



## Land Use Operational Policy Waterpower

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**NAME OF POLICY:** Waterpower

**APPLICATION:** Applies to all waterpower project uses of Crown upland and aquatic land

**ISSUANCE:** Assistant Deputy Minister; Tenures, Competitiveness and Innovation

**IMPLEMENTATION:** Ministry of Forests, Lands and Natural Resource Operations

**REFERENCES:** *Land Act* (Ch. 245, R.S.B.C. 1996)  
*Water Act* (Ch. 483, R.S.B.C. 1996)

**RELATIONSHIP TO PREVIOUS POLICY:** This policy replaces the previous Waterpower policy dated August 2004. As previously noted this policy incorporates elements of Industrial - General and Utilities policies.

**POLICY AMENDMENT:** Any formal request for amendment to this policy is to be directed in writing to the Director, Land Program Tenures Branch, Ministry of Forests, Lands and Natural Resource Operations.

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

August 17, 2011  
Date

<b>APPROVED AMENDMENTS:</b>		
Effective Date	Briefing Note /Approval	Summary of Changes:
December 01, 2011		Updated language with respect to investigative licence and multi tenure instrument
May 15, 2012	BN 186748	Clarification that roads associated with Clean Energy Projects may be authorized under the <i>Land Act</i> or by Special Use Permit under the <i>Forest Practices Code Act</i> .
October 19, 2012	BN 192085	Addition of Investigative licence size limitation
April 2, 2013	BN 196442	Amendments related to reversion back to GST made to: <ul style="list-style-type: none"> <li>• tenure conversion provision, and</li> <li>• administration fees provision so as to refer to “applicable taxes” only.</li> </ul>
December 16, 2013	BN 203110	Updated language with respect to investigative use permit and variance request
September 22, 2015	BN 217947	Land Act Reform phase 1 changes
February 23, 2018	BN NRS 341	Change to Section 9.6.2.1 providing relief from diligent use requirements for investigative tenures with over 5 years use. (Note additional minor correction to wording in Section 9.7)

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## 1. POLICY APPLICATION

This Waterpower policy outlines the type, term and pricing of tenures that will be issued for the Crown land project components.

The Ministry of Forests, Lands and Natural Resource Operations is the lead agency for the regulatory review of waterpower project proposals on Crown land. However, projects that exceed the Environmental Assessment Office (EAO) Energy Project threshold will require EAO review.

Waterpower Project applications received by the province must outline both the Crown land and water requirements of the project. Land tenure applications will only be processed in conjunction with an application for a water licence, or with proof of an existing or pending water licence pertaining to the project.

*The italicized text in this document represents information summarized from standard Crown land management policies and procedures. This material has been inserted where it provides necessary direction or context. As well, website links offer access to the full text of the relevant land management policies and procedures. Text in standard script is applicable to this policy only.*

## 2. PRINCIPLES AND GOALS

*Provincial employees act in accordance with applicable legal requirements when making decisions. The Guiding Principles are a summary of key administrative and contract law principles which guide provincial employees.*

*This policy is part of a series of policies that have been developed to help provincial staff use business and legal principles to achieve the government's goals with respect to the management of Crown land in a manner that is provincially consistent, fair and transparent. To that end, this policy also serves as a communication tool to help the public understand how the Province of BC makes decisions respecting Crown land.*

The "BC Energy Plan: A Vision for Clean Energy Leadership" ([The BC Energy Plan: A Vision for Clean Energy Leadership](#)) was released on February 27, 2007. More information on the energy plan can be found on the Ministry of Energy and Mines website and this operational Crown land use policy supports the goals of that plan.

Further information on the regulatory process for Clean Energy Production (CEP) or Clean Energy project proposals can be found in the proponent guidebook [Clean Energy Production in BC: An Inter-agency Guidebook](#).

## 3. DEFINITIONS

**Authorizing Agency** means the Provincial ministry responsible for the specific land use authorization.

**Development Plan** means the report submitted by the applicant containing technical information associated with the project.

**First Nation** is a term that refers to the Indian peoples in Canada, both Status and non-Status. Although the term First Nation is widely used, no legal definition of it

exists. Some Indian peoples in British Columbia have adopted the term “First Nation” to replace the word “band” in the name of their community.

**Headpond Area** means any land areas flooded at the intake to allow diversion of water for the project, but does not include a “reservoir” such as would be found behind a major dam.

**Improvements** (also see “Works” in Guide) means any physical structure on Crown land intended to enhance its value or utility or to adapt it for a new or further purpose.

**Linear Components** includes the penstock, the intake(s) or dam(s) and any tunnels or channels associated with the project.

**Powerhouse Site** means the Crown land site on which the facility housing the turbines is located.

**Preliminary Project Definition** means a concise description of the scope of the project. This preliminary information is submitted by the applicant at the time of initial application (see Guide).

**Staging Area** means that Crown land used for construction, spoil and/or laydown-uses during the construction phase of project development.

**Waterpower Project** means all the various components of the project including: the powerhouse, the penstock, intake(s) or dam(s) and any tunnels or channels, the transmission line, road and may include other land uses such as quarries, construction and spoil areas, staging areas and communication sites.

