issued under the *Land Act* to occupy Crown land for a specified purpose.

**Misfeasance** means in law, the abuse of lawful authority in order to achieve a desired result.

**Natural Resource Road Act** refers to the proposed Act intending to establish a single regulatory framework for construction, maintenance, use and deactivation of resource roads in British Columbia to ensure they are managed consistently, fairly and safely.

**Off Road Vehicle** means a motorized vehicle (e.g. motorcycle, All Terrain Vehicle, snowmobile) that is not licensable for use on public roads and is typically used on trails.

**Order** means subordinate legislation made under the authority of a statute. Orders may be made by the Lieutenant Governor in Council, a minister, a superintendent or similar official, a board or a body. Most orders are administrative in nature, but some may be classified as regulations.

**Person** means a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law.

**Private land** means land owned in fee simple by a person other than the government.

**Private road** means a portion of Crown land for a road/rail bed associated with an industrial land use over which exclusive use of the land is conveyed to the authorized tenure holder and which is not open to public use.

**Public road** means a portion of Crown land designated or indicated as a road under the *Land Act*. Includes all roads authorized pursuant to a works permit under Section 14(c), a Section 39 licence of occupation, or a Section 79 and 80 Road Allowance. Such authorization does not transfer exclusive use of the land to the applicant. Use of a public roadway may not be denied to any person.

**Qualified professional** means a person who is a licensed professional with the required education, training and experience necessary to provide service to clients within the scope of their professional expertise.

**Relief (from maintenance obligations)** means obligations defined by government and held by a designated maintainer that must be met prior to being granted relief from

maintenance obligations. It consists of environmental risk mitigation commensurate with government's stated road use objective. May include for example, full deactivation of a road, re-establishment of prior level of access or provision of some reduced level of continued use (e.g. unrestricted use, four wheel drive, Off Road Vehicle only, etcetera).

**Resource road** means roads utilized by motorized vehicles on Crown land, and any road on private land that has been authorized by government, but does not include public roads (highway, municipal, federal), roads covered by a *Mines Act* permit or private roads.

**Resource Road Act (Bill 30)** was legislation proposed in 2008, but did not proceed.

**Rights** means includes a power, authority, privilege and licence.

**Road use objective** means an objective set by road builders, users or government for a resource road that describes the ongoing management objective for the road. Some examples of what Government's objectives might be include: (1) long-term, unrestricted use, (2) short-term resource extraction followed by deactivation, (3) short-term resource extraction followed by long-term Off Road Vehicle use. Government will use its road use objective to set maintenance relief conditions for the designated maintainer.