



Land Procedure Tenure Administration

NAME OF LAND PROCEDURE:	Tenure Administration
APPLICATION:	Applies to all tenures issued pursuant to the <i>Land Act</i>
ISSUANCE:	Assistant Deputy Minister Reconciliation, Lands and Natural Resource Policy
IMPLEMENTATION:	Ministry of Water, Land and Resource Stewardship
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 replaces the previous Tenure Administration Procedure in effect August 16 th , 2004.

Colin Ward, ADM
Reconciliation, Lands and Natural Resource Policy
Ministry of Water, Land and Resource Stewardship

May 9, 2024

Date:

EFFECTIVE DATE: June 1, 2011

FILE: 11710-00

APPROVED AMENDMENTS:		
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
July 10, 2013	-----	<ul style="list-style-type: none"> • Descriptions of security types and associated requirements were updated by Risk Management Branch, Ministry of Finance. • Previous references to the Pooled Security Fund were deleted as the concept was no longer deemed viable.
July 10, 2013	BN 196546	Clarified information regarding replacement of tenures.
December 10, 2013	BN 202357	Updated Financial Guarantees section, removing Safekeeping Agreements as a form of acceptable security.
October 28, 2014	BN 209751	Comprehensive amendments included updating and ensuring consistency of terms and references, clarification of content and processes, improving administrative efficiency, and reflecting current best practices. Key subject areas include: assignments, sub-tenuring, abandonment and cancellation.
September 22, 2015	BN 217947	Land Act Reform phase 1 changes
December 17, 2018	235998	Amendments to clarify public input processes
February 26, 2021	BN 260513	Removed reference to securities and insurance procedures which will now be a stand-alone procedure. Updated language to clarify procedural steps and re-organized tenure administration activities for ease of reference. Moved relevant information into the Glossary, the Application Procedure, and the Forfeitures Procedure.
March 11 th , 2024	BN CLIFF 41159	Minor amendment to section 6 'Name Changes' to clarify that amalgamations are treated as name changes rather than assignments (per updated legal opinion).
May 9, 2024	BN CLIFF 41581	Updated cover page to reflect the transfer of administration of the <i>Land Act</i> and <i>Ministry of Lands, Parks and Housing Act</i> from the Ministry of Forests to the Ministry of Water, Land and Resource Stewardship. No amendments to the procedure.

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1. PURPOSE

The purpose of this procedure is to provide guidance on tenure administration activities related to all tenures issued pursuant to the *Land Act*.

Before embarking on any tenure administration task, the Authorizing Agency should be familiar with the *Land Act*, the operational policies and procedures related to the task, and the terms and conditions of the specific tenure they are administering. The guidance provided in this procedure is to be considered in the context of each specific tenure document. If the guidance in this procedure contradicts a term or condition in the tenure document, contact Lands Branch or Legal Services.

2. DEFINITIONS AND ABBREVIATIONS

This document uses terms that are defined in the *Land Act*. For other terms, a glossary of definitions and abbreviations is available in [Glossary and Abbreviations](#).

3. FIRST NATION CONSULTATION

The Authorizing Agency is responsible for ensuring the Province's obligations to First Nations are met during the administration of Crown land. *Land Act* tenure administration activities may trigger the duty to consult. The Authorizing Agency will carry out consultation in accordance with the consultation guidelines of the Province or any engagement frameworks in place and with the advice of Legal Services, if required.

4. TENURE MAINTENANCE

Pro-active tenure maintenance is strongly encouraged as a way of ensuring compliance with tenure terms and conditions, and ensuring that tenures remain in good standing. Consideration should be given to pre-scheduling tenure maintenance activities, especially for long term tenures.

The following describes some common maintenance tasks used to ensure that tenures remain in good standing.

4.1 File Reviews

A file review involves a detailed examination of the information on file relating to a disposition. A file review can be initiated by the Authorizing Agency as part of a routine review or it can be pre-scheduled to occur at a specific time during the tenure term (5-year intervals are the most common). Regular file reviews for longer term tenures are encouraged to reduce the occurrence of unresolved issues on a file.

A file review should be conducted if an issue or enquiry is raised relating to a disposition. For example, a file review can be used to review security amounts (see [Security and Insurance Procedure](#)) or, to monitor compliance with tenure terms or conditions, or to assess diligent use. File reviews can be a useful step in determining whether further action is needed on a file.

4.2 Rent and Royalty Review

For some tenures, rental and/or royalty rates are determined on an annual basis and are due and payable on an anniversary of the commencement date. Rent and royalties are determined based on specific conditions in the tenure document which may be subject to change over the course of the tenure. Rent and/or royalty reviews should be performed to adjust the rates as per tenure terms and conditions. Statutory declarations or other supporting information related to the financial performance of the tenured activity may be required as per tenure terms and conditions.

Upon review, if changes to the rental and/or royalty amount are required, then Tantalus must be updated and notice of the change must be provided to the tenure holder as outlined in the tenure document.

4.3 Diligent Use Assessment

Diligent use is an assessment of whether the tenure is being used appropriately and in accordance with terms and conditions. At any time during the tenure term, tenure holders may be asked to produce evidence of diligent use by providing the following, or other similar items:

- recent photos of the site (with date showing);
- an update regarding changes in operational use as outlined in the Management Plan;
- a Statutory Declaration indicating the site is being maintained in a safe, clean and tidy condition;
- an operational inspection schedule demonstrating that the tenure holder is inspecting the site for potential contamination;
- satellite images or aerial photos of the site with site boundaries identified; and/or
- updated site plan/s and map/s of the site.

4.4 Site Inspections

At the discretion of the Authorizing Agency, a site inspection may be conducted to ensure obligations under the tenure are being met and to confirm that the site is being maintained in accordance with conditions in the tenure agreement and Management Plan. Site inspections may be scheduled as part of standard practice or they could be triggered by an indication of increased risk at a site, for example:

- a request to change the purpose or additional uses;
- a request to a change of tenure holder;
- a new contaminant being introduced to the site;
- a contamination incident occurs;
- a change in operations and on-site activities; and/or,
- complaints or issues raised regarding the tenure.

