



Land Procedure Insurance and Financial Securities

NAME OF LAND PROCEDURE:	Insurance and Financial Securities
APPLICATION:	Applies to all tenures issued pursuant to the <i>Land Act</i>
ISSUANCE:	Assistant Deputy Minister, Rural Opportunities, Tenures and Engineering
IMPLEMENTATION:	Ministry of Forests, Lands and Natural Resource Operations and Rural Development
REFERENCES:	<i>Land Act</i> (Ch. 245, R.S.B.C, 1996) <i>Ministry of Lands, Parks and Housing Act</i> (Ch.307, R.S.B.C, 1996)
RELATIONSHIP TO PREVIOUS LAND PROCEDURE:	This procedure is built from components of the Tenure Administration Procedure in effect June 1 st , 2011.

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Date:

APPROVED AMENDMENTS:		
Effective Date	Briefing Note /Approval	Summary of Changes:
June 17 th , 2022	BN 270324	Updated procedure in consultation with Risk Management Branch and Ministry of Attorney General. Key changes include clarification of procedural steps, change to risk matrix to allow greater flexibility in setting security amounts, and moved all program specific security / insurance requirements into this procedure.

Table of Contents

1. PURPOSE.....	1
2. DEFINITIONS AND ABBREVIATIONS	1
3. INSURANCE	1
3.1 Types of Insurance and Minimum Amounts	1
3.1.1 General Liability Insurance Coverage	2
3.1.2 Additional Insurance Requirements for Specific Activities and Risks	3
3.2 Alternative Insurance Solutions	6
3.3 Insurance Administration	6
4. FINANCIAL SECURITIES.....	7
4.1 <i>Determining Security Amounts</i>	7
4.1.1 Phasing-In Security	8
4.2 <i>Forms of Securities</i>	8
4.2.1 Irrevocable Letter of Credit	9
4.2.2 Cash.....	10
4.2.3 Surety Bonds (Performance Bonds)	11
4.3 Special Circumstances	12
4.3.1 Blanket Securities.....	12
4.3.2 Blanket Security Shared Across Multiple Provincial Agencies.....	13
4.3.3 Association Agreements	14
4.3.4 Prescribed Land Development.....	15
4.4 Modification of Security Amounts.....	15
4.4.1 Procedures for Modification of Security	16
4.5 Invoking Security Deposits	16
4.5.1 Procedures for Invoking Security Deposits	17
4.6 Releasing Security Deposits.....	18
4.6.1 Procedures for Releasing Security Deposit.....	19
APPENDIX A: PROGRAM SPECIFIC INSURANCE REQUIREMENTS	20
APPENDIX B: RISK ASSESSMENT AND PROGRAM SPECIFIC GUIDANCE FOR FINANCIAL SECURITIES.....	22

1. PURPOSE

The purpose of this Procedure is to establish insurance and financial security guidance for *Land Act* tenure requirements and administration.

The Procedure was developed in consultation with the Ministry of Finance, Risk Management Branch (RMB) who create, operate, and support risk financing programs and policies. Additional guidance on financial guarantees and insurance is located on the [RMB Forms and Guidelines](#) site.

2. DEFINITIONS AND ABBREVIATIONS

The Procedure includes terms that are defined in the *Land Act*. For other terms, a glossary of definitions and abbreviations are available in [Glossary and Abbreviations](#).

3. INSURANCE

Insurance coverage is generally a required condition for *Land Act* tenures. The purpose of insurance is to ensure that the tenure holder can pay for damages or injuries that their actions cause to a third party. The insurance requirements in tenures are intended to ensure the Province is adequately indemnified against liabilities associated with the use and occupancy of Crown land by tenure holders.

The Procedure will guide decision makers on which type of insurance to require for *Land Act* tenures. The information contained in this Procedure is not intended to provide guidance to a tenure holder as to the adequacy of their insurance coverage. It is the responsibility of the tenure holder to work with their insurance company to purchase and maintain insurance that will cover their risks, including, but not limited to, the requirements specified in the tenure agreement.

3.1 Types of Insurance and Minimum Amounts

Land Act tenures generally will require at least general liability insurance coverage, usually in the form of either Commercial General Liability (CGL) or Personal Liability (PL) (often included in Homeowners and Renters/Tenants Insurance). There are also additional, specialized insurance products that protect against specific liability and exposures. These specialized coverages are issued by the insurance companies as separate policies or as add-ons to liability insurance coverages (endorsements).

The following section describes the common types and minimum amounts of general and specific insurance coverage required for *Land Act* tenures.

3.1.1 General Liability Insurance Coverage

General liability coverage for *Land Act* tenures comes in two forms – commercial general liability or personal liability coverage. Refer to Appendix A for a list of program specific general liability insurance requirements.

(a) Commercial General Liability

Commercial general liability (CGL) insurance protects against losses the tenure holder is legally obligated to pay, as a result of bodily injury or property damage to third parties. By adding the Province as ‘additional insured’ to the tenure holder’s insurance policy, the Province seeks to protect itself from having to pay for legal defense or damages where included in any legal proceedings against the tenure holder in relation to the use and occupancy of Crown land.

For tenures in and around the aquatic environment, it is the responsibility of the tenure holder to work with their insurance provider to ensure that marine liabilities are included in their CGL insurance package or by another insurance product (e.g., marine general liability).

The minimum requirement for CGL insurance is \$2,000,000 unless otherwise stipulated in reference to a specific program – see Appendix A. The Province must be named as ‘additional insured’ in CGL insurance.

(b) Personal Liability Insurance

For non-commercial activities, such as private residential uses (including private moorage, and roads, bridges, and utilities for residential purposes), the tenure holder is required to have insurance coverage against personal liability (PL). Such coverage is typically included in the tenure holder’s property (Homeowners or Renters) insurance. The Province is not normally added as an ‘additional insured’ on PL coverage.

The minimum requirement for PL insurance is \$2,000,000, unless otherwise stipulated in reference to a specific program – see Appendix A.

