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16.0.0 Land Allotment Policy – Contents

16.1.0 NOTIFICATION OF CURRENT APPLICANTS

All persons who have made land applications on or after January 1, 1980 that have not yet been dealt with by Council will be notified of the application process and asked to renew their application if they wish to pursue it.

16.2.0 LANDS ELIGIBLE FOR ALLOTMENT

Applicants will be considered only for unimproved land that is suitable for growing crops, housing, or pasture.

Individuals requiring land for non-agricultural, commercial ventures shall be required to either purchase or lease land at market rates. Improved agricultural lands would only be available on a lease basis.

16.3.0 RECOGNITION OR VALIDATION OF LAND SALES BY ALLOTMENT

Allotments will not be made to recognized or validate transactions involving sales of land where the seller did not have a certificate of possession to the lands sold.

16.4.0 LIMITATIONS ON LOT SIZES

Limitations on lot sizes shall be as follows:

- a. Lots of housing purposes shall be limited to one acre;
- b. Lots for housing and pasture shall be limited to 3 acres (including both uses);
- c. Lots for housing, pasture, and agricultural purposes shall be limited to 20 acres provided not more than three acres of housing and pastureland is included. In other words, a lot of 20 acres would include not less than 17 acres of land suitable for growing crops.

16.5.0 CONFLICTING LAND APPLICATIONS

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Where two or more land applications have been made that is in conflict (i.e. they are for the same parcel of land), they shall be dealt with in chronological order.

#### 16.6.0 DEFINITIONS

**“Certificate of Occupation”** means a certificate of occupation as contemplated by Section 20 of the Indian Act.

**“Certificate of Possession”** means a certificate of possession as contemplated by Section 20 of the Indian Act.

#### 16.7.0 CERTIFICATES OF OCCUPATION

Where the Council has resolved to make an allotment, a certificate of Occupation shall be issued prior to the issuing of a Certificate of Possession. The Certificate of Occupation shall state clearly the conditions that the applicant must fulfill prior to the issuing of a Certificate of Possession.

#### 16.8.0 PREPARATION OF A LEGAL SURVEY PLAN TO FACILITATE ALLOTMENTS

Where the Council has resolved to make an allotment, a legal survey plan must be completed of the land to be allotted. A legal survey plan is necessary to ensure that the land allotted is clearly defined and that the correct location of the allotment can be established in the future should any disputes arise.

#### 16.9.0 COSTS

The following costs related to the application process shall be the responsibility of the Band:

- a. All honorariums paid to Council Members, and committee members related to meetings and field trips;
- b. All staff and office costs related to research, meetings, field trips, and administrative work, and;
- c. All council, committee, and staff travel expenses

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**16.10.0 CONDITIONS THAT MUST BE MET BY APPLICANT PRIOR TO THE ISSUING OF A CERTIFICATE OF POSSESSION PURSUANT TO SECTIONS 20 OF THE INDIAN ACT.**

Where the Council has resolved to make an allotment, the following conditions must be met prior to the issuing of a Certificate of Possession pursuant to the Indian Act:

- a) The costs related to the preparation of a legal survey plan required to facilitate the conditional allotment are to be reimbursed to the Band at a predetermined rate of interest (even if there is not interest);
- b) The land shall not be transferred, assigned, leased, or rented by the applicant prior to the issuing of a Certificate of Possession.
- c) If the allotment is for housing purposes, a domestic water supply is to be established at the applicant's expense.
- d) If the allotment includes land that is to be used for pasture, the pasture land is to be cleared of underbrush, disturbed areas seeded and the boundaries of the pasture land are to be properly fenced at the applicant's expense;
- e) If the allotment is for the growing of crops, the land must be cleared, cultivated, and seeded at the applicant's expense;
- f) The conditions of the allotment must be met within two years from the date the resolution is passed making the conditional allotment. At the discretion of the Council, the conditional allotment may be extended to a further period of two years.

Special conditions could be established for certain allotments. For example, the Council and an applicant might agree that the applicant would be require to relocate an existing road that runs through land that the applicant has been allotted. A condition of the allotment would be that the new road shall be in place prior to the issuing of a Certificate of Possession.

**16.11.0 APPLICATON PROCESS**

The following process shall apply to all land applications:

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STEP 1 A letter of application with a rough description of the parcel of land applied for and a description of the proposed land use is submitted to the Band Manager by the Applicant.

STEP 2 Within 30 days of receiving a land application, a brief report shall be prepared by the Band Manager to assist the Council to decide whether or not to proceed further with the application.

The Band Manager's report shall include such information as:

- a) The extent and estimated value of the applicants current land holdings;
- b) The extend and estimated value of the applicants previous land holdings; if any;
- c) The history of the parcel of land applied for;
- d) Any other information pertinent to the application.