Where the Authorizing Agency determines that a site inspection is impractical or unnecessary, the tenure holder may be required to supply information indicating that performance requirements have been met. This information can be in the form of a statutory declaration, a signed report by a registered professional, or in a format determined to be suitable by the Authorizing Agency.

Site inspections should be carried out where any unauthorized activities occur and specifically if they threaten the environment or human health and safety, and where the Authorizing Agency intends to take compliance and enforcement action. Where issues of noncompliance are identified through a site inspection, appropriate compliance and enforcement procedures should be followed (see section 12.0 below).

Site inspections should be carried out in a safe and cost-effective way, with the least impact to tenure holder operations. Travel expenses to remote and hard to access sites may be paid for by the tenure holder.

5. MODIFICATION TO TERMS AND CONDITIONS (AMENDMENTS)

A request to change the terms or conditions of a tenure or a conditional Crown Grant, must be submitted in writing to the Authorizing Agency. The request for changes may result in either an amendment to the existing tenure or conditional Crown Grant, or a new application.

5.1 Modification Requiring an Amendment

A request to change the tenure in a way that does not significantly alter the terms and conditions is considered an amendment (commonly referred to as a 'minor' amendment). Only those items listed in the [Land Act - Crown Land Fees Regulation](#) section 2(5) qualify as minor amendments (e.g. changes to security or insurance, or a reduction in the tenure area, etc.). Any other modification requests will require a new application (see section 5.2 below).

The tenure holder must submit their amendment request in writing to the Authorizing Agency. The tenure holder will be required to provide supporting documentation (such as security or insurance documentation) with their amendment application. Applications for amendments will be charged the minor amendment fee (see [Land Act - Crown Land Fees Regulation](#) and the [Fee Procedure](#)). If an amendment is requested or required by government, no administrative fee is applied.

Amendment requests should only be considered when the tenure is in good standing or when the amendment is necessary to bring the tenure into good standing.

Amendments will be documented by either a Modification Agreement or a Notification letter. A Modification Agreement is to be used when both the decision maker and the tenure holder are required to give their consent to the amendment. A Modification Agreement should be the default document to use for an amendment. A Notification letter is used when the tenure language allows for a change to the tenure document at the sole discretion of the Crown, as long as notification is sent to the tenure holder. For example, a notification letter could be used when a decision maker increases security or insurance, if the tenure language says that security is at the Crown's sole discretion. In

addition to the notification letter, the Authorizing Agency may also choose to record any changes in an Endorsement Schedule.

Upon completion of the amendment, the Crown Land Registry (Tantalis) must be updated with the new information and the Modification Agreement or Notification Letter should be attached to the tenure document.

5.2 Modification Requiring a New Application

A request to significantly alter the terms and conditions of a tenure agreement will result in a new disposition application. Examples of these changes may include a request to increase the tenure area, new infrastructure, significant changes to the Management Plan, or a change in purpose or use of the site. These changes may be referred to as 'major amendments' but the procedure should follow that of a new application (see [Allocation Procedures - Applications](#)).

The new application should be given the same file number as the existing tenure whenever possible. However, there may be limited situations where the new application should be under a different file number. For example, if new area is being added to a lease and it's anticipated that the tenure holder will require occupation of the area prior to completion of a survey, the new application will need a separate file number to allow for both the existing lease and the interim licence (while the new area is surveyed) to be in good standing (i.e. Tantalis will not allow two dispositions to be in good standing under one file number which is why a separate file number is needed in this case).

If the new application is allowed, then a Modification Agreement for the existing tenure is drafted with the updated information. Once the Modification Agreement has been executed, the 'new application' can be cancelled. The Applications, Comments, and Reasons for Decision Website should be updated to show that the application was allowed.

Where new applications have resulted in significant changes to terms and conditions, it may be beneficial to draft a new tenure document rather than a Modification Agreement. In this case, a new tenure document is prepared as part of the 'new application'. Once the new tenure document has been executed, the original tenure document is cancelled.

The fee charged for a change to terms and conditions (i.e. major amendment) is the new application fee specific to the program area (see [Fee Procedure](#) and [Land Act - Crown Land Fees Regulation](#)) except when specified otherwise in the operational policy (e.g. Aquaculture).

5.3 Conditional Crown Grant Amendments

Land Act s. 52 allows for the deletion or amendment of Crown Grant terms by the Minister. This authority has been delegated to the Surveyor General under section 97(1.2) of the *Land Act*. The Authorizing Agency will provide the Surveyor General with a rationale to delete or amend the Crown Grant.

A Crown Grant holder must submit a written amendment request to the Authorizing Agency.

The Authorizing Agency will consider the following:

- a) whether the term, covenant, stipulation, reservation or exemption was included in error or is no longer required in the public interest
- b) any impacts that the amendment may have on First Nations and interested parties
- c) the value that was paid for the Crown Grant;
 - o if full market value was paid then the application to amend the Crown Grant can proceed, but if reduced market value was paid (due to the term, covenant, stipulation, etc.) then the difference between the current restrictive use and unimpeded use will be charged.
- d) If the Crown granted parcel had been subdivided, the applicant will need to clarify whether the amendment should apply to a portion or the whole parcel

If the Authorizing Agency considers it reasonable to remove the covenant, then a Crown grant proviso deletion amendment form is completed and sent to the Land Title and Survey Authority for the Surveyor General. Crown Grant amendments related to high monetary value or significant public interest will need a Ministerial Order.

6. NAME CHANGES

A 'name change' may occur when the tenure holder requests to change their legal name as it appears on their tenure. No fee is charged for a name change.

When an *individual* requests a name change from one legal name to another legal name (as in the case of marriage, divorce, legal name change, etc.) proof of the name change must be provided in the form of legal documentation (e.g. name change certificate, marriage certificate, Passport, Drivers Licence, etc.). Certified true copies of legal documentation may be required by the Authorizing Agency.

When a *corporate entity* with an incorporation number requests a name change but the incorporation number DOES NOT change, legal documentation from the corporate registry (e.g. Certificate of Name Change) showing that the incorporation is the same is required.

Alternatively, if the incorporation number DOES change then the request is for an assignment (not a name change) and should follow the assignment procedures in (Section 9.0), including the collection of fees. The exception to this is if the incorporation number changes because of an amalgamation, in which case the request is treated as a name change for the corporate entity.