In some limited cases, PL insurance may be cost prohibitive or difficult to attain from a local insurance provider. In these situations, a decision maker may consider waiving the insurance requirement in accordance with the [Variance Procedure](#) and with careful consideration of the following:

- decision makers should ensure that the tenure holder / applicant has undertaken due diligence in finding appropriate insurance solutions. For example, the Authorizing Agency may require the applicant / tenure holder to provide written responses from multiple insurance companies explaining that the insurance is unattainable. Applicants may also consider pursuing CGL insurance as an alternative to PL insurance.

- PL insurance requirements should only be waived for low-risk tenures or where the alternative to a tenure is considered higher risk. For example, a low-risk tenure may be a short, un-gated, road that will only be used by the tenure holder, or an assignment or replacement of an existing low risk tenure that has previously not had an insurance requirement. When weighing the risks, decision makers should consider that unattainable or cost prohibitive insurance may be an indicator that the tenure itself is high risk, and therefore not appropriate to waive the requirement.

Decision makers must ensure that the rationale for waiving the personal liability insurance requirement is recorded on file and referenced in the Land Use Report.

3.1.2 Additional Insurance Requirements for Specific Activities and Risks

The following section provides guidance on additional types of insurance which may be required for specific liability exposures, in addition to the general liability insurance requirements.

The insurance products listed below may be specifically required by the Authorizing Agency however, this is not an exhaustive list of all insurance requirements that the tenure holder must maintain. Standard tenure documents include a provision for tenure holders to maintain additional insurance which they are required to carry by law, or they consider necessary to insure risks not otherwise covered by the insurance specified in the tenure document. Tenure holders must work with their insurance brokers to ensure appropriate coverage.

(a) Watercraft Liability

Watercraft Liability insurance (also called Protection and Indemnity insurance) should be considered for activities that include the operation of watercraft, either owned or leased by the tenure holder.

There may be coverage for watercraft liability under a CGL policy, but only for watercraft under a certain size, weight, or length – these parameters will differ depending on the insurance policy and are determined by each insurer. The applicant / tenure holder should check with their broker to review the coverage provided under their CGL. The certificate of insurance may note that this policy does exist, but that coverage required is already included in the CGL.

It is important that clients receive advice from their insurance broker regarding this type of coverage and when it is required.

The minimum amount for Watercraft Liability is \$2,000,000. Where watercraft liability is used for coverage of ferry services, water taxis, floating lodges and any towing

operation, the minimum is \$5,000,000 per occurrence. The Province must be included as 'additional insured'.

(b) Aviation Liability

Aviation Liability (also referred to as Aircraft Liability) insurance coverage for passengers and public, should be considered for activities that include the operation of aircraft (including helicopters) either owned or leased by the tenure holder. If the activity is related to a commercial airline carrier, this insurance policy is not necessary.

Aviation Liability requirements are set by the Canadian Aviation Regulation and should be followed by all aircraft operators, however, in any event the following minimums per occurrence, as well as a requirement to include the Province as 'additional insured', are referenced in the tenure document:

- \$1,000,000 for aircraft carrying a pilot only (no passengers), or
- \$3,000,000 for aircraft with up to 5 passenger seats, or
- \$3,000,000 plus \$1,000,000 for each additional passenger seat for an aircraft up to 10 passenger seats, or
- \$10,000,000 for aircraft over 10 passenger seats.

Where applicable, the policy will also include coverage for aerial drift or misapplication of fertilizers or herbicide chemicals in an amount not less than \$50,000 per occurrence.

Consult RMB for further information and guidance on Aviation Liability coverage.

(c) Airport Premises and Operations Liability

Airport Premises and Operations Liability insurance coverage should be considered for activities that involve the operation and maintenance of an airstrip, runway, or airport.

The minimum amount for Airport Premises and Operations Liability is \$5,000,000 per accident or occurrence, and the Province must be included as 'additional insured'.

(d) Sudden and Accidental Pollution Liability

Sudden and accidental (S&A) coverage is for bodily injury, property damage and cleanup expenses arising from newly discovered pollution conditions caused by the tenure holder.

S&A pollution coverage should be considered if land tenure activities are subject to significant quantities of pollutants which might cause harm to third parties if suddenly or accidentally spilled or released (e.g., significant fuel storage, storage of pesticides, herbicides, fungicides, rodenticides, fertilizers, etc.). Decisions to require this policy should be considered on a case-by-case basis, depending on the level of risk.

Additional considerations and limitations include:

- This coverage is not intended to cover pre-existing pollution conditions (i.e., condition must be accidental and neither expected nor intended);
- This coverage does not include on-site clean-up; the policy is only paying for third party bodily injury/property damage; and,
- There are often time limitations placed on incidents, i.e., incidents must be discovered and reported within a specified period (e.g., 7 days discovery / 7 days reporting).

S&A pollution coverage is either an endorsement added to a CGL coverage or as a separate insurance policy. It depends on each insurer who is providing the CGL, whether they can provide an endorsement or issue a separate policy. Marine Liability policies typically already include S&A coverage.

The range for S&A pollution liability is typically between \$250,000 and \$1,000,000 per occurrence and the Province must be included as 'additional insured'. The insurance amount is based on risk. Examples of high-risk tenures and activities include:

- large quantities of hazardous materials;
- proximity to residential or highly frequented areas (possible impact on health and safety); and,
- proximity to areas of high environmental value (ecological reserves, parks, conservation areas, etc.).

Consult MB for further information and guidance on determining the amount and use of S&A pollution coverage.

(e) Environmental Impairment Liability

Environmental Impairment Liability (also referred to as Environmental Pollution Liability) provides much larger protection than S&A. It covers both gradual, and sudden and accidental events. It would also pay for clean-up costs of the third party, as well as those of the tenure holder. The tenure holder should work with their insurance provider to design / tailor a program to meet their specific needs.

Environmental Impairment Liability should be considered for activities that are subject to significant quantities of pollutants which could cause harm if accidentally spilled or released and/or which might gradually seep to neighboring properties over a long period of time. This type of coverage is also referred to as: Pollution Legal Liability, Environmental Impairment Liability, Environmental Site Liability, and Pollution Premises Liability.

Decisions to require this type of insurance should be considered on a case-by-case basis depending on risks. Where this insurance is required, the Province must be included as 'additional insured'.

Consult RMB for guidance on the use and amount of Environmental Impairment Liability.

3.2 Alternative Insurance Solutions

In very limited circumstances, an alternative type of insurance may be acceptable in the form of blanket insurance or self-insurance. Lands Branch is responsible for maintaining the lists of companies eligible for these alternative forms of insurance. Authorizing Agency staff should consult the list of eligible companies and consult with the Legal Documents Officer (Lands Branch) with any questions.

For any other enquiries regarding alternative risk financing, consult RMB.

3.3 Insurance Administration

Insurance requirements must be documented in the Land Use Report and included in the Notice of Final review letter.

Applicants must provide proof of insurance for all insurance types, except for personal liability insurance (unless a decision maker specifically chooses to require proof of insurance due to the specific circumstances of the file). The BC Certificate of Insurance form (commonly referred to as FIN 173) must be completed and signed by the insurance broker as suitable proof of insurance. Insurance companies must be licensed to conduct business in Canada to meet the insurance requirement.

Tenure agreements will clearly identify the amounts and types of insurance required. The Authorizing Agency may ask for proof of insurance (for all types of insurance) at any point during the tenure term.

Prior to any modification of the insurance requirements, the tenure terms and conditions should be reviewed.

A change of insurance notice to the tenure holder must include:

- a) a rationale for the change;
- b) the new amount or type of insurance required; and,
- c) timelines for providing the new proof of insurance (as per tenure terms and conditions).

Once proof of the new insurance has been provided, an endorsement schedule and / or letter must be sent to the tenure holder and appended to the tenure document.

4. FINANCIAL SECURITIES

For this Procedure, the term 'security deposit' is used broadly to mean a financial guarantee or financial assurance tied to a *Land Act* disposition. A security deposit serves two purposes in the Lands Program:

1. to provide additional (financial) incentive to tenure holders to meet their contractual obligations under the *Land Act*, and,
2. to protect the Province from unfavorable financial consequences should the tenure holder default on their contractual obligations.

Land Act s.36 allows the Minister to require a security deposit for the performance and completion of tenure obligations and requirements.

The security amount should be sufficient to pay for the residual risk of unfulfilled tenure conditions and be easily accessible should it be needed. Each tenure agreement will identify the conditions under which security deposits may be accessed by the Province to fulfill outstanding obligations of the tenure holder, and/or to pay overdue fees associated with the tenure agreement.

4.1 Determining Security Amounts

Security amounts should be determined using a risk assessment based on the likelihood of the security being used and the potential clean-up cost of the site. Comprehensive risk assessments are often limited by access to financial information of potential tenure holders, and by Authorizing Agencies not having the expertise to properly assess such information. Therefore, risk will often be more heavily weighted by the potential clean-up costs which are largely a factor of the extent and type of on-site improvements (proposed and existing).

The Risk Assessment Tool in Appendix B should be used to determine the appropriate security amount for all *Land Act* tenures. Generally, for moderate to high-risk tenures the amount of security is largely based on the potential cost of site clean-up and restoration. For negligible or low risk files, a minimum security amount may be used. Appendix B has program specific information regarding minimum security amounts.

To determine the security amount, the Authorizing Agency may ask applicants / tenure holders for a description and cost breakdown of future site decommissioning, clean-up or restoration, particularly for sites identified as having a moderate to high risk. This information can be used to estimate costs of clean-up and assist in determining an appropriate amount of security.

The Authorizing Agency must document their rationale for the security amount on file and/or in the Land Use Report. If the decision maker deviates from the guidance in this

Procedure regarding securities, they should provide a rationale for that deviation and follow the [Variance Procedure](#).

4.1.1 Phasing-In Security

For large development projects, a phased approach to the security amount may be considered to account for a change in risk as the project moves through development phases (e.g., pre-construction, construction, operations / maintenance, etc.). The Authorizing Agency should discuss the phased security approach with the applicant and may provide *estimates* as to the security amounts required for each future phase. Providing a guaranteed future security amount should be avoided, thus allowing for an accurate real-time risk assessment at the time of the change, rather than a projected one. The Authorizing Agency should schedule file reviews for these projects to ensure that the appropriate changes to security have been made over time.

There may be other situations where it is appropriate to phase-in large securities over a reasonable period (e.g., three to five years) to reduce financial hardships for some tenure holders. In such situations, an agreed amount would be added to the security each year until the full amount is in place. If a phased security is requested due to financial hardship, the authorizing agency should contact RMB for guidance.

Refer to *Section 4.4 – Modification of Security Amounts* for procedural guidance on changing security amount over time.

4.2 Forms of Securities

Legal restrictions or lack of protection for government prevent the Province from accepting certain forms of security deposits. The forms of security accepted in the Lands Program are listed here and described in more detail in the sections below:

- Irrevocable Letter of Credit (ILOC)
 - This is the preferred form of security for *Land Act* tenures
- Cash in Canadian funds, including the following forms:
 - Physical Cash;
 - Cheques and Bank Drafts;
 - Online banking bill payments, Interac debit card payments, and wire transfers; and,
 - Money orders.
- Surety (Performance) Bonds – only for large projects and under the guidance of RMB

The following are **not** acceptable forms of security:

- Credit card payments, due to operational limitations (i.e., inability to 'return' money onto a credit card within the Crown lands payment system);
- Electronic Fund Transfer (EFTs) and eTransfers where an applicant sends money directly to the Government via email or text; and,
- Sake Keeping Agreements.

For any forms of security not listed here, refer to RMB for guidance.

4.2.1 Irrevocable Letter of Credit

An Irrevocable Letter of Credit (ILOC) is a document issued by an acceptable financial institution, payable to the Minister of Finance, which assures a specific amount. At the Authorizing Agency's request, the financial institution will make funds available should the Applicant be unable or unwilling to fulfill their financial obligations. ILOCs are the preferred form of security for *Land Act* Tenures.

RMB has an approved template that should be used for all ILOCs. The ILOC template, can be found on the [RMB Forms and Guidelines](#) page. Contact RMB if there is a request to deviate from the approved template. ILOCs should only be accepted from the list of acceptable financial institutions (also found on the RMB Forms and Guidelines page).

The ILOC template asks for an 'identifier' which ties the security to a specific tenure. This should be filled out in a way that references both the *Land Act* and the file number, for example, 'Land Act disposition under file number XXXXXXX'. In the case of blanket securities (security covering more than one tenure) reference should be made to 'several *Land Act* tenures held by 'name of individual or company'; given the larger number of files covered by the blanket security, a list of file numbers is not required in the identifier description.

ILOCs are usually set at a term of one year with a clause allowing for automatic annual extension. If the financial institution will not extend the term of an existing ILOC, the Authorizing Agency must ensure that an appropriate security is in place by one of two methods:

1. require the tenure holder to provide an acceptable alternate financial guarantee prior to the expiry of the ILOC. Failure to do so could result in tenure cancellation; or,
2. draw on the ILOC (prior to its expiry) and then hold that amount as a cash security. See *Section 4.4 – Invoking Security Deposits*.

4.2.2 Cash

Cash is an acceptable, but not a preferred, form of security deposit, as are the following cash alternatives:

- Cheques and bank drafts in Canadian funds issued by a financial institution and payable to the Minister of Finance;
- Cash in Canadian funds deposited into a government account, including online banking bill payments, Interac debit card payments, and wire transfers; and,
- Personal money orders issued in Canadian funds by a financial institution or postal money orders issued by Canada Post Corporation, payable to the Minister of Finance.

All forms of cash must be deposited promptly into the consolidated revenue fund. Applicants must be notified that no interest will be paid on cash security deposits. The [FIN-93 Form](#) 'Acknowledgement That No Interest Payable On Cash Deposits' must be attached to the Notice of Final Review, for the applicant to sign and return to the Authorizing Agency should they choose to use a cash or cash alternative security.

Below is a quick reference to key considerations related to each type of cash deposit. Refer to the [Risk Management Branch Guidelines](#) for detailed information on each security type and their limitations.

Physical Cash

Physical cash must be in Canadian banknotes or coins. Bringing large amounts of physical cash into the Authorizing Agency office is strongly discouraged due to safety concerns for both the Applicant and government employees, possible money laundering and fraud issues, and additional administration. Instead, the Applicant should be advised to use an alternate form of cash or ILOC for large amounts.

Cheques and Bank Drafts

A certified cheque is the preferred form of cheque, but uncertified cheques are also accepted. Cheques must be received and deposited immediately. Cheques in the name of a third party (a name other than the tenure holder or applicant) are not accepted. Cheques and bank drafts should be made payable to the Minister of Finance.

Interac Debit Card Payments

Applicants can pay their security deposit via debit card at most FCBC service locations using the Interac terminal. These terminals are subject to maximum withdrawal limits which may limit the ability to use them for larger security deposits.

Online Banking Bill Payment

An online banking bill payment may be acceptable from an eligible financial institution listed below in Table 1. When setting up an online bill payment the payee will be as

listed below in Table 1, and the applicant must use either their disposition number or Crown land file number as the unique account identifier. Online banking bill payments from third parties (a name other than the tenure holder or applicant) are not accepted for security payments.

Table 1: Eligible financial institutions and payee name for online security payments

This list is subject to change from time to time, contact CSNR for any questions regarding the financial institution of payee name.

Financial Institution	Payee name (set by financial institution)
BMO (Bank of Montreal)	BC-Crown Land Revenue
CIBC (Canadian Imperial Bank of Commerce)	PROV BC Crown Land Revenue
RBC (Royal Bank of Canada)	BC-CROWN LAND REVENUE (LAND LEASE)
ScotiaBank (Bank of Nova Scotia)	BC-CROWN LAND REVENUE
TD Canada Trust (Toronto-Dominion Bank of Canada)	BC-CROWN LAND REVENUE
Coast Capital Savings (Credit Union)	BC Crown Land Revenue Land Lease
Central 1 Credit Union	BC_CROWN LAND REV

Once the online banking bill payment has been received by CSNR staff they will contact the regional Authorizing Agency staff to confirm the purpose of the payment. Regional staff will need to confirm that the payment is for security and then update Titan with the security details.

4.2.3 Surety Bonds (Performance Bonds)

Surety bonds, also referred to as performance bonds, are not commonly used in *Land Act* dispositions and should only be undertaken with advice and guidance from RMB.

Performance bonds may be appropriate for tenures and Crown grants related to large, complex construction or reclamation projects (e.g., roadways, utilities, airports). The Province may require a performance bond to secure the completion of one or more particular improvements or access routes. These bonds are rigorously underwritten by the surety company, and the Province (as Obligee), has the obligation to notify the surety of all material changes to the contract. If the Province fails to do so, the surety might not honor the claim on the bond in the event of default of the tenure holder. Always consult with RMB and/or Legal Services Branch prior to using performance surety bonds.

The two types of performance surety bonds most applicable to Crown land are:

1. Construction performance bonds – used to ensure compliance with specific development requirements in Management Plans or the tenure agreement; and,
2. Reclamation performance bonds – usually held by the Minister of Energy, and Mines for quarry tenures.

For more information on Surety Bonds, refer to the [Risk Management Guidelines](#).

The form and amount of surety bonds must be specified in the Notice of Final Review and tenure agreement. Evidence of this type of financial guarantee should be received before the work commences.

