



SURFACE RIGHTS BOARD

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Application Forms and information about the Board are available from any Service BC Centre (Government Agent) and Applications may be delivered to the Board either directly or through Service BC

September 2023

PRACTICE DIRECTIVE NO. 5

Applications under the *Geothermal Resources Act*

Purpose The purpose of this Practice Directive provides direction for making an application for right of entry under the *Geothermal Resources Act (GRA)*.

Background Geothermal resources in British Columbia are vested in the government. The *GRA* provides for the granting of permits and leases. The holder of a permit, or a person who has made an agreement with a permittee for the drilling or operation of a well has the exclusive right, subject to the regulations, to apply for well authorizations for wells to be drilled within the boundaries of the permittee's location. Once a geothermal well has been drilled, and a permittee submits a development plan with respect to a location, the minister may issue a lease. Once a lease has been granted for a location, the lessee may produce geothermal resources subject to the regulations and necessary authorizations issued by the BCER. Persons may not produce geothermal resources except for testing purposes other than in accordance with an approved production plan underlying the location of a geothermal lease granted in accordance with the *GRA*.

Section 1(2) of the *GRA* provides that the *Petroleum and Natural Gas Act (PNGA)* applies "in respect of entry onto and use of land for the purpose of exploring for and producing geothermal resources". A board mediator may make an order authorizing entry to private land if satisfied the order authorizing the right of entry is required for the purpose of exercising exploration or production rights granted under the *GRA*.

The Geothermal Operations Regulation, BC Reg 79/2017, requires a person applying for a well authorization to the BC Energy Regulator (BCER) to provide "proof of tenure or right to use private

land". Unlike in the oil and gas context where the proponent of an oil and gas project will typically receive authority from the BCER prior to seeking a right of entry order from the Board, the proponent of a geothermal project must either enter an agreement for access with a landowner or obtain a right of entry order from the Board authorizing access private land prior to submitting an application for well authorization to the BCER. The holder of a GRA Permit will also need to access land covered by the Permit to conduct preliminary work prior to submitting an application for well authorization.

Unlike in the oil and gas context, the extent and duration of access to land may not be known until a drilling program has been completed.

Directive

Exploration: Persons seeking right of entry to private land for the purpose of exercising exploration rights granted under the *GRA* must submit an application to the Board in Form # and include with their application:

- i) a copy of the Permit issued under the *GRA*;
- ii) where applicable, a copy of any agreement made with the permittee for the drilling or operation of a well;
- iii) a detailed description of works required to be carried out on the land to which access is sought including maps showing potential drill sites for which well authorization will be sought from the BCER.

The Board may require production of additional information to assist the parties in coming to agreed terms of access to private land for exploration purposes.

Unless the circumstances of a particular case warrants otherwise, a board mediator will assist the parties with mediation of terms of access to private land for all purposes necessary to:

- i) advancing an application to the BCER for well authorization;
- ii) drilling well in accordance with a well authorization issued by the BCER;
- iii) submitting a development plan to the Minister and converting the Permit to a lease.

The application and all included documents must be served on the owner or owners of the land to which access is sought in accordance with the Board's Rules.

Unless the circumstances otherwise warrant, if the parties are not able to agree to terms of access and the Board mediator is satisfied

that access to private land is required for the purposes listed above, the mediator may make a right of entry order authorizing entry to private land for all of the above purposes in accordance with an authorization issued by the BCER or as may be required by other government bodies. When making a right of entry order, the Board may make an order for a security deposit and must make an order for partial payment of compensation to a landowner. If the parties are unable to agree to the compensation payable to a landowner following completion of the drilling program, the board may provide further mediation to assist the parties in coming to an agreement, and if necessary arbitrate the compensation payable.

Production: Persons seeking right of entry to private land for the purpose of producing geothermal resources must submit an application to the Board in Form # and include with their application:

- i) a copy of the lease issued under the *GRA*;
- ii) a copy of the development plan submitted to the Minister.

The application and all included documents must be served on the owner or owners of the land to which access is sought in accordance with the Board's Rules.

The Board may require production of additional information to assist the parties in coming to agreed terms of access to private land for exploration purposes.

If the parties are not able to agree to terms of a surface lease for permanent production facilities, and the Board mediator is satisfied that access to private land is required for the purposes of producing geothermal resources for a production area set out in a lease issued under the *GRA*, the mediator may make a right of entry order authorizing entry to private land for the production of geothermal resources in accordance with an authorization granted by the BCER. When making a right of entry order, the Board may make an order for a security deposit and must make an order for partial payment of compensation to a landowner. If the parties are unable to agree to the compensation payable to a landowner, the board may provide further mediation to assist the parties in coming to an agreement, and if necessary arbitrate the compensation payable.

For the Board,

Jacqueline Beltgens, Chair