



Land Use Operational Policy Waterpower

NAME OF POLICY:	Waterpower
APPLICATION:	Applies to all waterpower project uses of Crown upland and aquatic land
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>Water Act</i> (Ch. 483, R.S.B.C. 1996)
RELATIONSHIP TO PREVIOUS POLICY:	New waterpower policy – incorporates elements of current 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 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

APPROVED AMENDMENTS:		
Effective Date	Briefing Note /Approval	Summary of Changes:
August 16, 2004		Changes made as a result of the Policy and Procedures Re-write Project.

APPROVED AMENDMENTS:

Effective Date	Briefing Note /Approval	Summary of Changes:
October 14, 2004	Ward Trotter, A/Director Policy and Economic Development Branch	Addition to clarify separate <i>Land Act Fees Regulation</i> application fee for Investigative Permits (i.e. not included in \$3300 Alternative Energy Project application fee). Addition to clarify use of <i>Land Act Fees Regulation</i> Utilities fees for transmission lines greater than 25 km (i.e. not included in \$3300 Alternative Energy Project application fee).
October 21, 2005		Policy changed to reflect new agency names and responsibilities

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1. PURPOSE

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

The Ministry of Agriculture and Lands 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.

Due to the complexity of the approvals, construction and operation of these projects, a "Guide for Waterpower Projects" is [available](#) to applicants. The Guide is consistent with and should be read in conjunction with this Crown land policy.

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.

British Columbia's *Energy for Our Future: a Plan for BC* produced by the Ministry of Energy Mines, and Petroleum Resources notes the abundance of alternative energy sources which should be harnessed "to meet our energy needs and generate renewed economic growth and prosperity for all British Columbians" and states that "the private sector will develop new electricity generation" (2002).

3. DEFINITIONS

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

Development Plan means the report containing technical water and land information associated with the project (see Guide for Waterpower Projects). The Development Plan contains two distinct sections:

- **Project Definition** - This section provides the definition of the project in terms of location and physical characteristics. This section adds detail to the Preliminary Project Definition submitted with the initial application.
- **Impact Assessment** - This section should identify all impacts of the construction and operation of the project. Where impacts cannot be fully addressed, the Development Plan should include Terms of Reference for completing the assessment.

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

MAL - Ministry of Agriculture and Lands

MEMPR - Ministry of Energy, Mines and Petroleum Resources

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. TYPE, TERM AND PRICING OF TENURE

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.

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

6.1 Appraisal

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.

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

6.2 Project Monitoring and Investigation Phase

6.2.1 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.

Type and Term of Tenure

A 2 year Investigative Permit (*Land Act 14b*) is the form of tenure provided to authorize temporary monitoring work.

Considerations for a second 2-year tenure are at the discretion of the authorizing agency when supported by a legitimate and sanctioned business requirement or where projects are proceeding through an *Environmental Assessment Act* review.

Pricing

The annual rental for an investigative permit is \$250/annum or a prepaid rental of \$500 for the 2 year term.

6.3 Project Development Phase

6.3.1 General Area – 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.

Type and Term of Tenure

A 3 year licence of occupation may be issued over a broad polygon-shaped area to allow for the construction of improvements. 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 also required and should be identified and included in the licence of occupation area.

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.

6.3.2 Road – Works Permit

A works permit may be issued to construct a road, non-commercial airstrip, bridge or trail over the land. This permit does not entitle the applicant to deny to any person the right to use the road, non-commercial airstrip, bridge or trail.

The maximum term for a works permit is 2 years.

See [Roadways policy](#) for details.

6.3.3 Quarry – 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), and 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.

See [Aggregate and Quarry Materials policy](#).

6.3.4 Communications Site – 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), and 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.

See Communications Sites policy.

6.4 Project Operation Phase

6.4.1 Powerhouse Site

Powerhouse Site – 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), and 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.

Type and Term of Tenure

A licence of occupation may be provided for the powerhouse site. The maximum term for this purpose is 20 years.

Pricing

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), with a minimum annual rent of \$500.

6.4.2 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 legal survey will generally be required at the applicant's expense to define the tenured area. A lease is a registerable interest in the land that is mortgageable.

Type and Term of Tenure

A lease may be issued for the powerhouse site. The maximum term for this purpose is 30 years.

Pricing

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.

6.4.3 Powerhouse Site – 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.

Type

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 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.

Pricing

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.

6.4.4 Linear Components

Linear Components – 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), and 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.

Type and Term of Tenure

A licence of occupation may be provided for linear components. The maximum term for this purpose is 20 years.

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.

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, not the right to exclude or charge the public for the use of improvements.

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.

Form and Term of Tenure

Linear components will normally be tenured by statutory rights of way. Statutory rights of way would normally be issued "for so long as required" if the powerhouse site is sold. If the powerhouse site is authorized by tenure, the term of any statutory rights of way will be equal to the term of the lease or licence used for the powerhouse site.

Pricing

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.

6.4.5 Transmission Line – 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, not the right to exclude or charge the public for the use of improvements.

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.

See Utilities policy.

Statutory rights of way would normally be issued "for so long as required" if the powerhouse site is sold. If the powerhouse site is authorized by tenure, the term of any statutory rights of way will be equal to the term of the lease or licence.

6.4.6 Road – 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), and 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.

See Roadways policy.

7. ALLOCATION PROCESSES

7.1 Applications

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

Note: Applications for Investigative Permits require a separate application fee as per the *Land Act Fees Regulation* and are not included as one of the tenures provided in the \$3300 Alternative Energy Project application fee.

7.1.1 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.

The Guide for Waterpower projects is available to assist applicants with the application package.

7.1.2 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.

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 should be provided separate file numbers at a later date, when required i.e. upon completion of construction and prior to survey (for complete details of the application and adjudication process please refer to the Guide for Waterpower Projects.

7.1.3 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.

7.1.4 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.

For further information see the Guide for Waterpower Projects "Step 5 – Review of the Project".

7.1.5 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.

7.1.6 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.

7.1.7 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.

7.1.8 Decision/Report

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

7.1.9 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. TENURE ADMINISTRATION

8.1 Insurance

The authorizing agency may initiate one of a number of different competitive processes (e.g. public auction, request for proposals) where permitted by program policy and when deemed appropriate by provincial staff.

8.2 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.

8.3 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.

8.4 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.

8.5 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.

9. 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. Summary Table of Waterpower Tenure Type, Terms and Pricing

Tenure Type	Term of Tenure	Pricing
Investigative Permit	2 year term	Industrial - General policy –Rental of \$250/year, or \$500 prepaid for the entire term
General Area - Licence of Occupation	3 year term	Utilities policy – Annual rental rate of 7.5% of zone land value (zone rate/ha x land area [ha])
Powerhouse Site – Licence of Occupation	20 years	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	30 years	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	Industrial - General Policy - Fee Simple dispositions will be priced at the appraised land value based on comparable industrial markets
Linear Components – Licence of Occupation	20 years	Utilities policy – Annual rental rate of 7.5% of zone land value (zone rate/ha x land area [ha]).
Linear Components – SRW	“for so long as is required”	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	20 years	Utilities policy – Annual rental rate of 7.5% of zone land value (zone rate/ha x land area [ha]).
Transmission Line – SRW	“for so long as is required”	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
Roads		See Roadways policy
Quarries		See Aggregates and Quarry Materials policy
Communication Sites		See Communication Sites policy