4.3 Special Circumstances

4.3.1 Blanket Securities

Tenure holders with multiple *Land Act* tenures may arrange to deposit a blanket security to cover all or a portion of their tenures, rather than provide an individual security for each tenure. Blanket securities should only be approved in limited circumstances and in consideration of the following guiding principles:

- Risk profile of the tenure holder – blanket securities should only be used for low risk / high performing tenure holders; and,
- Risk profile of the tenures – tenures covered by a blanket security should have similar risk profiles (i.e., avoid mixing low and high-risk tenures in a single blanket security).

For additional guidance, consult Lands Branch and/or RMB.

Acceptable forms of blanket security are the same as those listed above in *Section 4.2 - Forms of Security*.

A blanket security can be either regional or provincial in scope:

- Regional blanket securities that cover multiple tenures within a single region are administered by the Authorizing Agency regional office.
- Provincial blanket securities that cover multiple tenures in more than one region are administered by Lands Branch.

The administration of a blanket security includes managing any changes to the security over time.

The amount of blanket security should be determined on a case-by-case basis and adjusted over time if tenures are added or removed. Ideally the blanket security amount should be enough to cover a loss at several tenures at the same time. When a high number of tenures are involved, the risk may increase and necessitate a larger security.

The Risk Assessment matrix in Appendix B may be useful in determining the risk level of a group of tenures, however it should be noted that the guidance in Appendix B is based on the risk assessment of an individual tenure.

Prior to adding a new tenure to the blanket security, staff must review the blanket security to determine the appropriateness of adding the additional tenure and whether the blanket security amount should be increased. For review of a provincial blanket security contact the Legal Documents Officer in Lands Branch; for review of a regional blanket security contact the Senior Portfolio Administrator.

Blanket Security Documentation in Land Use Report, Tenure Document, and Titan

If a blanket security will be used to cover the security requirements of a tenure, the Authorizing Agency must also document the assessed security amount for the specific tenure in the respective Land Use Report and the tenure document.

Example: The security amount for a tenure is assessed at \$5,000, but the applicant wants to use an existing blanket security valued at \$20,000 to cover the security requirement. In this case, the Land Use Report should make it clear that the tenure amount was assessed at \$5,000, but the \$20,000 blanket security will be used. The tenure document will reference \$5,000 as the security amount (standard tenure document language is already in place to allow for another form of security which, in this case, is the \$20,000 blanket security).

Titan must be updated to link the Disposition Tenure ID (DTID) to the Security ID (SID). As per the example above, the tenure DTID must be linked to the SID for the \$20,000 blanket security. Regional staff should contact CLRHelp if they need assistance with linking to a provincial blanket security SID.

If a change to the blanket security is required to accommodate a new tenure, the tenure holder will be notified, and a new proof of blanket security will be required.

4.3.2 Blanket Security Shared Across Multiple Provincial Agencies

For large projects involving multiple security deposits for multiple authorizations across multiple pieces of legislation, a single blanket security could be used, but only under the conditions set out below:

- The provincial agencies involved must have an agreement which references the amount of security required and how the security can be accessed by each agency; this agreement must have a list of all authorizations covered by the blanket security;
- The amount of the security must be reviewed by all agencies prior to the addition of any new authorizations to the blanket security; and,

- The blanket security should cover a single project (authorizations for the same company but related to other projects must not be included in this blanket security).

The administrative burden and high-risk nature of this form of security means that it should only be used in extenuating circumstances and when authorized by a senior decision maker. Contact Lands Branch for guidance.

4.3.3 Association Agreements

An Association Agreement may be entered into between the Province and an association, which is a legal entity, to guarantee the performance and obligations of the association's members (e.g. the Guide Outfitters Association of BC, or the BC Shellfish Growers Association). All Association Agreements must be approved by the Director, Lands Branch in consultation with the RMB. Association Agreements should only be entered into in extenuating circumstances and should be reviewed and updated periodically.

In cases where the Association Agreement covers only program-specific tenures, a tenure holder may be required to provide separate security deposits for tenures issued to them under other program areas. For example, if an adventure tourism operator had a tenure not related to their adventure tourism operations, they may not be covered by the association agreement and therefore will need a separate security. It is the responsibility of the Authorizing Agency staff to determine if separate security deposits are required.

The amount of security under an Association Agreement should be based on risk and should be reviewed periodically to ensure appropriate coverage. Changes to risk over time may warrant changes to the coverage, subject to the conditions of the agreement.

It is the responsibility of the tenure holder to ensure they are in good standing with their association and thus covered by the Association Agreement. Should they choose to leave the association or have their membership discontinued, it is their responsibility to inform the Authorizing Agency and provide the appropriate security amount.

Association Agreement Documentation in Land Use Report, Tenure Document, and Titan

If an Association Agreement will be used to cover the security requirements of a tenure, the Authorizing Agency must also document the assessed security amount for the specific tenure in the respective Land Use Report and the tenure document. This requires following the same procedural steps as for documenting Blanket Securities (see details and example in section 4.3.1).

4.3.4 Prescribed Land Development

Prescribed land development refers specifically to prescribed development requirements that must be achieved (e.g., restrictions on the placement of improvements, specified rate of development, etc.) in direct sale situations. Re-purchase options are NOT used as a means of securing performance. Where prescribed land development is a condition of disposition, it is secured by a performance guarantee, enforced with a collateral agreement for security.

Prescribed land development is a condition of Crown land fee simple disposition in the following circumstances only:

- a) where specifically required by a particular Crown land use program; or,
- b) in compliance with an approved inter-agency agreement; or,
- c) as a result of an express request from a referral agency with a legitimate land development requirement that cannot be enforced through that agency's own licencing or regulatory mandate; or,
- d) in compliance with statements concerning development of specific Crown land areas in an approved land use plan or planning study; or,
- e) where a particular type of Crown land is in short supply in an area, and there is a known demand for that land from other potential tenants or purchasers.

Collateral Agreement

A Collateral Agreement for Development is a contractual arrangement between the Authorizing Agency and an applicant for fee simple disposition which commits the applicant to undertake specific developments or improvements to the land within a specified time as a means of securing performance.

Applications for direct sales for agricultural dispositions and for residential dispositions may be accompanied by a proposed plan containing information prescribed in individual land use policies. This information may be used in the preparation of a Collateral Agreement for Development performance when specified by land use policies.

The completed Collateral Agreement for Development should be attached with other pertinent materials to the Crown Grant Offer or Notice of Final Review (for a lease with a purchase option) and forwarded to the applicant for signature.

4.4 Modification of Security Amounts

If provided for in the terms and condition of the tenure, the Authorizing Agency may notify the tenure holder to:

- a) change the amount of the security deposit; and/or,
- b) provide and maintain another form of security deposit in replacement of, or in addition to, the guarantee already posted.

Changing the security amount (increasing or decreasing) may be desirable to address the following:

- a change in the estimated clean-up costs over time (e.g., due to inflation, or changes in the type and condition of the improvements);
- changes in risk at the site (e.g., due to a change in uses, change of tenant, introduction or removal of hazardous materials on-site, a contamination incident, a change in operations and on-site activities, etc.);
- accommodating the phase-in of a large security (see Section 4.1.1); and,
- any other similar circumstances.

4.4.1 Procedures for Modification of Security

Prior to any modification of security, the tenure terms and conditions should be reviewed. Standard tenure document language usually allows for a change in security (amount or form) with appropriate justification and notification to the tenure holder.

A change of security notice to the tenure holder must include:

- a) a rationale for the change,
- b) the new amount or type of security required; and,
- c) timelines for providing the new security (as per tenure terms and conditions).

Once the new security has been provided, an endorsement schedule and/or letter must be sent to the tenure holder and appended to the tenure document. Tantalus and/or Titan must be updated with the new security information.

4.5 Invoking Security Deposits

Security deposits may be accessed by the Authorizing Agency during the tenure term or at tenure termination. Security deposits should only be accessed after all reasonable efforts have been made to resolve outstanding obligations and requirements with the tenure holder (refer to [Tenure Administration Procedure](#)).

Invoking security during tenure term

If the tenure holder fails to perform their obligations during the tenure term and the Authorizing Agency uses all or part of the security to remedy the situation, the Authorizing Agency will request, in writing, that the tenure holder restore the security to its full amount, within a timeframe specified in the tenure document (normally 30 days if

not specified in the tenure document). The tenure holder must deliver further security in an amount equal to the amount drawn down. Any failure to restore the security amount is a breach of the tenure terms and conditions and could result in tenure cancellation (see [Tenure Administration Procedure](#)).

Invoking security at tenure termination

If at tenure termination, there are outstanding obligations and requirements, the authorizing agency may retain the security to ensure the former tenure holder fulfills the obligations (as per the tenure terms and conditions). For example,

- restoration of an area to a safe, clean and tidy state;
- obtaining legal advice, and costs to secure contractors and acquire new tenants (e.g., through advertising);
- noncompliance with tenure Management Plan requirements;
- rent owing;
- taxes owing (i.e., if a tax notice is provided by the province's Surveyor of Taxes); and,
- failure to pay fees.

If multiple deficiencies exist, the decision maker will need to prioritize based on the risk and amount of security available. Any unused portion of the security is returned to the tenure holder (see *Section 4.6 – Releasing Security Deposits*).

A tenure holder continues to be bound by all outstanding tenure obligations, and associated costs, even after the security deposit has been accessed by the Authorizing Agency. Where costs of clean-up and other obligations exceed the security deposit, the tenure holder needs to be advised that they are liable for these additional costs. These will be considered as a debt owing to the Crown pursuant to the *Land Act*. Refer to the [Tenure Administration Procedure](#) for how to collect additional funds.

4.5.1 Procedures for Invoking Security Deposits

If the Authorizing Agency is using or retaining the security deposit, notification must be provided to the tenure holder as soon as possible. If it is anticipated that a portion of the security will be returned, next steps and timelines should be communicated to the tenure holder with a request of acknowledgment. Additionally, security should not be retained un-used for more than two years. In extenuating circumstances where more than two years is needed, Legal Services Branch should be consulted.

The Authorizing Agency must ensure that the security deposits are accessed as follows:

For securities held by the Authorizing Agency (i.e., cash deposits in government accounts):

- a) Apply the security amount to satisfy any outstanding obligations of the tenure agreement; and
- b) Update Tantalus and the accounts receivable systems to reflect the security forfeiture.

For securities held outside of the government (i.e., ILOCs and surety bonds):

- a) Inform the holder of the security (i.e., financial institution) that the tenure holder has forfeited the security and make a claim;
- b) Convert the security instrument to cash and apply it to outstanding obligations; and,
- c) Update Tantalus and the accounts receivable system to reflect the security forfeiture.

Special considerations when invoking a Surety Bond

A surety bond is forfeited if:

- a) the site is not cleaned up or restored to the satisfaction of the Authorizing Agency; or,
- b) performance obligations are not completed to the standards outlined in the tenure agreement.

In the event of a default there are usually several courses of action available to the Authorizing Agency dependent on the term of the bond agreement. Contact the RMB for specific advice.

4.6 Releasing Security Deposits

If all tenure terms and conditions have been met upon tenure termination, the security must be returned to the tenure holder. Interest is not payable on cash or cash equivalent securities (notification to this effect should have been sent when the security was first provided, see *Section 4.2.2 - Cash*).

If the tenure holder fails to meet their tenure obligations, the security may be used as per the terms and conditions of the tenure (see *Section 4.5 – Invoking Security Deposits*). Any unused amount will be returned to the tenure holder once the Province is satisfied that all obligations have been met.

Securities associated with *Land Act* tenures are not available to other ministries, except where it is legally allowed, and specifically agreed to by the Authorizing Agency.

