



Land Use Operational Policy Utilities

NAME OF POLICY:	Utilities
APPLICATION:	Applies to all Crown land used for linear public and private utilities, including aquatic land within Provincial Forests and land subject to regulation under the <i>Park Act</i> .
ISSUANCE:	Assistant Deputy Minister Crown Land Administration Division
IMPLEMENTATION:	Ministry of Agriculture and Lands
REFERENCES:	<i>Land Act</i> (Ch. 245, R.S.B.C., 1996) <i>Hydro and Power Authority Act</i> (Ch. 212, R.S.B.C., 1996) <i>Land Title Act</i> (Ch. 250, R.S.B.C., 1996) <i>Utilities Commission Act</i> (Ch. 473, R.S.B.C., 1996) <i>Pipeline Act</i> (Ch. 364, R.S.B.C., 1996) <i>Park Act</i> (Ch. 344, R.S.B.C., 1996) <i>Forest Act</i> (Ch. 157, R.S.B.C., 1996) <i>National Energy Board Act</i> (Section 62)
RELATIONSHIP TO PREVIOUS POLICY:	This policy replaces the previous Utilities policy dated August 16, 2004.
POLICY AMENDMENT:	Any formal request for an amendment to this policy is to be directed in writing to the Director, Land Program Services Branch, Crown Land Administration Division.

Warren K. Mitchell

Warren Mitchell
A/Assistant Deputy Minister
Crown Land Administration Division
Ministry of Agriculture and Lands

05/10/29

Date

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1. PURPOSE

This policy applies to all Crown land utilized for public and private utility development as defined below, including Crown land within Provincial Forests (in accordance with Section 5 (5) of the *Forest Act*) and aquatic land.

Where appropriate, the policy will be applicable to tenures issued pursuant to the *Park Act* for public and private utilities uses.

This policy applies to linear projects regulated under the *Environmental Assessment Act* and the *Utilities Commission Act*.

This policy does not apply to oil and gas projects, nor to communication sites, except where provision is made for joint powerline/communication site tenures under the Communication Sites policy.

This policy does not apply to utility developments within roadway allowances and rights of way administered by the Ministry of Transportation (see agreement, "Utility Line Administration within Road Allowances").

This policy does not apply to utility developments for non-forest uses within Ministry of Forests and Range forest road rights of way.

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.

3. DEFINITIONS

Aquatic Crown land means that land below the visible high water mark of a body of water, extending offshore to the recognized limit of provincial jurisdiction, including the foreshore.

Authorizing agency means the provincial ministry responsible for the specific land use authorization.

Dominant Tenement (Estate) means the estate or tenement which is said to attach to and derive benefit from the servient estate or tenement in reference to an

easement (i.e., where an easement passes over an owner's land [the servient tenement] accessing an adjacent parcel of land [the dominant tenement]).

Linear telecommunication line means uses which involve two way data transmission by wire, cable, or similar strand connector, including fibre optics, coaxial and copper cables and associated hardware. The works may be installed underwater or on land and may also be incorporated as part of electric power lines or oil and gas pipeline projects.

Partial Taking Plus Damages means, in appraisal terms, the taking of only a part of the property for public use under the power of eminent domain and for which compensation must be paid, taking into consideration the damages or special benefits to the remaining property.

Transit Line means a pipeline originating and terminating outside British Columbia, and which crosses, but does not service the Province.

Transmission/Distribution Line means a line which conveys electricity, oil and/or gas or water for transshipment purposes and does not include a feeder line.

Utility means any upland or submerged utility development for a public or private purpose which crosses Crown land, and which includes, but is not limited to: oil and gas pipeline, distribution line, flow line, and transit line; sewer and water system; industrial outfall, electrical transmission and distribution line; telephone, cable TV or linear telecommunication line.

Zone Land Value (ZLV) means that land value for a right of way which is derived by multiplying the area of land utilized (within a given zone) by the appropriate zone rate per hectare as shown in Appendix 2 Map of Zone Land Values for Public and Private Utilities.

4. **ABBREVIATIONS**

BCA - BC Assessment

ha. - Hectare

MAL - Ministry of Agriculture and Lands

MOT - Ministry of Transportation

MOU - Memorandum of Understanding

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

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

For more detailed standard policy information see [Form of Crown Land Allocation](#) (link).

6.1 Investigative Permit

An investigative permit may be issued to any proponent requiring access to the land for appraisals, inspections, analyses, inventories, surveys or other investigations of Crown land or its natural resources, or where otherwise required. No buildings or other improvements may be placed on the land.

The tenure holder must permit public access to the area without interference, and must recognize that overlapping and layering of tenures may be authorized by government.

The maximum term for an investigative permit is 2 years.