STEP 3 The letter of application and the Band Manager's Report are considered by Council.

All applicants would first be submitted to Council to screen them out. This will prevent the surveys committee from spending time (and money) reviewing applications where the Council has no intention of making an allotment. Applications would *not* be automatically referred to the surveys committee.

STEP 3A If the council considers the application worthy of consideration, it would be referred to surveys committee.

STEP 3B If the Council has no intention of making an allotment, the application would be rejected and a letter would be sent the applicant outlining reasons for the rejection.

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Possible reasons for rejecting the application at this stage could be:

- a) The extent or value of the applicant's existing land holdings, or ;
- b) The extent or value of the applicants' previous land holdings, or'
- c) The unsuitability of the land for the proposed use, or;
- d) An undesirable use is proposed by the applicant, or;
- e) The slope of the land makes it unsuitable for development, or;
- f) The value of the land applied for (i.e. it could include valuable gravel or mineral deposits, range land, forest land, recreational land, potential housing land or commercial land).

If the Application were rejected by the Council at this point, the application process would be complete.

**STEP 4** If the application is referred by Council to the Surveys Committee, the applicant would then be instructed by the Band Manager to mark the parcel with wooden posts.

The purpose of marking the land applied for is to avoid any misunderstanding between the applicant, the committee and the council about the size and location of the parcel of land applied for.

**STEP 5** After the property has been marked by the applicant, a field trip would be made by the surveys committee with the applicant to view the parcel of land.

**STEP 6** If the application were for the growing of crops, soil testing would be done to determine the suitability of land for growing crops.

Soil testing would consist of the digging of test holes

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to a depth of two feet to determine the availability of topsoil. The number and location of test holes will be determined by the Committee. Backfilling of the test holes would be the responsibility of the applicant.

STEP 6A After their filed trip, if the Committee deems the land not suitable for the intended use, the Committee and applicant would then negotiate agreement on the size of the parcel and any conditions of the allotment.

The committee may want lot sizes and boundaries change or reduced to:

- a) Protect Band water
- b) supplies and water bodies, or;
- c) Remove side hills, or;
- d) Remove land not suitable for the intended use, or;
- e) Remove property which has potential for development for purposes of benefit to the entire community, or;
- f) Protect road, waterline, and power line rights-of-way

Once agreement has been reach between the applicant and the Committee on the size of the parcel, the boundaries of the proposed allotment would then be remarked by the applicant and the Committee. Any invalid markers would be removed by the applicant.

STEP 7 Once the size of the parcel and the conditions of the allotment have been agreed to between the Committee and the applicant, a forma application would be made by the applicant to Council which would be accompanied by a recommendation from the surveys committee.

STEP 8 A field trip would be made by the whole Council to view the land applied for. NO COMMITMENT TO

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THE APPLICANT WOULD BE MADE AT THAT TIME.

- STEP 9 Once a field trip has been made by Council, the formal application and the Committee's recommendation would be considered by the Council In Camera and a decision made.
- STEP 9A If the Council decides against the allotment, a letter would be sent to the applicant notifying him/her of the Council's decision and the reasons for the decision. If the application were rejected by the Council at this point, the application process would be complete.
- STEP 9B If the Council decides to allot the parcel of land on a conditional basis, notice of the Council's intent to make the allotment would be posted for a period of 30 days and distributed to each Band Member household.
- The notice would include a description of the land applied for and any conditions that the applicant will be required to fulfill prior to the issuing of a Certificate of Possession.
- STEP 10 If any protests were received within the time set out in the notice, the application would be reviewed in light of the protest. If no protests were received, the process would continue.
- STEP 10A If the Council decides that a legitimate protest has been made and that the application should be rejected, the applicant would be notified of the Council's decision and the reasons for the decision. If the application were rejected by the Council at this point, the application process would be complete.
- STEP 10B If the Council decides that a legitimate protest has not been made and

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dismisses the protest, the process would continue.

- STEP 11 If no legitimate protests are received within the time set out in the notice, the Council would authorized the preparation of a legal survey of the land at the Band's expense.
- STEP 12 Once the Legal Survey Plan has been completed, accepted, and registered, conditional allotment of the land would be made by Council and the Issuing of a Certificate of Occupation pursuant to Section 20 of the Indian Act would be requested.
- STEP 13 After a period of two years from the date of the Conditional allotment, the application would be reviewed.
- STEP 13A If all the conditions of the allotment have been met, the Council would request that a certificate of possession be issued pursuant to Section 20 of the Indian Act.
- STEP 13B if the conditions of the allotment have not been met, the application would be reconsidered by Council.
- STEP 14 If after a two year period the conditions of the allotment have not been met, a decision shall be made to either extend the Certificate of Occupation for a further two year period or cancel it.
- STEP 14A If the Council decides against the extension, the applicant shall be notified of the decision and the reasons for it. The Council would then request that the Certificate of Occupation be cancelled and that the land be made available for re-allotment.
- STEP 15 If a Certificate of Occupation were extended for a two-year period, the application would be reviewed after a

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period of four years from the date of the initial conditional allotment.