If the tenure holder is an individual and the security is to be returned, but the Province is unable to locate the tenure holder, and the security deposit meets the legislated definition of unclaimed property (as per the *Unclaimed Property Act*), the funds will be

remitted to the BC Unclaimed Property Society using the Society's procedure for remitting the money.

If the tenure holder is a corporation and the security is to be returned, but the corporation has been dissolved, the Ministry must hold the security deposit in trust for two years after the date on which the company is dissolved, as per *the Business Corporation Act* (s.349). The Ministry has established a waiting period of three years to accommodate the two years plus a 'safety margin' of one year.

4.6.1 Procedures for Releasing Security Deposit

For securities held outside of the government (i.e., ILOCs and surety bonds), the authorizing agency will return the original document (in some cases a copy will be accepted) to the financial institution with a letter from the Authorizing Agency (cc'd to the tenure holder) stating that the Province no longer has an interest in the security and that it can be released.

For securities held by the Authorizing Agency (i.e., cash deposits in government accounts), the Authorizing Agency will send an email to the regional CSNR Corporate Services Branch (CSB) Analyst instructing them to release the security to the tenure holder.

Titan must be updated with the release date of the security.

APPENDIX A: PROGRAM SPECIFIC INSURANCE REQUIREMENTS

The following table provides program specific guidance on which type of general liability insurance coverage is most appropriate for each program. Specific add-ons or endorsements may be required due to the specific nature of the tenure (e.g., watercraft liability, sudden and accidental pollution liability, etc.), see *Section 3.1.2 - Additional Insurance Requirements for Specific Activities and Risks*

Land Use Program	<u>General Liability Insurance</u> Type and Amount Commercial General Liability Insurance (CGL) or Personal Liability Insurance (PL)
Adventure Tourism	Most tenures will require a minimum \$2 million CGL Heli-ski Operations – minimum \$5 million CGL
Aggregate and Quarry Materials	Minimum \$2 million CGL
Agriculture - Extensive	Insurance not required, but recommended
Agriculture - Intensive	Minimum \$2 million CGL
Airports	Minimum \$2 million CGL Refer to section 3.1.2 for additional coverages
All Season Resorts	Refer to the All Seasons Resort Policy
Aquaculture	Minimum \$2 million CGL
Commercial - General	Minimum \$2 million CGL Film – Minimum \$3 million CGL
Communication Sites	Minimum \$2 million CGL
Community/ Institutional	Minimum \$2 million CGL If the Local Government is covered by the Municipal Insurance Association of BC (MIABC) they can provide a MIABC certificate of insurance as proof of insurance (rather than a FIN 173 form).
Floating Home Community	Consult Lands Branch and RMB
Industrial	Minimum \$2 million CGL

EFFECTIVE DATE: February 26th, 2021

FILE:11200-00

AMENDMENT: June 17th, 2022

PAGE: 20

Land Use Program	<u>General Liability Insurance</u> Type and Amount Commercial General Liability Insurance (CGL) or Personal Liability Insurance (PL)
Grazing	Insurance not required, but recommended
Ocean Energy	Minimum \$2 million CGL
Oil & Gas	Minimum \$2 million CGL
Private Moorage	Minimum \$2 million PL Group Moorage - \$2 million PL or CGL. If CGL is preferred by the group or association, contact Lands Branch for any necessary tenure document edits.
Residential	Minimum \$2 million PL Group Moorage - \$2 million PL or CGL
Roadways	Minimum \$2 million CGL For roadways related to residential use, minimum \$2 million PL
Utilities	Minimum \$2 million CGL For utilities related to residential use, minimum \$2 million PL
Waterpower	Minimum \$2 million CGL
Wind Power	Minimum \$2 million CGL

APPENDIX B: RISK ASSESSMENT AND PROGRAM SPECIFIC GUIDANCE FOR FINANCIAL SECURITIES

The following steps provide a guide for staff when assessing risk and determining an appropriate tenure security amount.

Step 1: Estimate clean-up cost grouping

- Negligible (N), less than \$1,000
- Low (L), \$1,000 to \$10,000
- Moderate (M), \$10,000 to \$50,000
- High (H), more than \$50,000

When estimating the cost of clean-up, the Authorizing Agency may ask applicants / tenure holders for a description and cost breakdown of future site decommissioning, clean-up, or restoration. The estimated cost of clean-up may include, but is not limited to, the following:

- Tenure document conditions (including the Management Plan) regarding the state of land at tenure termination (e.g., all improvements removed or not, safe clean and tidy condition, etc.);
- Type and size of improvements to be removed;
- Materials used for improvements;
- Type of site impact and area impacted;
- Form of site restoration required;
- Material disposal – dumping costs, potential for on-site disposal (e.g., burying pipes or foundations);
- Transportation, remoteness of site – form and condition of access, and travel distance; and,
- Presence of hazardous material and contaminants.

The Authorizing Agency may consider mitigating factors that may be used to adjust the estimated clean-up costs, for example:

- Likelihood of other operators taking over the tenure area and on-site improvements (e.g., only minimal clean-up may be necessary);
- Ability for the Authorizing Agency to sell improvements left on-site to off-set clean-up costs; and,
- Selling recycling material to off-set clean-up costs.

Step 2: Determine likelihood of needing to use security

- Negligible (N)
- Low (L)
- Moderate (M)
- High (H)

Consider the following:

- Experience with, or history of, the applicant /tenure holder;
- Current financial condition of the applicant/tenure holder;
- Experience with or history of similar businesses and uses;
- Economic health of the sector; and,
- Corporate structure of the company – are they a numbered company? If yes, consider moderate to high risk.

Step 3: Assess risk

Risk analysis is the process of calculating the consequence of an event (Step 1) and the likelihood of an event (Step 2). The product of these two variables is the risk rating.