Name changes are recorded with an Endorsement Schedule and/or an Endorsement Letter which will be appended to the tenure document. Upon completion of the name change, the Crown Land Registry (Tantalis) must be updated with the new information and documents.

Notification of a name change must be provided to:

- a) the appropriate local government;
- b) BC Assessment; and,
- c) Corporate Services for the Natural Resource Ministries - Revenue Branch (only if the name change results in a new client)

7. CHANGE OF CONTROL

A Change of Control may occur when shares in a private entity change hands. There have been changes over the years in how tenure documents treat changes of control so it's very important to review the tenure document when responding to requests. For example, some tenures may include a requirement for written consent from the Province prior to the change in control. If there is no reference to a change of control in the tenure document, then staff can record a change of control on the file if they are notified of one, but no other action is required.

Where consent for a change of control is required, the following should be considered:

- a) Eligibility requirements in the *Land Act* and the relevant operational land use policy.
- b) The performance of current or past tenures holders if they will gain control of the tenure (i.e. diligent use of current or previous tenures, compliance issues, etc.)
- c) There may be a requirement for First Nation Consultation

Where consent for a change of control is required, the Authorizing Agency will record their consent in a Consent Letter.

8. TRANSFER OF CROWN LAND ASSETS UPON DEATH

In the case of the death of the tenure holder, a transfer of assets needs to occur. No fee is charged for a transfer of assets upon death.

If the tenure was originally held by *one person*, the submission of the death certificate, Will and Letters of Probate are required or, if intestate (i.e. death without a will), the Letters of Administration are required (certified true copies of the legal documents listed may be required by the Authorizing Agency). The tenure is then recorded in the name of the Estate (e.g. 'the Estate of Sheila Henry').

If the tenure was originally held by *tenants in common* and one dies, the requirements are the same as above except the tenure is recorded in the names of the surviving tenure holder and the Estate.

If the tenure was held by *joint tenants*, only the Death Certificate is required. The tenure is then recorded in the name of the surviving tenure holder(s) only.

Unless the terms indicate otherwise, a tenure should be assumed to be held in equal shares by *tenants in common*. Any ambiguity in this respect should be discussed with Legal Services Branch.

While the estate is being settled, the executor or administrator is responsible for the ongoing maintenance and administration of the tenure on behalf of the Estate. A replacement application can be made in the name of the Estate.

Transfers of assets upon death are recorded with an Endorsement Schedule and/or an Endorsement Letter which will be appended to the tenure document and uploaded to Tantalus. The endorsement will reference the name of the Executor or Administrator (see Appendix A for endorsement language). Titan will be updated to record the status of the tenure holder as 'deceased' and the contact details for the Executor or Administrator must be added. Tantalus will then show the tenure holder as the Estate.

When it comes time to assign the tenure to the beneficiary from the Estate, the Executor will submit an assignment request on behalf of the Estate, and the standard assignment procedure (section 9.0) should be followed, including the collection of assignment fees.

Notification of the transfer of assets must be provided to:

- a) the appropriate local government;
- b) BC Assessment; and,
- c) Corporate Services for the Natural Resource Ministries - Revenue Branch (only if the transfer results in a new client)

9. ASSIGNMENTS

An assignment is the transfer of the tenure holder's entire rights and interest regarding the use of Crown land to a third party. *Land Act* s.99 sets out the requirements for the assignment of Crown land dispositions, and assignment conditions can be found in the tenure agreement.

The following general conditions apply to requests for assignment:

- a) Prior to considering an assignment, the tenure agreement should be reviewed. Tenure agreements may have specific requirements for assignment. In most cases, prior written consent of the Authorizing Agency is required.
- b) The assignee must meet eligibility requirements in the *Land Act* and the relevant operational land use policy.
- c) A Crown land tenure must be assigned in its entirety. The Authorizing Agency will not assign a portion of a tenure.
- d) The Authorizing Agency may refuse the assignment if the details of the assignment are not acceptable to the Authorizing Agency.
- e) The Authorizing Agency may refuse the assignment of a tenure to any existing tenure holder who is not using their current tenures diligently or where the tenures aren't in good standing.

- f) Applications cannot be assigned. Assignments will not be considered until the tenure has been issued.

9.1 Assignments for Tenants in Common and Joint Tenants

If a tenure is held by tenants in common (A and B) then tenure holder A can request to assign their portion of the tenure to a third party (C). In this case, notification of the assignment should be provided to tenure holder B, and the new tenants in common are B and C.

If a tenure is held by joint tenants (A and B), then tenure holder A can request to assign their portion of the tenure to a third party (C) but both tenure holders A and B must agree to the assignment.

9.2 Assignment Procedures

9.2.1 Assignment Request

Requests for assignment must be submitted, in writing, to the appropriate Authorizing Agency office. The following information is required as part of an assignment request:

- a) the original or certified true copy of the tenure document held by the assignor;
- b) the full names and addresses of the assignor and assignees;
- c) confirmation that the assignee meets the eligibility requirements of the *Land Act* and relevant policy (e.g. age and citizenship of the assignee)
 - if the assignee is a company or society, the number of the certificate of incorporation or amalgamation or other proof of authority to hold land must be provided;
 - if the tenure is a Statutory Right of Way registered with the Land Title and Survey Authority then the assignee must meet the eligibility criteria under *Land Title Act* s.218
- d) the assignment processing fee (see [Land Act - Crown Land Fees Regulation](#) and [Fee Procedure](#));
- e) a replacement security deposit or surety bond (if one is required by the original tenure);
- f) a new BC Certificate of Insurance;
- g) acceptable evidence of no outstanding property taxes related to the tenure, such as:
 - a tax clearance certificate from the Provincial Collector, or copy of the receipt; or,
 - a tax certificate or other proof from a municipal office, if the property is within a city, village, town or Municipality; or
 - screen print of automated land tax information system data for the tenure.
- h) confirmation that the tenure is being used diligently and adhering to terms and conditions.