STEP 15A If all the conditions of the allotment have been met, the Council would request that a Certificate of Possession be issued pursuant to Section 20 of the Indian Act.

STEP 15B If the conditions of the allotment have not been met the Certificate of Occupation would be cancelled and the land would be made available for re-allotment.

## 16.12.0 POLICY AMENDMENTS

### **May 19, 1992 – Page 2 - Special Council Meeting**

Review of the Draft Land Allotment Policy

**MOVED** by Eric Mitchell; **NO SECONDER**:

**THAT** we hire a facilitator to review the draft land allotment policy with council; and

**THAT** council be provided with copy of the book referred to by Eric Mitchell.

**MOTION WAS WITHDRAWN BY ERIC MITCHELL.**

**MOVED** by Lyle Brewer; **SECONDED** by Pamela Louis:

**THAT** the Land Allotment Policy be referred back to the Land Survey's Committee to be redrafted into a form that the Committee deems to be acceptable to Council.

Motion Carried Unanimously.

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**April 27, 1992 – Page 14 (c) - Band Council Meeting**

Rescinding of Band Council Resolution re: Temporary Allotment of a Portion of Block A, North of Lot 36, Block 2, OKIR # 2 Plan 1095, R.S.B.C., to Marcus Oppenheimer; and Rewording of Band Council Resolution so that the survey of the temporary allotment can be covered by the surveys entitlement fund.

Relevant Documentation: Excerpt from Council Minutes of Meeting held February 24, 1992; proposed BCR re: Temporary Allotment.

**MOVED** by Russell Williams; **SECONDED:** by Byron Louis;

**THAT** we rescind the motion made at the Okanagan Indian Band Council Meeting held February 24, 1992 under item 3.(c) Marcus Oppenheimer re: Application for Land for a two-year temporary allotment of approximately 6 acres of band land as outlined in the sketch and according to the land allotment policy.

**IN FAVOUR:** Tim Alexis, Graden Alexis, Steward Dubrett, Edward Fred, Byron Louis, Fred Louis, Pamela Louis, Eric Mitchell, Russell Williams, Daniel Wilson.

**AGAINST:** Mollie Bonneau, Lyle Brewer

**MOTION CARRIED**

Lyle Brewer votes against because the previous motion said we were going to allot the property according to the land

**December 9, 1991 – Page 8 (d) – Band Council Meeting**

Status of the Land Allotment Policy

Relevant Documentation: Memo to Chief and Council dated December 8, 1991 from Lands and Estates Trainee, Randy Marchand.

Lands and Estates Manager stated that Council had requested her to determine whether or not the Land Allotment Policy was adopted by Council, In fact, Council did adopt that policy, it is the policy that is in place until it is amended or replaced. Lands and Estates Manager asked what Council's wishes are with respect to the policy now. Lands and Estates

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### **November 24, 1986 – Page 7 – Band Council Meeting**

Upon review the the Band Council Resolution dated November 19, 1986, the Council that a letter should be written to Robert Louis stating that the land has to be surveyed as outlined in the Band Council Resolution dated November 19, 1979. Said survey to be carried out under the supervision of the Survey's Committee.

Lyle advised Council that Robert had asked if the Band would pay for the costs of the survey and Robert repay the Band when he is able to.

There was a lengthy discussion on the payment of the costs of a legal survey.

**MOVED** by Albert Saddleman; **SECONDED** by Tim Alexis;

**THAT** we do not pay the costs of the legal surveys required to identify lands for allotment to Band Members.

### **CARRIED**

Graden Alexis abstained from voting because he felt that preliminary survey could be used until a legal survey is done.

The Council established a policy that in the future, land applications would not be dealt with until the applicant is present.

### **April 29, 1986 – Page 14 – Band Council Meeting**

Committee Submissions:

- A. Jon Spotted Eagle, Councilor Cecil Louis, Councilor Re: Surveys Committee Meeting held March 19, 1986. File 7A/1/4.

Jon reported that the Survey's Committee reviewed the Land Allotment Policy and recommended that the policy be amended as follows:

**THAT** the applicant may pay for his own survey, and

**THAT** the policy is subject to amendment when needed.

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**MOVED** by Jon Spotted Eagle; and **SECONDED** by Molly Bonneau

**THAT** the Land Allotment Policy be approved with the amendments as recommended by the Surveys Committee.

**CARRIED**

A workshop for band members who are interested or who have questions to review the land allotment policy will be scheduled during the first week in June, 1986.