#### **4. ABBREVIATIONS**

**BCA** - BC Assessment

**ha.** - Hectare

**PRT** - Project Review Team

**MFLNRO** - Ministry of Forest, Lands and Natural Resource Operations

**MEM** - Ministry of Energy and Mines

#### **5. APPLICANT ELIGIBILITY**

*Applicants for new tenures, tenure assignment, or tenure replacement must be:*

- *Canadian citizens or permanent residents 19 years of age or older; or,*
- *Corporations which are incorporated or registered in British Columbia; or,*
- *Registered partnerships, cooperatives, and non-profit societies which are formed under the relevant provincial statutes; or,*
- *First Nations can apply through band corporations or Indian Band and Tribal Councils. Band or Tribal Councils require a Band Council Resolution a) authorizing*

*the council to enter into the tenure arrangement, and b) giving the signatories of the tenure document the ability to sign on behalf of the Band. For tenures which are to be registered in the Land Title Office, First Nations must apply through either a band corporation or trustees. Band members can elect 1 or more trustees to hold a tenure on behalf of the Band. Verification of election must be by way of a letter signed by the Chief and councilors of the Band giving the full names of the trustees and stating that they were elected at a properly convened meeting of the Band. A Band Council Resolution is not required.*

- *In the case of aquatic land, non-Canadians can apply if they own the adjacent upland (companies must still be incorporated or registered in B.C.).*

*For more detailed standard policy information see [Eligibility and Restrictions](#).*

## **6. FORM OF LAND ALLOCATION**

The rental rate for the major improvements reflects current Industrial - General and Utilities policies due to the nature of the improvements. **For other potential improvements associated with a project including transmission lines, roads, quarries, communication sites etc., reference is made to other appropriate pre-existing land use policies.** For all improvements, particular tenure types are available at each stage of the project.

Refer to Appendix 1 for a summary of the forms and terms of Crown land allocation available for waterpower operations.

Refer to Appendix 1 for a summary of the types, terms and pricing of Crown tenures available for waterpower projects.

### **6.1 Project Monitoring and Investigation Phase**

#### **6.1.1 Investigative Licence**

A *Land Act* Section 11 investigative licence of occupation is the form of tenure provided to authorize initial investigation of Crown land to determine site placement of waterpower project components. **Investigative licences will be issued for areas not exceeding 5000 ha.** Requests for larger areas are at the discretion of the Authorizing Agency. The term for an investigative licence is up to five (5) years at the discretion of the Decision Maker with the possibility of a one-time replacement.

An Investigative Plan must accompany the project application and include sufficient information to allow staff to assess that the site is being used diligently for the purposes of developing a waterpower project. The plan details should outline testing equipment locations and construction schedules for equipment as well as timing for the collection of monitoring data, and other information reasonably required by the Authorizing Agency. If the equipment is not used diligently, a subsequent tenure may not be granted.

### **6.2 Project Development and Operation Phase**

This phase involves the construction, testing and operation of the waterpower project and all associated structures and improvements, such as transmission lines and roads.

Listed below are the required project land-uses and the associated tenure types that are available for each land use. See Section 9.6.2 for diligent use requirements associated with this phase. It is important to note that the Authorizing Agency will review on the ground progress on a regular basis to ensure that the land is being used in the manner consistent with the timelines and schedules outlined in the Development Plan for the site.

### **Electricity Purchase Agreement (EPA)**

Proponents who have an existing Electricity Purchase Agreement (EPA) at this stage of development may apply for Crown land tenures that contain a tenure term with a coincident end date as that of their EPA. For proponents who do not have an existing EPA, Crown land tenure terms are available for terms up to 10 years. If a proponent obtains an EPA within the non EPA 10-year term period, the proponent at any time within this 10-year period may replace their Crown land tenures with the coincident end date of their EPA. Standard tenure replacement charges will apply.

For projects **without** an existing EPA and during the term of the tenure, the tenure-holder will be required to annually demonstrate due diligence in the pursuit of an electricity purchase agreement, participation in any standing offer program, or similar opportunity. The Development Plan must detail these actions, which will remain in full force and effect in subsequent tenures.

For projects **with** an existing EPA, the term of the MTI will be the same as the term of the EPA and will have the same expiry date. The MTI will also require that the Improvements be constructed by the commercial operation date within the EPA. The Development Plan must detail these dates and actions, which will remain in full force and effect in subsequent tenures

#### **6.2.1 Type and Term of Tenure(s) for Projects**

Once the proponent has made application for a waterpower project the form of tenure issued at this stage is the multi tenure instrument (MTI).

#### **6.2.2 Multi Tenure Instrument**

The Multi Tenure Instrument is the preferred tenure document for clean energy project development and operation. It is issued initially with minimal Crown land rights associated with investigation of the site and leads to the ability of the proponent to obtain further land and water rights for project construction and development activities.

To ensure that reasonable time is provided for the proponent to acquire an electricity purchase agreement or equivalent the initial term of the investigative licence is up to five years with a one-time replacement.

At such time as the project is built and becomes operational subsequent Crown land rights may be added or dropped as required to meet the needs of the individual Development Plan. The types of Crown land rights available during the development and operational phase are detailed below.