Clean-up cost class	Likelihood of security being used			
	N	L	M	H
N (<\$1k)	Neg	Neg	Low	Low
L (\$1k – \$10k)	Neg	Low	Low	Med
M (\$10k – \$50k)	Low	Low	Med	High
H (\$50k +)	Low	Med	Med	High

Step 4: Assign security amount based on the risk rating

Risk ranking	Basis for Security Amount
Neg	Consider using minimum amount (<i>as per table below</i>)
Low	Consider using a minimum amount or up to 30% of estimated / adjusted clean-up costs
Medium	Consider using 30% to 60% of estimated / adjusted clean-up cost
High	Consider using 60% to 100% of estimated / adjusted clean-up cost

Program Specific Guidance and Security Minimums

Land Use Program Area	Program Specific Guidance	Minimum Security Amount
Adventure Tourism	<p>If the tenure holder is a member in good standing with the Guide Outfitters Association of BC, then their security requirements may be met by an Association Agreement.</p> <p>The security on an AT licence may be applied to cover the associated Minimal Impact Sites.</p> <p>Where operations span both the <i>Land Act</i> and the <i>Park Act</i>, a single security/performance guarantee may be available upon agreement between the two Authorizing Agencies.</p>	\$1,000 minimum
Aggregate and Quarry Materials	In most cases, the Authorizing Agency should require security on <i>Land Act</i> tenures for aggregates and quarry materials. In some cases the reclamation and/or clean-up may be covered by a requirement from another agency (through statute or inter-agency agreement) in which case a <i>Land Act</i> security may not be required. The Authorizing Agency should review any non- <i>Land Act</i> security requirements before relying on them to meet the <i>Land Act</i> tenure conditions (including but not limited to the state of the land upon tenure termination). For example, a Mines Act Reclamation Bond may not necessarily cover the cost of reclamation and/or clean up required by the <i>Land Act</i> tenure.	\$3,500 / ha minimum
Agriculture - Extensive	Timber value or land value can be used to set a security amount. Security may be up to 10% of estimated timber value, or a minimum of 10% of estimated market value of land.	\$2,000 minimum
Agriculture - Intensive		\$2,000 minimum
Airports		<p>Airstrip and Heli-pads: \$1,000 minimum</p> <p>Airport: No minimum. Determined on a</p>

EFFECTIVE DATE: February 26th, 2021**FILE:**11200-00**AMENDMENT:** June 17th, 2022**PAGE:** 24

Land Use Program Area	Program Specific Guidance	Minimum Security Amount
		case-by-case basis.
All Season Resorts	Refer to the All Seasons Resort Policy	Community Mountain Resorts: \$10,000 minimum Regional and Destination Mountain Resorts: \$50,000 minimum Refer to the All Seasons Resort Policy for more detailed information
Aquaculture – Fin Fish	All operators are required to submit a security per finfish tenure held, or appropriate blanket bonds where multiple tenures are held. A blanket security is held by the BC Salmon Farmers Association on behalf of its members.	\$25,000 minimum
Aquaculture - Shellfish	All operators are required to submit a security per shellfish tenure held, or appropriate blanket bonds where multiple tenures are held A blanket security is administered by the BC Shellfish Growers Association for its members.	Beach: \$1,000 minimum Deep water (0-5 ha): \$2,000 minimum Deep water (5-10 ha): \$5,000 minimum Deep water (over 10 ha): \$10,000 minimum
Commercial - General		General Commercial: \$1,000 minimum Film: \$5,000 minimum Golf Course: \$5,000 minimum Marina: \$5,000 minimum

Land Use Program Area	Program Specific Guidance	Minimum Security Amount
Communication Sites	PCB's, fuel tanks and other hazardous material may be present on communication sites and should be considered. Communication sites are often remote and may require helicopter access for site remediation.	\$2,500 minimum
Community/ Institutional	Security not required for local governments.	\$1,000 minimum
Floating Home Community		No minimum. Security determined on a case-by-case basis.
Industrial	For mineral production under the Industrial Policy: In most cases the Authorizing Agency should require security on <i>Land Act</i> tenures for mineral production. In some cases, the reclamation and/or clean-up may be covered by a requirement from another agency (through statute or inter-agency agreement) in which case a <i>Land Act</i> security may not be required. The Authorizing Agency should review any non- <i>Land Act</i> security requirements before relying on them to meet the <i>Land Act</i> tenure conditions (including but not limited to the state of the land upon tenure termination). For example, a <i>Mines Act</i> Reclamation Bond may not necessarily cover the cost of reclamation and/or clean up	General and temporary log handling heli-drop sites: \$1,000 minimum \$5,000 minimum for log dump / sorting areas No minimum for Mineral Production – security determined on case-by-case basis
Grazing (<i>Range Branch</i>)	At present, no new applications are being accepted, and security deposits on existing leases are generally \$0.	No minimum. Security determined on a case-by-case basis.
Ocean Energy		No minimum. Security determined on a case-by-case basis
Oil & Gas	Security requirements for tenures authorized by the Commission are described in OGAA	No minimum. Security determined on a case-by-case

EFFECTIVE DATE: February 26th, 2021

FILE:11200-00

AMENDMENT: June 17th, 2022

PAGE: 26

Land Use Program Area	Program Specific Guidance	Minimum Security Amount
	and the Fee, Levy and Security Regulation.	basis
Private Moorage	Security is not required.	n/a
Residential		General: \$1,000 minimum Geothermal loop: \$1,000 minimum Group / strata moorage: \$2,000 minimum
Roadways		\$1,000 per km minimum
Utilities	Security is not normally required for <i>Land Act</i> tenures issued to BC Hydro.	Non-linear tenures: \$1,000 minimum Linear tenures: \$1,000 per km minimum
Waterpower	Phasing in / out of security amounts may be appropriate for large projects (see s.4.1.1 – Phasing-In Security).	Determined on a case-by-case basis
Wind Power	Phasing in / out of security amounts may be appropriate for large projects (see s.4.1.1 – Phasing-In Security). The estimated cost of removing a remote met tower is approximately \$15,000.	Determined on a case-by-case basis