- i) the tenure must be in good standing with respect to rental and royalty payments (if appropriate), as well as other taxes, including GST;
- j) if the assignment is to two or more individuals, their intended legal status as Joint Tenants or Tenants in Common must be stated

This information will be used to draft an Assignment/Assumption Agreement. The new tenure holder will be required to commit to, and be responsible for, operating under the terms and conditions of the original tenure, including all provisions of the Management Plan.

The Authorizing Agency may require the assignee to agree to additional terms, covenants or stipulations that reflect current program policy (these are to be recorded in a Modification Agreement). The tenure holder is responsible for ensuring that all tenures and permits necessary to support the operation are transferred concurrently.

9.2.2 Assignment Documentation

If the assignment request is approved, an assignment / assumption agreement is prepared and sent to the assignor (current tenure holder) and assignee (3rd party / new tenure holder) for signature. Once signed by the assignor and assignee, the originals are executed by the appropriate Authorizing Agency staff.

Once the assignment is complete, a covering letter with the assignment/assumption agreement and the original tenure agreement, are sent to the assignee. A copy of the letter is provided to the assignor, unless they specifically request the documents be sent to another party (e.g. their lawyer).

Notification of an assignment must be provided to:

- a) the appropriate local government;
- b) BC Assessment; and,
- c) Corporate Services for the Natural Resource Ministries - Revenue Branch (only if the assignment results in a new client)

In some circumstances, notification of an assignment should also be provided to:

- the holder of a right of way, who obtained consent to cross the tenure which is now being assigned;
- the upland owner, or any person who provided consent to the issuance of a foreshore tenure, should be advised of any assignment of the foreshore tenure; and,
- the appropriate First Nation.

Upon completion of an assignment, the Crown Land Registry (Tantalis) must be updated with the new information and documents.

9.2.3 Registered Leases and Statutory Rights of Way

The procedure for processing an assignment of a registered lease or statutory right of way is the same as that described above, with the exception that only copies of the

relevant documents are used (i.e. no originals), since the original of the lease document and the Authorizing Agency's consent form will be held by the Land Title Office.

It is the responsibility of the assignee to forward the Authorizing Agency's original executed assignment agreement to the Land Title and Survey Authority and follow up with any required documentation.

10. SUB-TENURING

Sub-tenuring is the granting of rights or an interest in Crown land by the tenant of that Crown land rather than by the Province. Sub-tenuring may be allowed where it encourages the sharing of common land and infrastructure in order to minimize the impact of multiple uses, or where it allows commercial operations to diversify and strengthen their business by sub-tenuring some activities.

The following general conditions apply to a request for a sub-tenure:

- a) Prior to considering a sub-tenure, the tenure document should be reviewed. Tenure agreements may have specific additional requirements for sub tenures. In most cases, prior written consent of the Authorizing Agency is required.
- b) The Authorizing Agency may refuse a sub-tenure to any existing tenure holder who is not using their current tenures diligently.
- c) The sub-tenure holder must meet eligibility requirements in the *Land Act* and the relevant operational land use policy.
- d) The Authorizing Agency may refuse the sub-tenure request if the details of the sub-tenure are not acceptable to the Authorizing Agency.
- e) Applications cannot be sub-tenured. Sub-tenures will not be considered until the tenure has been issued.
- f) Sub-tenures may not be issued for a term longer than the unexpired term of the original tenure.
- g) If the sub-tenure use is for activities not covered in the original tenure then, prior to the activity occurring, the original tenure must be amended to include the purpose of a proposed sub-tenure. This would require a new application and be processed accordingly. If the new application is approved and results in a new tenure, it could then be sub-tenured.
- h) A sub-tenure holder MAY NOT sub-tenure, i.e., no sub-sub-tenuring will be approved.
- i) All requirements for the sub-tenant(s) are the responsibility of the tenure holder.
 - o It is the responsibility of the tenure holder to inform the Authorizing Agency of any relevant changes with regards to the sub-tenure holder (e.g. change of business name.)

The tenure holder may be required to submit financial statements to the Authorizing Agency which also account for the finances of the sub-tenant (e.g. for some programs where rents are based on gross revenues). If rent is calculated based on gross revenue,

then sub-tenure revenue may be incorporated into rental calculations (see [Pricing Policy](#)).

10.1 Sub-Tenure Procedures

10.1.1 Sub-Tenure Request

Requests for a sub-tenure must be submitted, in writing, to the appropriate Authorizing Agency office. The following information is required:

- a) confirmation that the sub-tenant satisfies the current eligibility requirements of the *Land Act* and relevant policy (e.g. age and citizenship requirements).
- b) The sub-tenure processing fee (see [Land Act - Crown Land Fees Regulation](#) and [Fee Procedure](#)).

10.1.2 Sub-tenure Documentation

If the sub-tenure request is approved, a Consent to Sub-Tenure Document/Letter is prepared and appended to the Tenure document. The Authorizing Agency may also choose to record the Sub-Tenure in an Endorsement Schedule (in addition to the Consent document).

A copy of the consent document/letter is sent to the tenure holder with instructions to append to their copy of the tenure agreement.

Upon approval of a sub-tenure, the Crown Land Registry (Tantalis) must be updated with the new information and documents.

11. MORTGAGES AND NON-DISTURBANCE AGREEMENTS

11.1 Consent to Mortgage

The Province may consent to mortgages of leases or statutory rights of way. The Province will not consent to mortgages of licences of occupation, operating and master development agreements or temporary licences of occupation.

When consenting to a mortgage of a lease or a statutory right of way, the tenure holder must be made aware that any future assignee (i.e. the mortgagor) must meet the Province's eligibility criteria.

Requests for a consent to mortgage will be submitted to the Authorizing Agency. An administration fee will be charged for the request (see [Land Act - Crown Land Fees Regulation](#) and [Fee Procedure](#) – the assignment fee is used for consent to mortgage requests).

The tenure holder must provide a copy of the mortgage document to the Authorizing Agency. The term of the mortgage should be one day shorter than the tenure term. If the mortgage term is longer, then the tenure holder (and/or financial institution) must be made aware that the consent to the mortgage will expire when the tenure expires.

