


## Land Procedure Policy Variance

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<b>NAME OF LAND PROCEDURE:</b>	Policy Variance Procedure
<b>APPLICATION:</b>	Applies to all land use policies, excepting those portions under the jurisdiction of the Ministry of Transportation and Infrastructure
<b>ISSUANCE:</b>	Assistant Deputy Minister, Tenures, Competitiveness and Innovation
<b>IMPLEMENTATION:</b>	Ministry of Forests, Lands and Natural Resource Operations
<b>REFERENCES:</b>	<i>Land Act</i> (Ch. 245, R.S.B.C, 1996)
<b>RELATIONSHIP TO PREVIOUS LAND PROCEDURE:</b>	This procedure replaces the previous Policy Variance Procedure in effect November 23, 2007

  
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Dave Peterson, ADM  
Tenures, Competitiveness and Innovation  
Ministry of Forests, Lands and Natural  
Resource Operations

  
\_\_\_\_\_  
Date:

<b>APPROVED AMENDMENTS:</b>		
Effective Date	Briefing Note /Approval	Summary of Changes:
June 1, 2011	BN 175892	Policy and Procedure update to reflect reorganization of resource ministries April 2011
January 14, 2019	BN 246958	Significant changes made to streamline administrative process and modify responsibilities.
May 28, 2021	BN 263712	Minor revisions to wording and restructuring of document for flow.

**Table of Contents**

1. PURPOSE .....4

2. GENERAL PROCEDURE .....4

    Variance Details.....4

    2.1 Significance of Variance .....4

3. VARIANCE CONSIDERATIONS.....5

    3.1 Related Process.....6

        3.1.1 Land Use Report.....6

        3.1.2 Financial factor changes .....6

        3.1.3 Decision maker .....6

        3.1.4 Tenure document language .....6

4. GENERAL DECISION MAKING PRINCIPLES.....7

## 1. PURPOSE

The purpose of this procedure is to assist decision makers in evaluating whether a decision made under the *Land Act* should vary from established Crown land direction.

A policy variance is a decision to vary from a component of a land use policy, procedure or tenure document provision. The subject of variances may include, but are not limited to: eligibility requirements, tenure types, tenure terms, forms of allocation, in very limited circumstances pricing methods and royalties, application-related requirements and administrative policy.

## 2. GENERAL PROCEDURE

The following outlines the procedure for processing and considering variances with respect to policy and procedural direction resulting in tenure issuance.

In limited circumstances, processing of applications for Crown land tenure through to issuance of tenure may need to vary from formal policy and procedure (policy). To ensure that these variations are within legislative boundaries, captured for future file reference, and to improve future processes, they must be documented and retained with the Crown land file.

A policy variance can be considered after the initial application has been submitted, as it may trigger a new application, if the nature of the request is deemed significant enough to be considered an amendment to the application.

During application review, land authorization staff may identify a need to vary from a policy in their recommendation to the decision maker or request tenure document clause adjustments.

### Variance Details

When a variance is considered, the inclusion of the following details are required to give the decision maker context when determining if a policy should be varied from:

1. the nature of the variance being requested is clearly stated in writing; and
2. why a variance is being considered - is there a reasonable rationale on why a Policy variance is being sought.

If the above information is not available to the decision maker, the variance request will be rejected.

### 2.1 Significance of Variance

The Lands Branch must be consulted during the consideration of “major” or significant policy variance-requests or where there is uncertainty, to provide advice and any relevant background information on the policy. This will also allow Lands Branch to monitor requests and, if necessary, address them through future policy amendments.

The following is a list of criteria that can be used to assist in determining when a variance may be considered “major”:

1. It is complex and has a number of significant issues associated with it that may have broad policy implications.
2. It has the potential to establish a precedent that could affect a significant number of dispositions (i.e. there may be numerous clients with similar circumstances, and potentially across multiple regions);
3. The policy component in question or the program area that the application is associated with is being examined as part of a policy or program review.
4. It will be varying pricing policy, including rental methodology and royalties, or will have a significant negative revenue impact compared to current pricing (see Appendix 1 Financial Factor Variance Form);
5. It is linked to a memorandum of understanding or protocol agreement negotiated with other agencies;
6. It is associated with a section of policy that has been specifically negotiated with sector organizations or approved by Cabinet;
7. It has implications to public health, or personal or property safety; and
8. It conflicts with other current Government policies.

### **3. VARIANCE CONSIDERATIONS**

The following provides a general list of criteria and questions for Land Authorization staff to consider when making recommendations/decisions on Policy variances. There may be additional factors in specific circumstances which are not listed below, contact Lands Branch to discuss.

1. Consistency with principles and objectives:
  - is this consistent with [Crown land allocation principles](#)?
  - is it consistent with the [pricing goals and principles](#)?
  - is it consistent with the stated objectives of the land use policy?
2. Precedent:
  - how unique is this situation? Will other clients likely seek a similar variance?
3. Fairness to other clients:
  - will this create a competitive advantage over other proponents?
  - how have similar requests by others in similar circumstances been addressed?
4. Business / operations need:
  - has the client provided a demonstrable business or operations need for the variance?