### **6.2.2.1 General Area – Licence of Occupation**

*A licence of occupation may be issued where minimal improvements are proposed, where there are potentially multiple users of a site (e.g. communication sites), where survey is not required or when the land is located in remote areas and legal survey costs required for a lease or right of way are prohibitive, and where Government wishes to retain future options and management control over the use of the lands. It may also be used to allow development to proceed while awaiting completion of survey requirements for a lease or right of way.*

*A licence of occupation conveys fewer rights than a lease. It conveys non-exclusive use for the purpose described, is not a registerable interest that can be mortgaged, and does not require a survey.*

*A licence of occupation does not allow the tenure holder to curtail public access over the licence area except where it would impact the licencees' right to use the land as per the licence document. Government may authorize overlapping and layering of tenures.*

A licence of occupation may be issued over a broad polygon-shaped area to allow for the construction and operation of improvements for those projects which do not have an existing electricity purchase agreement. The identification of Crown land should account for not only the footprint of all improvements (powerhouse, penstock, intakes, etc.) but also the space required to locate and install improvements during the construction phase. A staging area is generally required and should be identified and included in the licence of occupation area.

The tenure holder may also request that separate tenures be issued for various improvements, as per the following sections. This request may be submitted at any time during the term of the general area licence. If multiple tenures are requested, the general area licence should be amended to exclude these areas. The remainder of the general area licence will provide flexibility for alterations to the locations of the improvements during construction. Deviation from existing leases or statutory rights-of-way will require submission of an application for additional tenures for the new area(s) or for amendment to the existing tenure(s).

Upon completion of construction, the tenure area may be reduced to eliminate additional land required during construction to ultimately reflect only that land required for project operation.

### **6.2.2.2 Powerhouse Site – Licence of Occupation**

A licence of occupation may be provided for the powerhouse site.

### **6.2.2.3 Powerhouse Site – Lease**

*A lease should be issued where long term tenure is required, where substantial improvements are proposed, and/or where definite boundaries are required in order to avoid conflicts.*

*The tenure holder has the right to modify the land and/or construct improvements as specified in the tenure contract. The tenure holder is granted quiet enjoyment of the area (exclusive use).*

*A lease can be issued in a form that is registerable in the Land Title Registry (whereas, a Licence of Occupation is not.) Registered leases for a term of 30 years or more may be considered a fully taxable transfer of interest in property and may be subject to Property Transfer Tax in accordance the Property Transfer Tax Act.*

*Where a lease is not registered in the Land Title Registry, Property Transfer Tax does not apply.*

*In most cases, a tenure holder may apply for a replacement tenure at any time following the mid-term of the lease. Replacement of tenures is at the Authorizing Agency's discretion.*

*Where a replacement lease is for the same land, will result in a total duration of more than 30 years, and the replacement lease is registered in the Land Title Registry, the leases may be viewed as a single transaction and may be subject to Property Transfer Tax.*

*Where the term of a registered lease is less than 30 years or the total duration of all leases does not exceed 30 years, Property Transfer Tax exemption is available.*

*A lease can be a registerable interest in the land that is mortgageable.*

*A legal survey will be required at the applicant's expense to define the tenured area. A lease is a registerable interest in the land that is mortgageable. A lease may be issued for the powerhouse site.*

#### **6.2.2.4 Linear Components – Licences of Occupation**

*Licences of occupation may be provided for linear components such as the penstock with or without the intake.*

#### **6.2.2.5 Linear Components – Rights-of-way**

*A statutory right of way is normally used to authorize linear uses of Crown land for transportation, communication, energy production and utility developments.*

*The tenure holder is granted a legal right of passage over the land for a specific purpose. It does not generally confer the right to exclusive use and enjoyment of the area, nor the right to exclude or charge the public for the use of improvements.*

*Statutory rights of way for major activities are normally issued for so long as required. Shorter tenures are issued where the investments are lower, the use is of a shorter duration, or as defined under a specific program.*

*A legal survey will be required at the applicant's expense to define the tenured area. A Statutory Right of Way is a registerable interest in the land that is mortgageable.*

Statutory rights-of-way may be provided for linear components such as the penstock with or without the intake.

#### **6.2.2.6 Intake Structure – Licence of Occupation**

A licence of occupation may be provided for the intake site if not already included with the tenure for the penstock.

#### **6.2.2.7 Intake Structure – Lease**

A legal survey will be required at the applicant's expense to define the tenured area. A lease is a registerable interest in the land that is mortgageable. A lease may be provided for the intake site if not already included with the tenure for the penstock.

#### **6.2.2.8 Road – Licence of Occupation**

A licence of occupation is the tenure available for road purposes within a waterpower project. The licence will also require that the Improvements be constructed by the commercial operation date within the EPA.

#### **6.2.2.9 Road – Statutory Right-of-Way**

A statutory right of way may be issued or interim licence of occupation leading to a statutory right of way.

See Roadways policy.

#### **6.2.2.10 Road – Special Use Permit (*Forest Practices Code Act*)**

Rather than apply for any of the *Land Act* instruments described above for roads located within the Provincial Forest, the applicant may choose to apply for a Special Use Permit, which is issued in accordance with the *Forest Practices Code Act*, and subject to the requirements of the *Forest and Range Practices Act*.