Once the Authorizing Agency is satisfied, a Consent to Mortgage document is prepared and signed by the decision maker (*Land Act* s.99) and appended to the tenure

document. The Authorizing Agency may also choose to record the consent to Mortgage in an Endorsement Schedule (in addition to the Consent document). Final copies of the Consent to Mortgage Document and the Endorsement Schedule must be provided to the tenure holder. The Crown Land Registry (Tantalis) must also be updated with the new information and documents.

It is the responsibility of the tenure holder to notify the Province when a mortgage is released.

11.2 Consent and Non-Disturbance Agreements

A Consent and Non-Disturbance Agreement (NDA) is an agreement between the Province, the tenure holder, and an eligible lender. Generally, the agreement is to ensure that the lender would be assigned the tenure rights if ever the tenure holder defaulted on their commitments to the lender. In very limited circumstances and only when described in specific operational policies, NDAs can be used for capital intensive major projects on Crown land.

The decision to enter into an NDA will be made by the Authorizing Agency on a case-by-case basis. Criteria to consider when making the decision to enter an NDA include, but are not limited to:

- the level of new investment on Crown land (examples of major projects where an NDA may be required include those that require an environmental assessment including: large clean energy projects; All Seasons Resorts; mines; Liquefied Natural Gas development; and any other major development requiring significant new investments on Crown land);
- whether there are acceptable alternative methods of providing security of investments to investors (e.g. consent to mortgages of leases or Statutory rights of Way) that do not put additional obligations on the Authorizing Agency and,
- provincial priorities for investments on Crown land where it may be necessary to provide this additional security to investors in order to meet Government objectives.

When a decision maker determines the Authorizing Agency is willing to enter an NDA, an approved NDA template is available. Forms of NDAs or comfort agreements with lenders that are not approved, are not to be used. In the case of All Seasons Resorts, a special template developed for use with operational and master development agreements may be used.

Applicants should include as much information as is possible regarding their requirement for an NDA at the time of application submission for a major Crown land development. Specific Crown land policies may contain specific instructions and requirements regarding the application for an NDA. Where the need for an NDA is identified as a part of the *Land Act* application additional fees should be collected at the time of the application (application fee as well as the assignment fee).

The Authorizing Agency will confirm the following prior to signing an NDA:

- a) the tenure is in good standing (including diligent use)

- b) property taxes are up to date
- c) liability insurance is on file and up to date

Once the NDA is prepared it must be sent to the tenure holder along with a cover letter requesting the appropriate fees (see [Land Act - Crown Land Fees Regulation](#) and [Fee Procedure](#) – the assignment fee is used for NDAs). It is the tenure holder’s responsibility to obtain signatures from the financial institution in addition to their own signatures. The tenure holder will then return the NDA to be signed (executed) by the Authorizing Agency. The Authorizing Agency will retain one copy of the executed NDA and the remainder(s) must be delivered to the tenure holder and financial institutions. The Authorizing Agency will update the Crown Land Registry (Tantalis) and upload a copy of the agreement.

11.3 Insolvency, Realization and Creditor Remedies

There may be times where a creditor, trustee or receiver asserts an interest in the tenure agreement due to mortgage foreclosure, or bankruptcies, etc. In these situations, or where the Authorizing Agency receives any notification related to foreclosure, receivership or bankruptcy, the authorizing agency should seek guidance from legal services branch.

12. NON-COMPLIANCE WITH TENURE TERMS AND CONDITIONS

All complaints or reports of non-compliance must be recorded on file. Some land use operational policies have specific requirements for compliance and enforcement (e.g. Windpower, Adventure Tourism, etc.).

The Compliance and Enforcement Procedure should be consulted for all contraventions of *Land Act* s.60, or for trespass proceedings under *Land Act* s.59, or for payment of occupational rent as a condition precedent to the issue of a disposition under *Land Act* s.60.

In all cases of non-compliance, the Authorizing Agency will generally follow these steps:

- Step 1:** Investigation: gather information and understand the root cause of the non-compliance.
- Step 2:** Notification: the tenure holder should be notified and given adequate time to respond (note: the tenure document may have specific notification timelines).
- Step 3:** Seek resolution: work with the tenure holder to seek resolution to and resolve the non-compliance. This may involve drafting an action plan on how the tenure holder will resolve the non-compliance.
- Step 4:** Action: take actions necessary to resolve the non-compliance. This may involve the tenure holder carrying out an agreed upon action plan to resolve the non-compliance, or the Authorizing Agency making changes to the tenure terms and conditions. If all efforts to find a resolution have been exhausted, then the

authorizing agency may decide to move forward with tenure cancellation (section 13.0).

The following provides procedural guidance when a tenure holder is not adhering to specific terms and conditions of their tenure.

12.1 Overdue Rentals

Where rent is paid annually, invoices should be mailed to the tenure holder 30 to 60 days prior to the anniversary date of the tenure. The notice will show the rental amount and advise the tenure holder that interest will be charged on overdue accounts.

Invoices should be paid by the due date which typically is the tenure anniversary date. If the invoice is unpaid after 30 days, an overdue notice is generally sent out by the Financial Services Branch (FSB)-Revenue at the Corporate Services for the Natural Resource Sector (CSNR). This notice includes notification of outstanding balance with interest due, as well as a statement of the Authorizing Agency's policy respecting cancellation.

If required, the CSNR Client Services Analyst (CSA) would send a second overdue notice, 60 days after the invoice past due date. Within this time frame, the CSA is responsible to pursue collection action against the tenure holder. When the account becomes overdue for 90 days or more, the CSA is expected to send a request to FSB-Revenue for administrative action. Upon review, FSB-Revenue would escalate the file to the Receivables Management Office (RMO), Ministry of Finance to undertake further collection/legal action against the tenure holder. Cancellation proceedings, pursuant to Land Act s.43 of the Land Act may be instituted (see section 13.0 below) and a Notice to Vacate may be sent unless extenuating circumstances warrant the granting of an extension of time.

Activities for handling payments received and collecting monies owed to the Crown are described in the Core Policy and Procedure Manual, issued by the Office of the Comptroller General.

Application of Interest on Overdue Accounts

Interest is charged on all accounts where payment of the rental, royalty or gross receipts is not received on the due date of any Land Act tenure.

This procedure applies to all Crown land dispositions issued under the *Land Act* which are levied a rental fee, royalty or gross receipts.

Interest is calculated at the rate prescribed pursuant to *Land Act* s.26 from the anniversary date of the term until payment is received.

Where royalty or gross receipts are payable as a condition of the tenure, and where a Statutory Declaration and royalty payment are not received within 15 days of the tenure anniversary date (or due date specified in the tenure agreement), the royalty or gross receipt payment are to include interest.

Where a rental or royalty payment is received after the due date, the account is considered in arrears for the interest owed, provided the amount of interest owing exceeds \$5.00 and that the notifications for overdue rental have been initiated.

12.2 Outstanding Taxes

If taxes are in arrears, the Surveyor of Taxes or Municipality notifies the Authorizing Agency. The Authorizing Agency also checks for outstanding taxes if a tenure is being altered in any way (e.g. assignment, sub-tenure, modification, at time of replacement, etc.).

The Authorizing Agency may send out a warning letter advising that payment of outstanding taxes is required within 60 days, and non-payment may result in the Authorizing Agency initiating cancellation proceedings.

If the requested funds or suitable representations are not received within the allotted time, then cancellation may be initiated as per Section 13.0.

12.3 Failure to Perform Tenure Terms or Conditions

Should it be determined that a tenure term or condition is not being observed, the Authorizing Agency will send a registered letter to the tenure holder advising of the non-compliance and require compliance with the tenure condition within 60 days upon penalty of cancellation. A copy of the letter is sent to BC Assessment and all mortgage holders.

If compliance or suitable representation is not made within the allotted time, security deposits and surety bonds may be invoked as applicable, and cancellation may be completed as per Section 13.0 below.

12.4 Environmental Risk and Contamination

Tenure documents may include obligations associated with environmental risks such as contamination or degradation of Crown land. These include, but are not limited to:

- limitations for bringing hazardous substances (any substance which is hazardous to a person, property or the environment) on Crown land;
- obligations on how hazardous substances are treated during the tenure term; and
- obligations the tenure holder may have regarding reporting and cleaning up of hazardous substances both during the term and upon termination.

Tenure holders are also responsible for meeting all requirements under all applicable environmental legislation and regulations associated with their use of Crown land. For example, the *Environmental Management Act* (EMA) establishes requirements regarding site contamination and states which industries and activities require EMA authorization.

If there is suspected contamination or degradation of Crown land, the Authorizing Agency may require the proponent to submit a contamination report detailing the extent of the contamination and a plan to clean up the site.

13. TENURE TERMINATION

Tenures are commonly terminated in one of the following ways:

- 1) *Expiration*: where termination is triggered by the expiry date of the tenure
- 2) *Abandonment*: where termination is triggered by the tenure holder
- 3) *Cancellation*: where termination is triggered by the Authorizing Agency

The following are intended to guide the procedures for terminating a tenure.

13.1 Types of Tenure Termination

13.1.1 Expiration

Every tenure document will have a date upon which it expires, except for tenures granted in perpetuity. Prior to tenure expiry, the Authorizing Agency should notify the tenure holder that they may apply for a replacement tenure (see [Allocation Procedures - Applications](#)) or decommission the site and allow their tenure to terminate on the expiry date.

Replacement Tenure Application

A replacement tenure is a subsequent tenure agreement issued to the tenure holder for the same purpose and area. A tenure holder must apply for a replacement tenure prior to their tenure expiry date. The replacement application should be initiated as early as possible to allow adequate time for processing. Replacement tenure application information can be found in the [Allocation Procedures - Applications](#) (section 8).

Decommissioning

If a tenure holder intends to terminate on the expiry date, the Authorizing Agency may request an updated decommissioning plan prior to expiry. The decommissioning plan should describe how the tenure holder intends to return the land in safe, clean and tidy condition prior to expiry. Terms and conditions pertaining to decommissioning and the condition of the land upon termination may be stipulated in the tenure document or management plan. The Authorizing Agency should attain an approved decommissioning plan well before the tenure expiry date to ensure adequate time to complete decommissioning.

13.1.2 Abandonment

Land Act s.45 allows a tenure holder to abandon and terminate a disposition by notifying the Authorizing Agency in writing. In the case of abandonment, the tenure holder must adhere to the terms of their tenure regarding the desired state of the land upon termination (*Land Act* s.46).

The written notification of abandonment will include:

- a) A statement indicating formal notice of abandonment
- b) A decommissioning plan

- c) Confirmation that the tenure is in good standing with respect to rental and taxes in any of the following forms:
- if the property is outside a municipality - a tax clearance certificate from the Provincial Collector, or copy of the receipt; or
 - if the property is within a city, village, town or municipality - a tax certificate or other proof from a municipal office; or
 - Screen print of automated land tax information system data for the tenure

The Authorizing Agency will review the specific tenure agreement to confirm tenure termination conditions and may advise of additional requirements.

13.1.3 Cancellation

All *Land Act* tenures may be cancelled by the Authorizing Agency. Cancellations are normally dealt with under *Land Act* s.43 or s.44. Cancellation can be initiated for reasons including, but not limited to, the following:

- **Uncured Defaults (generally *Land Act* s.43):**
 - rental payments, taxes or other monies due the Crown are in arrears;
 - the tenure, or any interest in it, has been assigned or otherwise alienated without the written consent of the Authorizing Agency;
 - the tenure area is not being used in compliance with the Management Plan;
 - unauthorized activities are being conducted on the Crown land by the tenure holder;
 - the tenure holder otherwise breaches the terms and conditions of the tenure agreement.

- **Other reasons (generally *Land Act* s.44):**
 - a clerical error in the names or description of the application, the description of Crown land, or any other material part of the approval or disposition;
 - that the Crown land was not available for disposition;
 - that the survey was incorrect;
 - that the information provided by the applicant was incorrect;
 - the tenure holder becomes unable to continue use of the Crown land (e.g. due to insolvency).