6.2 Temporary Permit

A temporary permit may be issued for temporary uses (including one-time events and sustained or repeated use of Crown land), where a business is better served by such a permit than by a license of occupation.

The tenure holder must allow public access to the area without interference, and must recognize that overlapping and layering of tenures may be authorized by Government.

The maximum term for a temporary permit is 2 years.

6.3 Licence of Occupation

A licence of occupation may be issued where minimal improvements are proposed, where short-term tenure is required, where there are multiple users of a site (e.g. communication sites), or in remote areas where survey costs are prohibitive. 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.

The standard term for a licence of occupation is 10 years.

A licence of occupation may be given:

- for a short term temporary use (limited to a 2-year term);
- for local service power, telephone or communication lines in remote areas where there is a low probability of land use change and where precise surveyed boundaries are not required.
- to authorize entry, occupation, and construction of the utility as an interim tenure pending completion of survey requirements and issuance of a statutory right of way.

At the discretion of the authorizing agency, a term of up to 30 years may be offered for local service power, telephone or communication lines in locations where no development is anticipated. Licence terms greater than 10 years are exceptional.

6.4 Statutory Right 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.

A statutory right of way is the standard tenure for all linear utility uses including oil, gas, water, or electrical transmission, distribution, transit or feeder lines.

A statutory right of way is to be used to authorize utility uses over land already under lease or licence tenure.

A statutory right of way may also be used for major pipeline projects where financing requirements dictate, subject to completion of survey within 18 months.

6.4.1 Easement

An easement is issued in those cases where a designated dominant tenement precludes issuance of a statutory right of way. Term of tenure is as per statutory right of way.

7. PRICING POLICY

7.1 Administrative Fees

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

Linear utilities (including oil and gas pipelines, electric transmission lines, etc):

Uses that are ancillary or integral to construction of linear utilities such as access roads, staging areas, spoil sites, borrow pits, etc, can be applied for under a single application along with the linear utility use. The single application fee will be based on the appropriate utility fee category (i.e. item 18 or 30 of the *Land Act Fees Regulation*).

Although multiple sites may be covered under a single application, the number and type of tenures that could be issued will need to be determined on an application specific basis.

7.2 Method of Valuation

Valuation is normally based on zone rates shown in the map of Zone Land Values (see Appendix 2). These are considered minimum rates only. Where there is market evidence to support higher rates, the authorizing agency may, at its discretion, call for a market value appraisal of portions or all 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. Where dispute arises over appraised land values, resolution should be adjudicated and resolved in accordance with the [Disposition Price Resolution Procedure](#).

Where a public or private utility crosses more than one zone or involves one or more appraisal, each segment of the utility is valued independently and the total land value for the utility is determined as the sum of the values of individual segments of the utility line.

Zone rates will be adjusted periodically to reflect changes in land values. The province retains the right to adjust considerations and licence fees pursuant to adjustments to zone rates where provided for under terms of an individual tenure document.

Refer to the [Community and Institutional Land Use](#) policy for pricing of utility tenures for institutional and/or community use.

7.3 Rentals

7.3.1 Investigative Permit

\$250 for terms up to one year, or \$500 prepaid for 2 years.

7.3.2 Temporary Permit

\$250 for terms up to one year, or \$500 prepaid for 2 years.

7.3.3 Licence of Occupation

Prepaid Rents

Rent is normally prepaid based on a rental rate of 7.5% of zone land value, as follows:

Prepaid Rent = 7.5% X Zone Land Value [zone rate/ha X number of ha] X the appropriate discount factor

The discount factor is a financial factor, selected from Table 7 in the Pricing Policy for the particular term for which the tenure is issued and using the appropriate discount rate (generally "prime plus 1%", updated each quarter).

The minimum rent for prepaid tenure terms longer than 1 year is \$500 regardless of term.

Annual Rents

Annual rents, based on 7.5% of zone land value, remain available at the request of the client. The minimum annual rent is \$500.

Interim Licence

Where a licence of occupation is issued as an interim tenure pending project construction and completion of legal survey, the tenure holder prepays the right of way consideration in advance for the full term of the right of way. The licence rental is included in the right of way consideration, and where prepaid, the statutory right of way will be issued subject to completion of the legal survey for a nominal \$1.00 fee (plus any additional application fees).

7.3.4 Statutory Right of Way

Prepaid Considerations

Statutory right of way consideration is prepaid for the full term of tenure based on 100% of zone land value and subject to adjustment upon completion of a legal survey. The minimum prepaid consideration is \$500 for the entire term. Replacement rights of way are issued for a nominal \$1.00 rent (plus application fees) where the original tenure was prepaid as a consideration.

Annual Payments

Annual payments based on 7.5% of ZLV remain available at the request of the client where an existing annually paid right of way is undergoing rent review. The annual minimum rental payment is \$500.

7.3.5 Existing Tenures - Rental Review

Rental reviews (when provided for in tenure documents) should reflect current pricing policy. Where an annual rental is provided for, this may be continued or prepaid, at the client's request. The following formula applies for pro-rated consideration:

Pro-rated consideration = full consideration X (yrs. remaining in existing /tenure term of existing tenure)

8. ALLOCATION PROCESSES

8.1 Applications

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

8.1.1 Receipt of Applications

Where a public or private utility easement or right of way runs adjacent to or intersects a public road, the width of the road allowance should be obtained from the Ministry of Transportation.

8.1.2 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.

General Provisions

Utility developments on Crown land shall not unreasonably interfere with the natural drainage of those lands, and shall make provision for remedial measures acceptable to the authorizing agency where such interference is anticipated.

Utility developments on aquatic lands shall not unreasonably interfere with the public's right of access to and use of the foreshore and the public waterway.

The right of way documents for public and private utilities are to be issued subject to the prior rights of third parties.

The right of way and licence documents for electrical transmission and distribution lines may authorize use of the land for joint-use telecommunication lines and aircraft warning buoy purposes.

Consideration should be given to the possibility of multiple use of right of way corridors in order to avoid duplication and to minimize impact.

Required Consent

An application for a statutory right of way or easement should include the written consent of any Crown lessee, licensee or statutory right of way holder across whose tenure the development is to be built, in addition to consents from various agencies as appropriate.

Applications for individual private lines are required to include with their applications written confirmation that the utility supplying power to the area does not wish to apply for the tenure.

8.1.3 Application Acceptance

New applications will be reviewed for acceptance based on application package completeness, compliance with policy and program criteria, preliminary status, 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.

8.1.4 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.

8.1.5 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).

Project Review Team (PRT)

A Project Review Team (PRT) is an advanced referral method which may be used for complex applications. It is a team chaired by the authorizing agency and comprised of recognized agencies and groups which meets to review and comment on specific Land Act applications.

8.1.6 Advertising/Notification

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

Upland Owner Consent

Owners of waterfront property have certain "riparian rights" which include the right of access to and from the upland (see [Riparian Rights and Public Foreshore Use in the Administration of Aquatic Crown Land](#)). Provincial staff will advise applicants if there is a need to obtain a letter indicating the upland owner's consent to their application.

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.

8.1.7 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.

8.1.8 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.

8.1.9 Decision/Report

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

8.1.10 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.

Consent Forms

The following consents may be required to be provided by the applicant during the course of adjudication:

- the consents of all lessees, licensees, right of way and Certificate of Purchase holders;
- approval from the Ministry of Transportation for the crossing of a pipeline already in place under the authority of the *Pipeline Act*;
- approval from the Ministry of Transportation for an easement over a public road;
- approval from the National Energy Board for the crossing of a pipeline authorized pursuant to the *National Energy Board Act*;
- approval from the Agricultural Land Commission for a utility line crossing land located in the Agricultural Land Reserve.

Registration of Statutory Rights of Way under the *Land Title Act*

All statutory rights of way should be registered under the *Land Title Act* in a *Land Title Office*.

Holders of statutory rights of way should be informed that only surveyed statutory rights of way shown on plans filed under the provisions of the *Land Title Act* are registerable.

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.

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.

Performance bonds are not required for statutory rights of way issued to major utility companies or other corporate clients having multiple tenures in good standing as determined by the authorizing agency.

The authorizing agency may determine whether to require a performance bond for licence of occupation tenures, and may decide the amount of such a bond.

Companies and subsidiaries holding a number of tenures may arrange a single blanket amount to cover all such tenures.

9.3 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.

Investigative and temporary permits can not be sub-tenured or assigned.

All tenure holders, including major utility companies, are required to provide tax certificates for assignments and abandonments.

9.4 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.

Investigative permits are not generally replaced. A further two year term may be provided, at the authorizing agency's discretion, when there are legitimate requirements for a longer investigative period.

All tenure holders, except major utility companies, are required to provide tax certificates for tenure replacements.

9.5 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.

10. VARIANCE

Any decision that would vary from this policy must be made by the Assistant Deputy Minister, Crown Land Administration Division, Ministry of Agriculture and Lands.

Appendix 1. Utilities Policy Summary

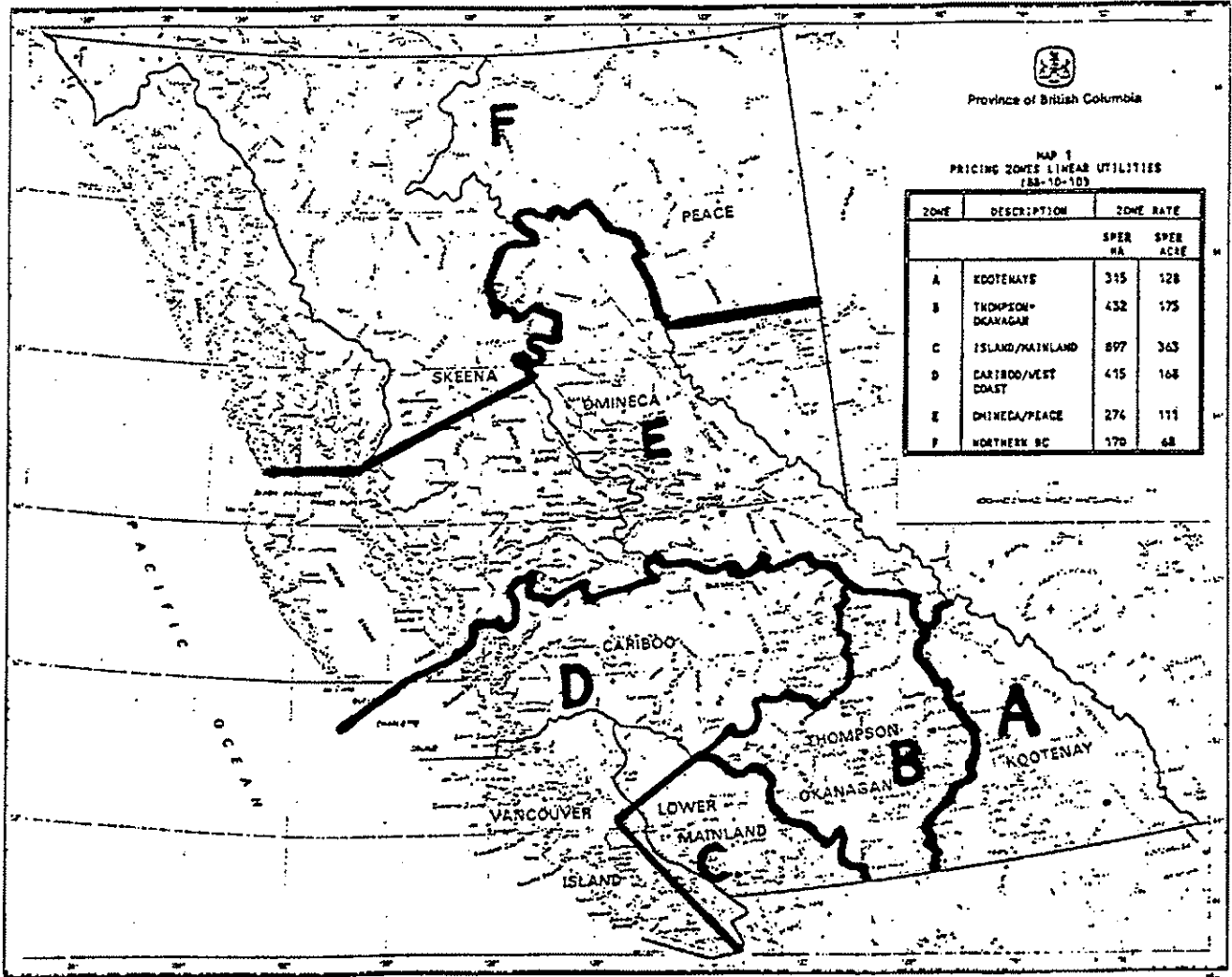
TENURE	TERM	VALUATION	PRICING	METHOD OF DISPOSITION
Investigative or Temporary Permit	2 years	Fixed amount	\$250 for terms up to one year, or \$500 prepaid for 2 years	Application
Licence of Occupation (standard)	10 years normal term	Zone rate (except in any area where the authorizing agency may require individual appraisal)	Normally prepaid for entire term based on 7.5% of appraised or ZLV, as stated above. Minimum \$500 for entire term. Optional annual payment available based on 7.5% of ZLV Minimum \$500/yr	Application
Licence of Occupation (Interim pending issuance of Right of Way or Easement)	2 years normal term	N/A	Rent is covered by the Right of Way charge as calculated above.	Interim tenure issued in response to Right of Way application
Statutory Right of Way and/or Easement	Normally issued for so long as required	Zone rate (except in any area where the authorizing agency may require individual appraisal)	Prepaid for full term based on 100% of ZLV or, at authorizing agency's discretion, appraised land value. Minimum \$500 for the full term.	Appraisal

Appendix 2. Map of Zone Land Values for Utilities



VOLUME 3 - LAND USE PROGRAMS
 CHAPTER 3.5 - TRANSPORTATION,
 COMMUNICATIONS AND
 UTILITIES LAND USE

SECTION 3.5.0300



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