5. Administrative efficiency:
  - how will this variance affect ministry workload or administrative efficiency?
6. Harmonization with other authorizations:
  - will this create consistency with other agency authorizations that are associated with the project/operation and is there a clear benefit by harmonizing?
7. Approval of original policy:
  - would this be altering a Cabinet policy decision or a ministers' directive?
8. Sector impact:
  - is current policy a result of discussions/negotiations with sector associations, Government agencies or other stakeholders?
  - is the variance significant enough to warrant re-consultation with any of these groups and can this be done in a timely manner?

### **3.1 Related Process**

#### **3.1.1 Land Use Report**

The rationale for allowing or disallowing a variance request must be provided in the Land Use Report.

#### **3.1.2 Financial factor changes**

Changes to any of the financial factor variables including the rent calculation method, the valuation source, minimum or maximum rents, the rental rate (percent), and any royalty or percentage of revenue calculation also need to be considered in the Policy variance decision. For such variance requests, complete the Financial Factor Variance Request form as shown in Appendix 1.

#### **3.1.3 Decision maker**

A decision maker may elevate the entirety of a decision to a more senior delegated decision maker where appropriate. However, no portion of a decision may be so elevated.

A decision maker may consider a variance from a policy at any time prior to a final decision being made. A variance is part of the decision and must be included with the decision package for the decision maker.

#### **3.1.4 Tenure document language**

To avoid delays in producing a tenure that reflects the Policy variance decision, the Senior Portfolio Administrator should be advised of any potential implications to tenure language as soon in the process as possible. Any policy questions that may come up in the development of the tenure language, including questions that may be raised by legal services in the drafting of tenure language, can then be dealt with in the Policy variance decision.

#### **4. GENERAL DECISION MAKING PRINCIPLES**

All decisions made under the *Land Act* must be made in accordance with the principles of administrative law.

- Any decision made must be authorized by statute. That is to say a decision maker cannot vary from a policy in a way that is contrary to any statute.
- Any variance from a policy must be articulated and reasonable.
- There is one decision maker. Any person who has authority under legislation to make a decision must also be the individual who has fully informed themselves of all of the facts of a file, including any submissions from any party. This is known as 'one who hears must decide'. An individual who does not have all of the collected information in front of them, including any submissions made post Notice of Final Review, may not render a decision.
- Any decision maker, when considering a policy variance, must not fetter themselves. Fettering occurs when a decision maker either refuses to consider evidence that they must, or binds themselves to following a path that another person (or policy) has dictated, when that is not specifically set out in the governing legislation. A decision maker must not be fettered by an outside influence, or allow their own discretion to determine what the outcome of a decision will be without a full consideration of all the relevant facts.
- A decision maker can seek guidance from others to inform themselves when making a decision so long as they keep their minds open to the possibility of deciding against the guidance provided.
- If reconsidering a decision that has already been made, contact legal counsel prior to proceeding.

## Appendix 1: Financial Factor Variance Request Form

Please complete and submit form to the Lands Branch for all financial factor variance requests.

### VARIANCE REQUEST REQUIRED INFORMATION

Briefing or Decision Note # \_\_\_\_\_ (if applicable)

File Number: \_\_\_\_\_

Disposition Identification Number: \_\_\_\_\_

Date of Request: \_\_\_\_\_

Requestor: \_\_\_\_\_

Request for a Financial Factor Variance (briefly provide the reasoning/justification for this variance from land use policy, including pricing methods listed below. Describe the variance and explain which policies are involved and why the existing policy will not work for this situation. You must include Tenure Type, subtype, purpose and subpurposes):

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Possible Tantalus Financial Factor Fields that need to be completed (not all fields apply to any particular factor):

#### Mandatory for most financial factors:

rent calculation method (,fixed rent, land value, agriculture productivity, grazing, prepaid or rent free) \_\_\_\_\_

valuation source (BCAA, converted, estimated, in house, Ministry or zonal) \_\_\_\_\_

minimum rent (\$) \_\_\_\_\_,

maximum rent (\$) \_\_\_\_\_;

rental %, \_\_\_\_\_;

land value (\$) \_\_\_\_\_,

#### Optional or for specific land uses:

annual management fee (\$) \_\_\_\_\_,

Min Gross Rev.,

% Minimum Royalty per \_\_\_\_\_,

animal weight gain \_\_\_\_\_,

grazing % \_\_\_\_\_,

Min Liability Insurance (optional) \_\_\_\_\_,

Minimum Performance Bond (\$) (optional) \_\_\_\_\_; Blanket Bond \_\_\_\_\_;

Default term, \_\_\_\_\_ unit (days, months, years or indefinite),



tenure replacement option in years (midterm or expiry) \_\_\_\_\_,  
development rental rate % \_\_\_\_\_,  
development years \_\_\_\_\_,  
phase-in, land value (\$) \_\_\_\_\_,  
phase-in years (yrs) \_\_\_\_\_,  
land prod %, \_\_\_\_\_, and  
stock price \_\_\_\_\_.

Target completion date: \_\_\_\_\_ (e.g. when does the tenure need to  
be confirmed in Tantalus with the approved valuation tab Financial Factor).

Recommendation from DOA or approval authority and the SPA to the request variance.

Recommended: ☐  
Not Recommended: ☐

Recommended: ☐  
Not Recommended: ☐

\_\_\_\_\_  
DOA or authorized authority

\_\_\_\_\_  
Senior Portfolio Administrator

Date: \_\_\_\_\_

Date: \_\_\_\_\_

For LTB Only:

Legal Documents Officer  
Date:

Mgr, Regional Operations  
Date: