



WESTBANK FIRST NATION CONSTITUTION

PART XI – LAND RULES

Amended July 19th, 2007



PART XI – Land Rules

98. General

- 98.1 The purpose of this Part is to set out the principles, rules and administrative structures pursuant to which Westbank will exercise authority and jurisdiction over Westbank Lands.
- 98.2 Westbank Lands are “lands reserved for the Indians” under subsection 91(24) of the *Constitution Act, 1867*, and are reserves set apart by Her Majesty the Queen in Right of Canada for the use and benefit of Westbank First Nation.
- 98.3 Title to all Westbank Lands shall continue to be held in the name of Her Majesty the Queen in Right of Canada for the use and benefit of Westbank.
- 98.4 The use and development of Westbank Lands is subject to this Constitution, Westbank Law and other applicable laws.
- 98.5 (a) any instrument purporting to create, grant, assign or transfer an interest in Westbank Lands which restricts the application of, or is, in violation of Westbank Law or other applicable law, is void.
- (b) notwithstanding section 98.5(a) should an offending provision be capable of being severed from the instrument the remaining provisions shall not in any way be affected or impaired.
- 98.6 Council shall develop Westbank Laws, consistent with this Constitution, regarding the management, administration, use and protection of Westbank Lands.
- 98.7 Council shall, within two (2) years of the date this Constitution comes into force, refer a final draft Westbank Law to adopt a Land Use Plan to a Special Membership Meeting for enactment by Electors in accordance with section 63.3(e) of the Constitution.

99. Westbank Lands Office

- 99.1 The Westbank Lands Office shall carry out duties and responsibilities delegated or assigned to it under this Part or by Westbank Law.
- 99.2 Without limiting the generality of the duties and responsibilities of the Westbank Lands Office, it shall:
- (a) administer Westbank Lands in accordance with this Part and Westbank Law;
- (b) prepare forms of Written Instruments for use in registering interests in Westbank Lands where deemed necessary and advisable by the Westbank Lands Office;
- (c) prepare forms of Written Instruments for use in registering or recording instruments which affect, or purport to affect, Westbank Lands where deemed necessary and advisable by the Westbank Lands Office;

- (d) receive and review Written Instruments which affect, or purport to affect, Westbank Lands;
- (e) *[repealed, July 19, 2007]*
- (f) arrange for the execution of Written Instruments and related documentation on behalf of Westbank, the Minister and Her Majesty the Queen in Right of Canada;
- (g) where requested by one of the parties to a Written Instrument, act as representative for that party in forwarding the Written Instrument for registration or recording;
- (h) maintain and protect records in relation to Westbank Lands;
- (i) prepare and present regular reports to Council; and
- (j) carry out such duties as are requested or required by Council consistent with this Constitution, Westbank Law and other applicable law.

[amended, July 19, 2007]

- 99.3 The Director of Lands shall oversee the day-to-day operations of the Westbank Lands Office and perform such duties and responsibilities consistent with this Constitution and Westbank Law as are required under this Part and Westbank Law.
- 99.4 Without limiting the generality of section 99.2 and 99.3, the Director of Lands or his or her designate appointed in writing shall:
- (a) manage the Westbank Lands Office;
 - (b) execute such Written Instruments and carry out any action required to be taken by and on behalf of the Minister or Her Majesty the Queen in Right of Canada in relation to an interest in Westbank Lands described in section 100.1; and
 - (c) carry out any action required to be taken by the Minister or Her Majesty the Queen in Right of Canada in relation to an interest described in section 100.1 after the date this Constitution comes into force; and
 - (d) carry out any action or responsibility delegated to the Director of Lands under section 118.1.
- 99.5 Neither the Westbank Lands Office nor the Director of Lands shall be responsible or liable for ensuring that a Written Instrument which affects, or purports to affect, Westbank Lands:
- (a) is validly made;
 - (b) complies with this Part;
 - (c) should be registered or recorded; or
 - (d) will be accepted by Canada for registration or recording.

[new, July 19, 2007]

100. Interests in Westbank Lands

- 100.1 Interests in Westbank Lands approved, created, granted or issued pursuant to the *Indian Act* and existing as of the date this Constitution comes into force shall continue to have effect in accordance with their terms and conditions.
- 100.2 Where an interest described in section 100.1 includes an action to be taken by the Minister or Her Majesty the Queen in Right of Canada the responsibility for such action after the date this Constitution comes into force shall be with the Director of Lands or his or her designate.
- 100.3 The types of interests in Westbank Lands are:
- (a) Allotments;
 - (b) Leaseholds;
 - (c) Easements;
 - (d) Permits;
 - (e) Licences; and
 - (f) Mortgages.

101. No Interest Created

- 101.1 Subject to section 100.1 an interest in Westbank Lands may only be created, granted, assigned or transferred by Written Instrument in accordance with this Part or a Westbank Law provided for in this Part.
- 101.2 No person may acquire an interest in Westbank Lands by use, occupation or any other means not authorized under this Part or a Westbank Law provided for in this Part.
- 101.3 A contract, instrument or agreement of any kind entered into after the date this Constitution comes into force, whether written or oral, by which a person purports to create, grant, assign or transfer an interest in Westbank Lands is void if it does not comply with this Part or a Westbank Law provided for in this Part.

102. Natural Resources

- 102.1 Subject to applicable law all Natural Resources on Westbank Lands belong to Westbank.
- 102.2 The use and development of Natural Resources on or under Westbank Lands will be subject to this Constitution, Westbank Law and other applicable laws.
- 102.3 To the extent that Westbank has ownership or rights over water as recognized by federal or provincial legislation or Order-in-Council, or by operation of law, Westbank retains ownership and has jurisdiction to manage and regulate water use.
- 102.4 Subject to this section, unless specifically excluded by the instrument granting an Allotment of Westbank Lands, the Allotment includes all Natural Resources on or under that land to the extent they are under Westbank jurisdiction.

103. Allotment

- 103.1 Only Members can hold or receive an Allotment.
- 103.2 Subject to section 103.4 no Allotment shall be granted until a Westbank Law has been enacted establishing policy, procedure and criteria for the granting of Allotments.
- 103.3 A Westbank Law referred to in section 103.2 shall be enacted by referendum under section 63.3(f) of this Constitution.
- 103.4 An Allotment may be granted by Resolution where the Allotment is required to fulfill an agreement lawfully entered into prior to the date this Constitution comes into force or to comply with an order of a court of competent jurisdiction.

104. Leasehold in Community Lands

- 104.1 A Leasehold in Community Lands for a term or possible term of fifteen (15) years or less, calculated by including any renewal or extension period, may be granted by Resolution.
- 104.2 Where Westbank proposes to grant a Leasehold in Community Lands for a term or possible term of more than fifteen (15) years, calculated by including any renewal or extension period, but not more than forty-nine (49) years, Council shall schedule a Special Membership Meeting to decide whether the Leasehold should be granted.
- 104.3 Notice of the Special Membership Meeting shall be given to the Membership at least twenty (20) days before the meeting and shall include:
- (a) a summary of the proposed Lease;
 - (b) notification that a full copy of the proposed Lease can be obtained by Members at the Westbank administration building;
 - (c) a statement that there will be a vote by secret ballot of the Electors present at the Special Membership Meeting to make a decision on whether or not to grant the proposed Leasehold; and
 - (d) the date, time and place of the Special Membership Meeting also specifying the time period during which voting will take place.
- 104.4 Notice of the Special Membership Meeting shall be provided to the Membership by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
 - (b) posting of the notice in a public area of the Westbank administration building.
- 104.5 At the Special Membership Meeting, Council or its designate shall explain the purpose and provisions of the proposed Lease and Members may ask questions and provide comments.
- 104.6 Upon completion of the discussion, the Electors, including Council members, present at the Special Membership Meeting shall vote by secret ballot on whether or not to grant the proposed Leasehold.

- 104.7 The granting of a Leasehold described in section 104.2 shall be deemed authorized if a Majority of Electors voting at the Special Membership Meeting approve the proposed Leasehold. *[amended, July 2007]*
- 104.8 The decision at the Special Membership Meeting shall be recorded in the minutes and shall be evidence of the approval for granting the proposed Leasehold or rejecting the granting of the proposed Leasehold.
- 104.9 Where the proposed Leasehold is for a term or possible term longer than forty-nine (49) years, calculated by including any renewal or extension period, the proposed Leasehold must be approved by referendum held under Part XII of this Constitution.
- 104.10 The granting of a Leasehold for a term, or possible term, longer than forty-nine (49) years shall be deemed authorized if approved by the referendum vote.
- 104.11 The results of the referendum held under section 104.9 shall be evidence of approval for granting the proposed Leasehold or rejection of the proposed Leasehold.
- 104.12 The granting of a Leasehold does not grant any interest in the Natural Resources on or under the land described in the Lease unless specifically included in the terms and conditions of the Lease.

105. Easements, Permits and Licences in Community Lands

- 105.1 Council may, by Resolution, grant Easements and Permits in Community Lands.
- 105.2 Where Westbank proposes to grant a Licence in Community Lands for a term, or possible term, of less than fifteen (15) years, calculated by including any renewal or extension period, Council shall schedule a Special Membership Meeting to consider whether the proposed Licence should be granted. *[amended, July 19, 2007]*
- 105.3 Notice of the Special Membership Meeting shall be given to the Membership at least twenty (20) days before the meeting and shall include:
- (a) a summary of the proposed Licence;
 - (b) notification that a full copy of the proposed Licence can be obtained by Members at the Westbank administration building;
 - (c) a statement that there will be a vote by secret ballot of the Electors present at the Special Membership Meeting to make a decision on whether or not to grant the proposed Licence; and
 - (d) the date, time and place of the Special Membership Meeting also specifying the time period during which voting will take place.
- 105.4 Notice of the Special Membership Meeting shall be provided to the Membership by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
 - (b) posting of the notice in a public area of the Westbank administration building.

- 105.5 At the Special Membership Meeting, Council, or its designate, shall explain the purpose and provisions of the proposed Licence and Members may ask questions and provide comments.
- 105.6 Upon completion of the discussion, the Electors, including Council members, present at the Special Membership Meeting shall vote by secret ballot on whether or not to grant the proposed Licence.
- 105.7 The granting of a Licence shall be deemed authorized if a Majority of Electors voting at the Special Membership Meeting approve the proposed Licence. [*amended, July 19, 2007*]
- 105.8 The decision at the Special Membership Meeting shall be recorded in the minutes and shall be evidence of approval for granting the proposed Licence or rejecting granting the proposed Licence.
- 105.9 Where the proposed Licence is for a term, or possible term, longer than fifteen (15) years, calculated by including any renewal or extension period, the proposed Licence must approved by referendum held under Part XII of this Constitution.
- 105.10 The granting of a Licence for a term, or possible term, longer than fifteen (15) years shall be deemed authorized if approved by the referendum vote.
- 105.11 The results of the referendum held under section 105.9 shall be evidence of approval for granting the proposed Licence or rejecting the proposed Licence.

106. Creation of Sub-interests in Allotted Westbank Lands

106.1 A Member holding an Allotment in Westbank Lands may grant a Leasehold, Easement, Permit or Licence in those lands by Written Instrument registered in the Westbank Lands Register provided that:

- (a) the Member is the sole lawful possessor of the land;
- (b) there is a proper legal description of the lands, and, if required, the lands have been surveyed and the survey registered or recorded in the Westbank Lands Register; and
- (c) the Member states in writing that the terms of the Written Instrument will not violate any agreement with a person who has, or will have, an interest in the lands affected, or any portion thereof, or the Member has obtained the written consent of the interest holder.

[*amended, July 19, 2007*]

106.1.1 A Member granting a Leasehold, Easement, Permit or Licence under section 106.1 may grant that interest to himself or herself in the same manner as to another person. [*new, July 19, 2007*]

106.2 Subject to 100.1 a person holding a Leasehold in Westbank Lands may grant a Sub-lease, Easement, Permit or License in those lands by Written Instrument registered in the Westbank Lands Register provided that:

- (a) the interest to be granted is permitted by the terms of the Lease;
- (b) there is a proper legal description of the lands and, if required, the lands have been surveyed and the survey registered or recorded in the Westbank Land Register; and
- (c) the term of the interest granted does not exceed the duration of the Leasehold.

[amended, July 19, 2007]

106.3 The granting of a Leasehold does not grant any interest in the Natural Resources on or under the lands described in the Lease unless specifically included in the terms and conditions of the Lease.

- 106.4 (a) In transactions under sections 106.1 and 106.2 neither the Westbank Lands Office nor the Director of Lands are obligated to undertake any investigations or due diligence and will not be responsible or liable for any breaches of those provisions or for any representation or warranty made by the person granting the interest.
- (b) For greater certainty, without restricting the generality of section 106.4(a), neither the Westbank Lands Office nor the Director of Lands shall be responsible for determining whether a Lease, Easement, Permit or Licence is in good standing or its terms have been complied with.

107. Mortgages

107.1 Subject to section 107.2 the holder of an Allotment, Leasehold or Licence may, in accordance with this section grant a Mortgage of that interest.

107.2 The holder of an Allotment may only grant a Mortgage of that interest to a Member or to Westbank.

107.2.1 For greater certainty:

- (a) the holder of an Allotment who has been granted a Leasehold pursuant to section 106.1.1 may grant a Mortgage of the Leasehold interest to any person;
- (b) A Leasehold Interest held by an Indian, as that term is defined in the *Indian Act*, in Westbank Lands, including allotted lands, is subject to charge, pledge, mortgage, attachment, levy, seizure, distress, and execution, and the mortgagee has all the same legal and equitable rights it would have if the Leasehold interest was held by a non-Indian; and
- (c) A Leasehold interest in Community Lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution by a mortgagee.

[new, July 19, 2007]

107.3 The holder of a Permit or Easement cannot grant a Mortgage.

107.4 A Mortgage may be granted by Written Instrument registered in the Westbank Lands Register provided that:

- (a) the land is in the sole lawful possession of the Member granting the Mortgage or, the Leaseholder or Licence holder granting the Mortgage holds the entire legal and beneficial interest in the Leasehold or Licence;
- (b) the granting of the Mortgage and the terms of the Mortgage are permitted by the provisions of the Allotment, Lease or Licence;
- (c) there is a proper legal description of lands that are to be subject to the Mortgage and, if required, the lands have been surveyed and the survey registered or recorded in the Westbank Lands Register; and
- (d) in the case of a Mortgage of a Leasehold or Licence, the Mortgage term does not exceed the duration of the Leasehold or Licence.

[amended, July 19, 2007]

107.5 Neither the Westbank Lands Office nor the Westbank Director of Lands shall be responsible or liable for ensuring that the Lease or Licence permits the interest in the land to be mortgaged or that the Lease or Licence is in good standing or its terms have been complied with.

107.6 Except as modified in this section, the provisions of Section 89 of the *Indian Act* continue to apply.

108. Transfer of Interests

108.1 Subject to section 108.2 and this Part, a Member may, by a Written Instrument registered in the Westbank Lands Register, transfer their Allotment.

108.2 A Member may only transfer their Allotment to another Member or Westbank.

108.3 Where an Allotment is transferred to Westbank other than in relation to the granting of a Mortgage, the Allotment and any Certificate of Possession issued are cancelled and the Westbank Lands described in the Allotment become Community Lands.

108.4 Subject to section 108.5 and this Part a person holding an interest in Westbank lands other than by way of Allotment may transfer, assign or devise their interest to any person or entity by a Written Instrument registered in the Westbank Lands Register.

108.5 A Member or Westbank holding a Mortgage of an Allotment can only transfer or assign that Mortgage to another Member or to Westbank.

109. Transfer on Death

109.1 Until Westbank exercises jurisdiction in relation to wills and estates pursuant to the Agreement, the provisions of the *Indian Act* dealing with wills and estates shall continue to apply with respect to interests in Westbank Lands.

109.2 A person who receives an interest in Westbank Lands by testamentary disposition or succession in accordance with a written decision of the Minister, or his or her designate, pursuant to the *Indian Act*, is entitled to have that interest registered in the Westbank Lands Register.

110. Ceasing to be a Member

110.1 A person who ceases to be a Member shall within one year of ceasing to be a Member transfer their Allotment to Westbank or another Member.

110.2 Where a Member does not transfer their Allotment in accordance with section 110.1 the Allotment and any Certificate of Possession issued shall, one year after the person ceases to be a Member, be cancelled and the Westbank Lands described in the Allotment become Community Lands.