Tenure cancellation may be necessary to resolve a situation in which the Crown inadvertently issues an overlapping *Land Act* tenure that creates a conflict which impacts human safety, or that has a significant negative impact on an existing tenure holder's contractual rights (*Land Act* s.44). See Appendix B for procedural steps on how to deal with conflict or issues that may result from the overlapping of *Land Act* tenures that are caused by mapping, data input and statusing errors or omissions made by the Authorizing Agency

If terms or conditions of the tenure are not being adhered to, the Authorizing Agency will provide the tenure holder with notice of the issues via registered mail and an opportunity to resolve the issues within a specified time (depending on the issue, the tenure document may specify the number of days but where no timeframe has been identified the standard 60 days as per *Land Act* s.43 should be used). If the tenure is a Statutory Right of Way the Authorizing Agency may extend the time to comply up to 2 years after the notice is mailed. As per *Land Act* s.43, if the failure or neglect continues after the allotted time period the Minister may cancel the disposition; alternatively, the Authorizing Agency may choose to give the tenure holder additional time to resolve the issues prior to cancelling the tenure.

If a cancellation decision is made, a written rationale for cancellation and details of cancellation facts must be sent to the tenure holder as per tenure conditions and by registered mail (in most cases). The Authorizing Agency will notify the tenure holder that they must observe and perform all covenants, stipulations and terms of the disposition (*Land Act* s.46). This includes returning the land to a safe, clean and tidy condition and paying any outstanding rent.

The applicant may apply for a new tenure, which requires payment of an application fee. All past indebtedness to the Crown must be liquidated before such an application will be considered.

13.2 Tenure Termination Processing

13.2.1 Site Condition

Regardless of why a tenure is being terminated (expiration, abandonment, or cancellation) the Authorizing Agency will make every effort to confirm that there are no outstanding conditions (e.g. rent, royalty or property tax payments) and that the site has been left in a satisfactory condition (as defined in the tenure document) prior to terminating the tenure and releasing the security deposit.

Once the site has been properly decommissioned, the tenure holder may be asked to provide proof of the site's condition. This may come in the form of a Statutory Declaration stating that the site has been left in a condition acceptable to the Authorizing Agency, or photographs of the site pre and post decommissioning. The Authorizing Agency should inspect the property to confirm the site condition whenever possible.

In the case where the site has *not* been left in a satisfactory condition, the Authorizing Agency will send a letter to the tenure holder requiring clean-up to be completed within a specified time period. Failure to comply with the clean-up requirements may result in further actions according to the terms and conditions of the tenure agreement, which can include payment of occupational rent until such time as the site has been left in a clean and tidy state.

Security deposits will not be returned until the site has been left in a satisfactory condition and no other outstanding commitments remain (e.g. rent or royalty payments). The security may be used as per the terms and conditions of the tenure to cover the costs of cleaning up the site or paying any outstanding rent or royalty (see [Security and Insurance Procedure](#)).

Cost of Clean-Up

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*.

As tenure language has changed over time, tenure agreements should be reviewed to determine the best approach for collecting these additional funds. The Financial Services of CSNR and the Financial Core Policy Manual should also be consulted when determining the best approach. Depending on the tenure language, the following two options may be available:

1. The Authorizing Agency incurs the cost before the tenure holder is billed:
 - This option is to be used if tenure language does not allow the Province to bill a client prior to incurring the cost or if the cost cannot be determined ahead of time.
 - The Authorizing Agency regional office (or in some cases district office) incurs the cost in their operating budget; however, an invoice is immediately sent to the tenure holder for the amount the region has incurred, and the cost nets to \$0 in the region's books once the invoice is sent.
 - There is a risk to the regional office if the tenure holder does not pay the cost and it has gone through the collections process, as the amount will be charged to the region's budget

2. The tenure holder is invoiced before the Authorizing Agency incurs any cost (deferred revenue):
 - This option must be provided for in the tenure agreement.
 - A reasonable estimate of cost must be determined.
 - Steps to be taken:
 - Send the invoice to the client
 - Ensure payment is received by the Authorizing Agency (considered as deferred revenue)
 - The Authorizing Agency initiates clean up within 2 years from receipt of payment unless exceptional circumstances force a delay
 - If clean-up is not carried out, money is sent to the Consolidated Revenue Fund and can no longer be used for clean-up or fulfilling other obligations

Both options require a site assessment to determine the costs of fulfilling any outstanding obligations.

If contamination and clean up risks continue to be problematic the authorizing agency may seek advice from Risk Management Branch and/or Legal Services.

13.2.2 Termination Documentation

Upon termination, a letter is forwarded to the tenure holder with a rationale for the termination and confirming the date of termination. Copies of the letter will be provided to:

- a) BC Assessment; and
- b) the applicable Municipality or Regional District
- c) all mortgage holders (if any)

If a tenure with outstanding conditions and/or an unsatisfactory site condition is terminated, the letter will include an explanation of any further steps that the Authorizing Agency is taking (e.g. retaining the security deposit, charging occupational rent, etc.).

If the site has been left in a satisfactory condition and no other outstanding conditions remain, then the security deposit is returned.

Upon termination, the Crown Land Registry (Tantalis) must be updated to reflect the new status.

13.2.3 Special Considerations for Canceled Tenures

When the tenure being cancelled is registered in the Land Title Office, a certificate signed by the Minister, or delegate, pursuant to *Land Act* s.43(5) is forwarded to the Registrar of Land Titles who will cancel or amend the registration accordingly. A copy of the certificate is sent to BC Assessment.

14. CANCELLATION OF PLANS

This section applies to cancellation or partial cancellation of parcels and/or roads defined by a subdivision or reference plan deposited in the Land Title Office.

14.1 General Procedure

- a) Crown ownership of all parcels must be verified by completion of a status.
- b) All parcels must be free of encumbrances.
- c) All proposals to cancel roads or lanes outside of a Municipality must be referred to the Ministry responsible for the *Transportation Act*.
- d) All parcels, roads and lanes to be cancelled must have been dedicated by the same plan.

All proposals for cancellation must be referred to the Surveyor General Division, Land Title and Survey Authority for confirmation of process before commencement of the procedures. The Surveyor General Division will prepare the necessary documents and will deposit all documents and plans, if required, into the Land Title Office.

Certain cancellations will require that a plan or plans be prepared by a British Columbia land surveyor. Seek direction from the Surveyor General Division. The Authorizing Agency will be responsible for all survey costs.