#### **6.2.2.11 Quarry – Licence of Occupation**

If applicable, a licence of occupation for aggregate purposes will be required in addition to a general area licence of occupation. Tenure terms will be consistent with direction given in the Aggregate and Quarry Materials policy.

A Quarry – Licence of Occupation will be issued separately from the General Area-Licence of Occupation. Gravel use will be subject to royalty payments in the following circumstances:

- i) gravel removed from a quarry;

- ii) gravel used in the production of concrete; and
- iii) gravel moved from its original position and used in another location of the tenure area.

Gravel use will not be subject to royalty payments in the following circumstances:

- i) gravel used to build and maintain public roads; and
- ii) gravel located immediately beneath the tenured area of the intake, penstock, powerhouse, not used in concrete production and ultimately used in the same position (i.e. penstock bedding).

See Aggregate and Quarry Materials policy.

#### **6.2.2.12 Communications Site – Licence of Occupation**

If applicable, a licence of occupation for communication site purposes will be required in addition to a general area licence of occupation.

See Communications Sites policy.

#### **6.2.2.13 Site Decommissioning**

The site must be decommissioned by the tenure holder as per the terms and conditions of the tenure document. The length of time required to complete the decommissioning will be project specific.

## **7. PRICING POLICY**

### **7.1 Administrative Fees**

Application fees for tenures, other administrative fees, and applicable taxes are payable to the Province of BC. These fees are set out in the [fee schedules](#) contained in the Land Act, Ministry of Lands, Parks and Housing Act Crown Land Fees Regulation.

### **7.2 Land Valuation**

Utility policy zonal values and BCA actual land value will be applied where they reflect current land value. However, in most cases annual rental calculations for final tenures will be based on appraised land values. Zonal and BCA land values are considered minimums.

The project site will be appraised based on two separate markets:

- Powerhouse- comparable **industrial** markets;
- Linear components and transmission lines - comparable **utilities** markets

One appraisal contract will be used to value both components.

Note: Appraisal Terms of Reference and the choice of independent appraiser should be agreed upon in advance with the applicant.

In the event of a dispute over appraised values, refer to standard policy regarding the Disposition Price Resolution Procedure.

The rental rate for the major improvements reflects current Industrial - General and Utilities policies due to the nature of the improvements.

### **7.3 Project Monitoring and Investigation Phase Rent**

#### **7.3.1 Investigative Licence of Occupation**

The annual rent is \$500.

### **7.4 Project Development and Operation Phase Rent**

#### **7.4.1 Individual tenures or Multi Tenure Instrument schedules**

Rent for each tenure or equivalent schedule attached to a Multi Tenure Instrument is calculated in the identical way. For example, an individual licence of occupation and a licence of occupation schedule are both priced at 7.5% of the Zone Land Value (zone land value described in the Utilities Policy). Rental rates are described below.

#### **7.4.2 General Area – Licence of Occupation**

Annual rental is 7.5 percent of the Zone Land Value (zone rate/ha x land area [ha]) from the Utilities policy.

#### **7.4.3 Powerhouse Site – Licence of Occupation**

Annual rent is calculated at 7.5% of appraised land value based on comparable industrial markets (or BCA actual land value where they reflect current market value), with a minimum annual rental of \$500.

#### **7.4.4 Powerhouse Site – Lease**

Annual rent is calculated at 8% of appraised land value based on comparable industrial markets (or BCA actual land value where they reflect current market value), with a minimum annual rental of \$500.

#### **7.4.5 Linear Components – Licences of Occupation**

Licences of occupation may be provided for linear components such as the penstock including the intake. The term of the licences will be the same as the term of the electricity purchase agreement and will have the same expiry date. The licences will also require that the improvements be constructed by the commercial operation date within the electricity purchase agreement.

#### **Pricing**

Rent is normally prepaid based on the rental rate of 7.5% of zone land value from the Utilities policy (zone rate/ha x land area [ha] x the appropriate discount factor from Table 7 of the Pricing Policy). The minimum rent for prepaid tenure terms longer than 1 year is \$500 regardless of term.

#### **7.4.6 Linear Components – Rights-of-Way**

Rent is normally prepaid for the entire term. Valuation is normally based on zone rates as per Utilities policy. These are considered minimum rates only. Where there is market evidence to support higher rates, the Authorizing Agency may call for a market value appraisal of all or portions of the subject area. Where an appraisal is undertaken, the new land value is normally calculated as a percentage (50%) of the appraised market value of similar land over which the utility passes.

#### **7.4.7 Intake Structure – Licence of Occupation**

Rent is normally prepaid based on the rental rate of 7.5% of zone land value from the Utilities policy (zone rate/ha x land area [ha] x the appropriate discount factor from table 7 of the Pricing Policy). The minimum rent for prepaid tenure terms longer than 1 year is \$500 regardless of term.

#### **7.4.8 Intake Structure – Lease**

Annual rent is calculated at 8% of appraised land value based on comparable industrial markets (or BCA actual land value where they reflect current market value), with a minimum annual rental of \$500.

#### **7.4.9 Road - Licence of Occupation or Statutory Right of Way**

See Roadways policy.

#### **7.4.10 Quarry – Licence of Occupation**

See Aggregate and Quarry Materials policy.

#### **7.4.11 Communications Site – Licence of Occupation**

See Communications Sites policy.

## **8. ALLOCATION PROCESSES**

### **8.1 Applications**

New and replacement tenures are normally offered in response to individual applications.

### **8.2 Application Package**

Applications must be complete before they can be accepted for processing. A complete application package will include all the material defined in the Application Checklist.

*Note: Applications including a transmission line greater than 25 km will have the Land Act Fees Regulation Utilities application fee applied (i.e. \$50/hr) to the line and will not be included as part of the \$3300 Alternative Energy Project application fee package.*

### **8.2.1 Application Acceptance**

*New applications will be reviewed for acceptance based on application package completeness, compliance with policy and program criteria, preliminary statusing, and other information which may be available to provincial staff. The acceptance review is to be completed within 7 calendar days. Applications that are not accepted will be returned to the applicant.*

### **Investigative Plan**

A completed Investigative Plan is required as part of the application process for the investigative phase. The Investigative Plan can form the framework of the more complete Development Plan which is to be submitted at the time of project application. The requirements of the Investigative Plan are located on the website - [Land Uses - Waterpower](#)

### **Development Plan (DPIR)**

A completed Development Plan (see Section 8.6.1) will be required as part of the application process.

A Clean Energy Development Plan includes information on project construction, operation, monitoring, and decommissioning. It describes the environmental and socio-economic details of the project and ways that impacts will be avoided or mitigated. The Development Plan provides critical information to assess the proposed project and determine whether authorizations will be issued under the relevant legislations.

The DPIR is available for download from the Waterpower web pages: [Land Uses - Waterpower](#)

Waterpower Projects should be accepted and entered into Tantalus as a single application using the Waterpower Project “Purpose” and “Sub-purpose” codes (as opposed to an individual application for each project component). The various components can be provided separate file numbers at a later date, when required, i.e. upon completion of construction and prior to survey. The Clean Energy Production in B.C.: An Inter-agency Guidebook for Proponents provides guidance for the application process.

### **8.2.2 Clearance/Statusing**

*After acceptance, provincial staff undertake a detailed land status of the specific area under application to ensure all areas are available for disposition under the Land Act and to identify potential issues.*

### **8.2.3 Referrals**

*Referrals are a formal mechanism to solicit written comments on an application from recognized agencies and groups. Referrals are initiated as per legislated responsibilities and formal agreements developed with other provincial and federal government agencies. Referrals may also be used to address the interests of local governments and First Nations. Referral agencies, organizations and identified special interest groups provide their responses to the Authorizing Agency within 30 days (45 days for First Nations).*

Applications for investigative authorizations are referred and notice of the application will be provided to the EAO and BC Hydro to enable a coordinated approach to Waterpower Project power management, including (if available) information respecting suitability of the site/area for waterpower development purposes. Applications for investigative authorizations are to be advertised as per section 8.1.5.

All other applications for tenure will be referred to key agencies and groups as deemed appropriate.

*Additionally, notice will be sent to existing waterpower producers and wind and ocean energy tenure holders within one kilometre of the new area under application.*

#### **8.2.4 Advertising/Notification**

*At the time of application acceptance, provincial staff will notify applicants if advertising is required and provide the necessary instructions.*

#### **8.2.5 Upland Owner Consent**

*Owners of waterfront property have certain “riparian rights” which include the right of access to and from the upland. Provincial staff will advise applicants if there is a need to obtain a letter indicating the upland owner’s consent to their application.*

#### **8.2.6 Adjacent Owner Notification**

*New applications to tenure foreshore adjacent to privately owned property, including Indian Reserves, are brought to the adjacent property owner's attention through referrals or direct contact. In certain circumstances, provincial staff may advise applicants that there is a need to obtain a letter indicating adjacent owner’s consent to their application.*

#### **8.2.7 Aboriginal Interests Consideration**

*The Authorizing Agency is responsible for ensuring the Province’s obligations to First Nations are met in the disposition of Crown land. Provincial staff carry out consultations in accordance with the consultation guidelines of the Province to identify the potential for aboriginal rights or title over the subject property and to determine whether infringement of either might occur.*

#### **8.2.8 Field Inspections**

*Field inspection means the on-site evaluation of a parcel of Crown land by provincial staff. The need to conduct a field inspection will vary and the decision to make an inspection ultimately lies with the Authorizing Agency.*

#### **8.2.9 Decision/Report**

*The applicant will be notified in writing of the government’s decision. [Reasons for Decision](#) are posted on the Applications and Reasons for Decision website.*

### **8.3 Issuing Documents**

*If the application is approved, tenure documents are offered to the applicant. All preconditions must be satisfied prior to the Authorizing Agency signing the documents. It is the applicant’s responsibility to obtain all necessary approvals before placing improvements or commencing operations on the tenure.*



### **8.3.1 Environmental Tenure Provisions and Schedules**

Tenure terms and conditions may be selected from standard tenure document template provisions or in some cases they may be drafted to address specific issues identified through the processing of an application.

In some cases the standard environmental provisions in the tenure document may not adequately reduce potential liabilities and risks to the Province relating to contamination or degradation of Crown land. In these situations a specific set of environmental terms and conditions (referred to as an environmental schedule), as well as additional insurance requirements, will be considered for inclusion into the tenure document.

The need for an environmental schedule or additional insurance requirements will be considered on a case by case basis when processing new or replacement tenures, or tenure assignments. Circumstances that may warrant an environmental schedule or additional insurance requirements may include sites where there is a known or high risk of contamination or environmental impacts due to current or past activities; or a high risk of contamination or environmental impacts occurring in the future as a result of the tenure holders activities.

*For circumstances where additional requirements are being considered regional staff are to contact Land Tenures Branch (Ministry of Forests, Lands and Natural Resource Operations), who will work with Ministry of Justice to prepare a customized environmental schedule if warranted.*

### **8.3.2 Remote Community or Small Scale Project**

Applications which would provide power to a community without access to the provincial electricity grid and small scale projects are not normally subject to competitive processes. Please see the Community and Institutional Land Use Policy for further information.

## **8.4 Direct Sale**

*Crown land sales may occur through an application process if the proposed site meets specific criteria and the use is considered suitable by government agencies and other affected interests.*

The site occupied by the powerhouse may be considered for fee simple disposition. Fee simple disposition may be made where a lot is either registered in a *Land Title Act* subdivision plan; or a *Land Act* survey for the parcel complies with Ministry of Transportation and Infrastructure approving officer requirements (title to be raised on issuance of Crown grant). Fee simple disposition constitutes permanent allocation of Crown land. A legal survey will be required at the applicant's expense to define the sale area.

Fee Simple dispositions will be priced at the appraised land value based on comparable industrial markets (see Section 6.1), payable at the time of disposition.

## **9. TENURE ADMINISTRATION**

### **9.1 Insurance**

*A tenure holder is generally required to purchase, and is responsible for maintaining during the term of the tenure, a minimum level of public liability insurance specified in the tenure document. The province may make changes to the insurance requirements and request copies of insurance policies at any time during the term of the tenure.*

A minimum of \$2 million in liability insurance is required for all phases of a waterpower project.

## **9.2 Security/Performance Guarantee**

*A security deposit or bond may be required to be posted by the tenure holder where any improvements on, or changes to, the land are proposed. The security deposit is collected to insure compliance and completion by the tenure holder of all the obligations and requirements specified in the tenure. Some examples where such security may be used are for any type of clean-up or reclamation of an area, and/or to ensure compliance with development requirements.*

All waterpower project tenure holders are required to provide an appropriate deposit to the province in the event the Crown is forced to assume the cost of site clean-up in the case of de-commissioning or abandonment.

## **9.3 Tenure Conversion**

For deletion and addition of tenure schedules under a Multi Tenure Instrument, in support of moving from a development to operational stage of the project, addition of new schedules will require a conversion fee equivalent to 50% of the program area application fee (minimum of \$200) of the individual program for that use. For example – to delete the transmission line area from the initial general area, a fee of \$500 will be charged to add the transmission line schedule to the MTI. \$500 is 50% of the Utilities (transmission line program) application fee of \$1000.

For conversion of the single General Area- Licence of Occupation to individual Project Operation Phase tenures (i.e. powerhouse site, penstock, transmission line, etc.) each project component will require an individual conversion fee, by land program, as per the *Land Act* Miscellaneous Fees Regulation (50% of the Application Fee for that program) as below:

<b>Component</b>	<b>Program</b>	<b>Conversion Fee</b>
Powerhouse Site	Industrial policy	\$Application Fee x 50%
Linear Components	Utilities policy	\$Application Fee x 50%
Transmission Line	Utilities policy	\$Application Fee x 50%
Road	Roadways policy	\$Application Fee x 50%

## **9.4 Assignment and Sub-Tenuring**

*Assignment is the transfer of the tenure holder's interest in the land to a third party by sale, conveyance or otherwise. Sub-tenuring means an interest in the Crown land granted by a tenant of that Crown land rather than the owner (the Province).*

*Assignment or sub-tenuring requires the prior written consent of the Authorizing Agency. The assignee or sub-tenure holder must meet eligibility requirements. The Authorizing*

*Agency may refuse the assignment of existing tenures if the details of the assignment or sub-tenure are not acceptable to the province.*

#### **9.4.1 Assignment**

##### **9.4.1.1 Investigative tenures**

Assignment is allowed with an Investigative licence.

##### **9.4.1.2 Development and Operation Phase**

Assignment may occur at the development and operation phase subject to the following considerations.

- that the Authorizing Agency must have written support from power purchasers (BC Hydro and others) that they support the assignment and are prepared to deal with the new owner;
- written proof that Environmental Assessment Certificate or other required government approvals be transferred or otherwise provided to the assignee;
- *the assignee must agree to be bound by all terms and conditions, covenants and obligations agreed to by the assignor and any new ones that may be reasonably required by the Province.*

### **9.5 Tenure Replacement**

*Replacement tenure means a subsequent tenure document issued to the tenure holder for the same purpose and area.*

*In most cases, tenure holders may apply for a tenure replacement at any time following the mid-term of the tenure. Replacement of tenures is at the Authorizing Agency's discretion. The province may decline to replace a tenure, or may alter the terms and conditions of a replacement tenure. For tenure terms and conditions see Section 6.*

### **9.6 Monitoring and Enforcement**

*Tenure terms and conditions, including requirements contained in approved management/development plans, act as the basis for monitoring and enforcing specific performance requirements over the life of the tenure.*

#### **9.6.1 Investigative Plan, Development Plan and Development Plan Amendments**

All proponents will be required to prepare an Investigative Plan and a more comprehensive Development Plan that is approved by the Authorizing Agency. An investigative and subsequent Development Plan is part of the tenure agreement and as such becomes part of the legal contract between the tenure holder and the Province. Failure to comply with an approved Investigative or Development Plan is an event of default which if not addressed, may lead to termination of the tenure agreement. An Investigative and subsequent Development Plan is one of the principle ways in which the Authorizing Agency assesses diligent use.

Further information on the structure and content of the Investigative Plan is found on the Land Uses - Waterpower page.

More information about the Development Plan is contained in the [Clean Energy](#)

[Production in B.C.: An Inter-agency Guidebook for Proponents](#) and the DPIR – the Development Plan Information Requirements, also located on the Land Uses - Waterpower page.

<http://www2.gov.bc.ca/gov/content/industry/natural-resource-use/land-use/crown-land/crown-land-uses/clean-energy/waterpower>

For waterpower, the Development Plan will must include details such as the location of Improvements, particulars of construction, schedule of construction, production phase-in, installed turbine capacity; targeted long term production levels, environmental management strategies, site security, public access and safety, reclamation and decommissioning strategies and any other matters as reasonably requested by the Authorizing Agency.

Once each stage of the Development Plan is approved by the Authorizing Agency, the tenure holder must comply with the Plan. The tenure holder must advise the Authorizing Agency of any extraordinary events that may affect their ability to comply with the Development Plan. A tenure holder may request an amendment to the Development Plan that the Authorizing Agency must consider, but not necessarily approve. Examples of amendments that are anticipated include but are not limited to: changes to tenure boundaries, expansion or reduction in area, change in timing of construction and development, tenure term or tenure purpose, a significant alteration of site improvements and or layout of structure on the tenure area are proposed, for example, adding structures to the site not approved in the current plan.

The Authorizing Agency may request, from time to time, amendments to the Development Plan where in the reasonable opinion of the Authorizing Agency, such amendments are required for environmental, safety, land-use or other similar reasons in the public interest.

The Authorizing Agency, from time to time, may request a consolidation of the amendments to the Development Plan.

### **9.6.2 Diligent Use**

All proponents who have acquired a Crown land tenure must demonstrate diligent use of the tenured area. The Authorizing Agency may assess diligent use at any time. The onus is on the proponent to produce verifiable evidence, satisfactory to the Authorizing Agency, that diligent use is being maintained. Diligent use is measured against the obligations set out in the Investigative Plan and each of the stages of the Development Plan as described in section 9.6.1 including but not necessarily limited to meeting construction schedules or energy production targets.

The Authorizing Agency is under no obligation to extend or replace a tenure where the proponent has not demonstrated, to the satisfaction of the Authorizing Agency, that they have met the diligent use requirements set out in this policy and this may, in longer term tenures, require adjustments to Development Plans, including tenure area, or in extremely serious breaches of performance, initiate procedures to terminate the tenure agreement.

### **9.6.2.1 Diligent Use Requirements for Investigation**

Diligent use at this stage may also include, for example, the finalization of approvals from the EAO, expenditures for field work, and obtaining financing and reaching agreement with a purchaser for energy produced by the project. Examples of field work that may meet diligent use requirements include; reconnaissance level biophysical and archaeological surveys; road access and land use surveys; geological and terrain surveys; First Nations considerations; and public consultation. The intent of diligent use requirements at this stage is to ensure that project proceeds to development in a timely fashion. Some examples of field work types and expenditure levels are attached as Appendix 2 to this policy.

A subsequent investigative licence may be offered, at the discretion of the Authorizing Agency, to proponents holding sites where diligent use has not been achieved because of factors outside of the proponent's control or where further investigative work is required. The Investigative plan will be updated by the proponent to reflect the changes and diligent use will be required going forward otherwise the term will expire with no replacement.

**NOTE: Diligent use requirements for replacement tenures will be waived for investigative tenure holders who have held an investigative tenure for 5 or more years and provide a written statement that further diligent use activity is not required to move to a project application. Continuation of practice will be reviewed in 2021.**

**It is the investigative tenure holders' responsibility to demonstrate that the investigative tenure area has been held for 5 or more years and diligent use applied in each of the 5 years.**

### **9.6.2.2 Diligent Use Requirements for Project Development and Operation**

This phase occurs during the term of a 10-year multi tenure instrument for a project without an existing EPA or similar, and prior to the commercial operation date of a project with an EPA. During this period construction schedules for roads, powerhouse structures, power lines and other infrastructure, completion of legal surveys, expected power production levels and other requirements articulated in the Development Plan must be substantially on target. The Regional Executive Director may adjust targets on a case by case basis based on extenuating circumstances.

Following construction of the improvements or a particular phase of the development, the site must continue to be used as per the Development Plan. If the characteristics of the site preclude achievement of production levels specified in the Development Plan after the project development phase, the Authorizing Agency should consider whether or not the matter can be best dealt with by an amendment to the Development Plan. Rent, based on land area under tenure will in all cases be payable. In cases involving serious breaches of performance the Province may need to consider initiating termination procedures for the waterpower tenure.

### **9.7 Other Land Use**

The Authorizing Agency may issue tenure to other applicants for non-waterpower land-use within the investigative area. Upon receipt of the non-waterpower application, the Authorizing Agency would normally notify and request comments from the waterpower tenure holder to determine compatibility.

The Authorizing Agency may issue tenures to other applicants for non-waterpower uses within any areas tenured for waterpower purposes under a Licence of Occupation or Statutory Right of Way, subject to the specific language in tenure documents.

## **10. VARIANCE**

*Variances to this policy must be completed in accordance with the [Policy Variance Procedure](#).*

## APPENDIX 1. Summary Table of Waterpower Tenure Type, Terms and Pricing

Tenure Type	Term of Tenure		Pricing
	Without EPA	With EPA	
Investigative Licence	5 year term	5 year term	Annual rental of \$500 per year
Multi Tenure Instrument	10 years	Expiry coincident with EPA expiry	Based on tenures included
General Area - Licence of Occupation	10 year term	Expiry coincident with EPA expiry, construction completed by COD	Utilities policy – Annual rental rate of 7.5% of zone land value (zone rate/ha x land area [ha])
Powerhouse Site – Licence of Occupation	10 years	Expiry coincident with EPA expiry, construction completed by COD	Industrial - General policy - Annual rental will be 7.5% of appraised land value based on comparable industrial markets (or BCA actual land value where it reflects current market values)
Powerhouse Site – Lease	10 years	Expiry coincident with EPA expiry, construction completed by COD	Industrial - General policy - Annual rent is calculated at 8% of appraised land value based on comparable industrial markets (or BCA actual land value where they reflect current market value)
Powerhouse Site – Sale	N/A	N/A	Industrial - General Policy - Fee Simple dispositions will be priced at the appraised land value based on comparable industrial markets
Linear Components – Licence of Occupation	10 years	Expiry coincident with EPA expiry, construction completed by COD	Utilities policy – Prepaid rental rate of 7.5% of zone land value (zone rate/ha x land area [ha]) times discount factor.
Linear Components – SRW	N/A	Expiry coincident with EPA expiry, construction completed by COD	Utilities policy - The entire term is priced at an amount equal to 50% of a new appraised land value based on utilities markets, or 100% of the utilities zonal value
Transmission Line – Licence of Occupation	10 years	Expiry coincident with EPA expiry, construction completed by COD	Utilities policy – Prepaid rental rate of 7.5% of zone land value (zone rate/ha x land area [ha]) times discount factor.
Transmission Line – SRW	N/A	Expiry coincident with EPA expiry, construction completed	Utilities policy - The entire term is priced at an amount equal to 50% of a new appraised land value based

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		by COD	on utilities markets, or 100% of the utilities zonal value
Roads	10 years	Expiry coincident with EPA expiry, construction completed by COD	See Roadways policy
Quarries	10 years	Expiry coincident with EPA expiry, construction completed by COD	See Aggregates and Quarry Materials policy
Communication Sites	10 years	Expiry coincident with EPA expiry, construction completed by COD	See Communication Sites policy



## **APPENDIX 2. Diligent Use Examples**

### **Water quality and quantity data collection**

Data collection to meet water licencing requirements.

### **Reconnaissance-level Biophysical and Archaeological Surveys**

Surveys would be conducted within the investigative licence boundary and additionally adjacent to the site. These investigations would be designed to gain a better understanding of the local biophysical/cultural setting, including habitat and species presence. Investigations may focus on determining the presence of a “key feature” at the site – such as a rare or listed species, sensitive habitat, or an archaeological resource. The intention would be to evaluate the potential for significant environmental effects to this key feature in order to determine whether the key feature represents a fatal flaw for the project.

### **Road Access and Land Use Survey**

Road surveys could be conducted by a professional road design engineer or specialist that would involve a compilation of road access information and land use, particularly relating to resource roads and the limiting factors for waterpower development (such as load limitations on bridges, present or existing forestry activities, etc). This survey would be appropriate where road access constraints (and access constraints for installation of transmission lines) may affect the feasibility of the project. The intention would be to determine whether site access is sufficient for the project.

### **Geology and Terrain Assessment**

Assessments could be conducted that would include a transect being walked within the investigative boundary in order to assess terrain suitability within the site by investigating factors such as existing and potential landslides, karst potential, depth to bedrock, and geotechnical suitability for roads and turbine foundations. The intention would be to determine whether these factors represent a critical flaw in the project.

### **First Nations Considerations**

Building relationships with First Nations, as below with Public Consultation, as well as negotiations and consultations with First Nations chiefs, council, community members, and other bodies, can require significant resources. In most cases the intention would be to develop a Protocol Agreement between a Proponent and the First Nation(s) in question.

### **Public Consultation**

Public consultation and community relationship-building are necessary to determine acceptance of a project in a region and to identify ways community members would like to be involved in future project planning and development. Distributing accurate and adequate information is an essential step in ensuring that residents and stakeholders have the resources they need in order to provide input on a proposed waterpower project in their community. Consultation could be conducted via public meetings or open houses, printed material, smaller visits or stakeholder meetings, or other media

FIGURE 1.