110.3 Where an Allotment reverts to Westbank under section 110.2 the person ceasing to be a Member shall remain liable for any obligations or monies owing pursuant to any interest they granted prior to the date the Allotment reverts to Westbank.

111. Westbank Lands Register

111.1 Interests in, and instruments which affect, or purport to affect, Westbank Lands shall be registered or recorded in the Westbank Lands Register. [*amended, July 19, 2007*]

111.2 Notwithstanding section 111.1, the registration or recording of an instrument in the Westbank Land Register will not create, grant, assign or transfer an interest in Westbank Lands unless there is compliance with this Part. [*amended, July 19, 2007*]

111.2.1 For greater certainty, instruments which affect, or purport to affect, Westbank Lands shall be filed with the Westbank Lands Office prior to applying for registration or recording in the Westbank Lands Register. [*new, July 19, 2007*]

111.3 A copy of the Westbank Lands Register will be kept at the Westbank Lands Office.

111.3.1 The Westbank Lands Register will be administered in accordance with the Westbank First Nation Land Registry Regulation or any successor regulation made under the *Westbank First Nation Self-Government Act*. [*new, July 19, 2007*]

111.3.2 In the event of a conflict between the Westbank First Nation Land Registry Regulation and Westbank Law, the Regulation prevails to the extent of the conflict. [*new, July 19, 2007*]

111.4 Until the enactment of the Westbank First Nation Land Registry Regulation and subject to sections 111.1 through 111.11, the Westbank Land Register shall be administered in the same manner as the Reserve Land Register established under the *Indian Act*. [*amended, July 19, 2007*]

111.5 The Westbank Lands Register shall accommodate the registration of interests not accommodated specifically by the *Indian Act*, in accordance with criteria or procedures to be agreed upon by Canada and Westbank.

111.6 [*repealed and replaced, July 19, 2007*]

111.7 No instrument that requires a Council Resolution, approval of the Westbank Lands Office, approval by Electors at a Membership meeting or in a referendum may be registered or recorded unless evidence of that Resolution, approval or referendum result is attached to the instrument. *[amended, July 19, 2007]*

111.8 Surveys prepared in accordance with section 114 may, subject to Westbank Law and other applicable law, be registered or recorded in the Westbank Lands Register. *[amended, July 19, 2007]*

111.9 Subject to the Westbank First Nation Land Registry Regulation, financial claims or other assertions of right under Westbank Law or other applicable law which affect or purport to affect Westbank Lands may be registered or recorded in the Westbank Lands Register. *[amended, July 19, 2007]*

111.10 The types of instruments which may be registered or recorded in the Westbank Lands Register under section 111.9 include, but are not limited to, instruments relating to:

- (a) judgments;
- (b) court orders;
- (c) rights of first refusal;
- (d) certificates of pending litigation;
- (e) caveats;
- (f) liens;
- (g) assignments of rent;
- (h) options to purchase;
- (i) tax certificates; and
- (j) written decisions of the Minister or his or her designate referred to in section 109.2.

[amended, July 19, 2007]

111.11 Registration under section 111.10 shall not be deemed to be support for the legal validity of any claims nor the ability to take execution or other proceedings as a result of registration.

112. Date of Grant or Transfer of Interests

112.1 The grant, transfer or other disposition of an interest in Westbank Lands shall be effective on the date the documents are registered in the Westbank Lands Register.

112.2 An interest in Westbank Lands is not enforceable unless it is registered in the Westbank Lands Register.

113. Cancellation or Forfeiture of Interests

- 113.1 Except as otherwise provided in this Constitution, Westbank Law or by operation of law no interest in Westbank Lands may be cancelled or forfeited unless:
- (a) all parties to the relevant Written Instrument have consented in writing to the cancellation or forfeiture as the case may be;
 - (b) a court of competent jurisdiction has ordered the cancellation or forfeiture of the interest and the time period for filing an appeal of the order has passed without an appeal having been taken; or
 - (c) an arbitrator or other person appointed to adjudicate a dispute pursuant to the Written Instrument in issue has ordered or declared the interest to be cancelled or forfeited and no appeal has been taken from that decision within the allotted time.
- 113.2 Notwithstanding section 113.1 no interest in Westbank Lands may be cancelled or forfeited if it will adversely affect:
- (a) an interest in those Westbank Lands held by a third party; or
 - (b) a claim against, or interest in, those Westbank Lands held by Westbank.
- 113.3 If an interest in Westbank Lands is cancelled or forfeited under section 113.1 the Westbank Land Register will be amended or rectified accordingly.