Where two or more contiguous parcels within a plan are owned by the Crown the interior lot line or lines can be cancelled pursuant to Sections 137 of the *Land Title Act*. Section 136 of that act can be used to cancel both parcels and roads and lanes.

It is significant whether the subject parcels, roads and lanes are located within or outside of a Municipality.

14.2 Outside a Municipality

If no actual roads or lanes are involved:

- lot lines between two or more contiguous Crown owned parcels shown on a plan can be cancelled under Section 137 of the *Land Title Act*;
- a *Land Title Act* Form 14 (Application for Cancellation of Interior Lot Lines) is filed with the Land Title Office and a new title is created; and,
- an explanatory plan is required in some cases.

Where Roads or Lanes are involved:

- parcels and roads or lanes can be cancelled pursuant to Section 136 of the *Land Title Act*; and,
- an explanatory plan and order by designated authority (being the Surveyor General) is required.

14.3 Inside a Municipality

If no actual Roads or Lanes are involved:

- proceed under Section 137 of the *Land Title Act* in the same manner as stated above.

Where Roads or Lanes are involved:

- the roads and lanes must first be closed by a municipal bylaw;
- the Municipality must transfer the closed roads and lanes to the Crown via the *Land Act*, Form A (Freehold Transfer);
- the now closed roads and lanes can be cancelled, along with any Crown owned parcels pursuant to Section 136 of the *Land Title Act*; and,
- an explanatory plan and order by designated authority (being the Surveyor General) is required.

APPENDIX A – APPROVED ENDORSEMENT LANGUAGE FOR LEGAL DOCUMENTS

The following is approved endorsement wording to be used for endorsement schedules and correspondence.

ASSIGNMENTS

Assigned unto (name), (date)

Mortgage dated assigned unto (name), (date)

Assigned by way of Deed of Trust and Mortgage dated ... unto ...

Assigned by way of Supplemental Trust Deed dated ... unto ...

Modified by an Assignment by way of Supplemental Deed of Trust and Mortgage dated ...

The interest of ... assigned unto...

Assigned by way of Mortgage dated ... unto ... subject to the prior Mortgage dated ... unto ...

Mortgage dated discharged pursuant to an Indenture dated ...

Trust Deed dated ... discharged in accordance with an indenture dated ...

Mortgage dated ... released pursuant to an Indenture dated ...

SUB-LEASES

Portions sub-let ... unto ... for a term expiring ...

*(Sub-lease must expire one day prior to the expiry of the head lease.)

Portion sub-let ... unto ... for a period of ... years from ...

Sub-lease dated ... unto terminated pursuant to an Indenture dated ...

SUB-LEASE EXTENSION

Expiry of sub-lease dated ... unto ... extended from to

TRANSFER OF ASSETS UPON DEATH

This tenure is recorded in the name of the Estate of..., naming ... as the Executor/Executrix or Administrator.

TRANSFER OF ASSETS UPON DEATH – TENANTS IN COMMON

Interest of ..., deceased, recorded in the name of the Estate of ... , naming ... as the Executor/Executrix or Administrator.

TRANSFER OF ASSETS UPON DEATH – JOINT TENANTS

This Licence/Lease is recorded in the name of ... by reason of the transmission of an Estate by death.

APPENDIX B – OVERLAPPING TENURE STATUS / CLEARANCE ERRORS

The Authorizing Agency will address conflicts/issues that may result from the overlapping of *Land Act* tenures that are caused by mapping, data input and statusing errors or omissions made by the Crown.

When a potential erroneous overlap is identified the following procedure should be followed.

1. Determine the extent of the overlap and the nature of the rights granted to each party.
2. The Authorizing Agency notifies both parties of the matter and, where reasonable, encourages them to:
 - a) reach agreement on the joint use of the overlap area by entering into a joint use agreement; or
 - b) agree to a tenure boundary amendment that eliminates the overlap.

The Authorizing Agency monitors the progress of the tenure holders and obtains written confirmation of any agreements. The Authorizing Agency determines what other steps, if any, may be advisable to implement the resolution (e.g. amendments to Management Plans or tenure agreements).

3. If the tenure holders cannot reach agreement within an adequate period of time, as determined by the Authorizing Agency, the Authorizing Agency advises the tenure holders that the Province will impose a resolution. The following steps should be carried out.
 - a) Invite tenure holders to provide information that they consider relevant to the issue to the Authorizing Agency by a specified date.
 - b) The Authorizing Agency may arrange a meeting with both tenure holders to:
 - i. assess the extent and nature of any operational conflict;
 - ii. determine if a mediator, facilitator or other third party negotiator is required to assist in resolving the overlap; and/or,
 - iii. explore issues that arise during the process that may be clarified or resolved through a joint meeting.
 - c) The Authorizing Agency provides a written explanation of the decision and anticipated impact of the change to all parties involved. Tenure holders should be provided with an opportunity to comment on the decision. Where possible, reasonable notice should be provided to both parties before a solution is implemented.
 - d) The tenure agreement language is reviewed to determine if:
 - i. the tenure agreements contain legal clauses which provide specific direction related to managing overlapping *Land Act* tenure conflicts (e.g. Adventure Tourism tenures).

- ii. one of the tenants involved in the conflict has been granted priority rights.
- e) Before implementing a decision, the Authorizing Agency considers all relevant facts including:
 - i. the historical background of the overlapping tenures;
 - ii. recommendations provided by provincial staff; and,
 - iii. any information provided by the tenure holders.
- f) The Authorizing Agency should make an effort to minimize the impact of the change and provide incentives that may encourage tenant collaboration.
- g) Historically, the first tenure holder has usually been given precedence and the boundaries of the latter tenure would be adjusted. However, all decisions must consider the case-specific circumstances before a resolution is implemented.
- h) If the Authorizing Agency determines that amending the boundary(s) will not result in an adverse material impact, the Authorizing Agency may amend the tenure area on one or both tenures in accordance with any requirements of the tenure agreement(s).
- i) The matter must be referred to the ADM Regional Operations for direction before a decision is implemented if:
 - i. it is determined that either tenure holder may suffer a material adverse effect if boundaries are altered to eliminate the overlap; and,
 - ii. either tenure holder takes the position that they are entitled to compensation as a result of proposed change(s) to the tenure area boundaries.