114. Surveys

- 114.1 Westbank may cause surveys to be made of Westbank Lands in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.
- 114.2 The holder of an interest in Westbank Lands that is registered in the Westbank Lands Register may cause surveys to be made of those lands in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*. [amended, July 19, 2007]
- 114.3 All surveys of Westbank Lands prepared by the Surveyor General of Canada, or his or her designate, shall be deemed for all purposes to accurately describe and identify the boundaries of the lands covered by such survey.
- 114.4 All surveys respecting Westbank Lands only become effective upon registration in the Westbank Lands Register.

115. Exchange of Lands

- 115.1 Subject to federal expropriation, no part of Westbank Lands shall be sold so as to remove their status as Westbank Lands except for an exchange of lands in circumstances where:
- (a) Westbank receives land of greater or equivalent size or value in consideration for the exchange taking into account all of its interests involved;
 - (b) Canada is willing to set apart the lands received in exchange as a reserve as defined in section 2(1) under the *Indian Act* for the use and benefit of Westbank and as subsection 91(24) lands as set out in the *Constitution Act, 1867*;
 - (c) Council has made full disclosure to the Membership of all the circumstances surrounding the exchange. At least three Membership meetings shall be held where the proposed transactions are disclosed; and
 - (d) the exchange is approved in a referendum held under Part XII of this Constitution.

[amended, July 19, 2007]

116. Expropriation for Community Purposes

- 116.1 Westbank may expropriate an interest in Westbank Lands for a Community Purpose provided that no expropriation may take place until the following conditions, in the order listed, have been met:
- (a) a Westbank Law has been enacted setting out:
 - i) a procedure governing the expropriation process;
 - ii) a method of determining fair compensation to be paid to the interest holder; and
 - iii) the procedure for an Arbitrator to resolve disputes regarding the amount of compensation to be paid to the interest holder.

- (b) written notice has been given to the interest holder specifying the interest that is being considered for expropriation;
- (c) Council has attempted in good faith to negotiate an agreement with the interest holder for the transfer of the interest that is being considered for expropriation but has failed to reach such an agreement; and
- (d) Council has issued a report to the Membership setting out the Community Purpose for which the proposed expropriation is required and the necessity for the proposed expropriation.

117. Dispute Resolution

117.1 Except as otherwise provided in this Part disputes in relation to Westbank Lands or interests in Westbank Lands shall be determined as follows:

- (a) the parties to the dispute may agree that the dispute may be determined by mediation, arbitration or other dispute resolution mechanism agreed to by the parties; or
- (b) if the parties to the dispute do not agree on a dispute resolution mechanism, the dispute shall be determined by a court of competent jurisdiction.

118. Delegation

118.1 Westbank may, by Resolution, delegate any authority under this Part to the Westbank Lands Office or the Director of Lands other than:

- (a) law making,
- (b) the adjudication of violations of Westbank Law; or
- (c) a matter required under this Part to be determined in a specific manner.

118.2 Westbank may, by Westbank Law, establish boards, tribunals, commissions or other bodies to carry out any duties or responsibility under this Part other than:

- (a) law-making;
- (b) adjudication of violations of Westbank Law; or
- (c) a matter required under this Part to be determined in a specific manner.

119. Treatment of Interests in Westbank Lands on Marriage Breakdown

119.1 Westbank shall enact a law within twelve months of the date this Constitution comes into force setting out rules and procedures applicable to use, occupancy and possession of Westbank Lands and the division of interests in these lands on the breakdown of a marriage involving at least one Member.

119.2 For greater certainty, the Westbank Laws described in section 119.1 shall not discriminate on the basis of sex but may distinguish as between Members and non-

Members for the purpose of determining what type of interest in Westbank Lands may be held by an individual.

120. Review

120.1 *[repealed, July 19, 2007]*