

WESTBANK FIRST NATION
ALLOTMENT LAW 2020

WHEREAS:

- A. Westbank First Nation honours its connection to the land, and recognizes its responsibility to protect the land and her resources for future generations;
- B. Westbank First Nation has jurisdiction and authority over Westbank Lands and Natural Resources;
- C. It is in the interests of the social, economic, and community development of Westbank First Nation to provide Allotments to Members; and
- D. The *Westbank First Nation Constitution* provides that, subject to any agreements in existence prior to April 1st, 2005 or any court order, no Allotment of Westbank Lands may be granted until a Westbank law has been enacted to govern the granting of Allotments.

NOW THEREFORE the Council of Westbank First Nation repeals the *Allotment Law No. 2006-03* and replaces it with the following:

1. TITLE

- 1.1 This Law may be cited as the "*WFN Allotment Law 2020*".

2. DEFINITIONS

- 2.1 In this Law, unless the context requires otherwise:

"Adjudicator" means an independent third party appointed by Council;

"Allotment" means an interest in Westbank Lands granting a Member lawful possession of a part of Westbank Lands under Part XI of the Constitution or, prior to the date the Constitution came into force, granted pursuant to section 20 of the *Indian Act*;

"Certificate of Possession" means documentary evidence of a Member's Allotment of part of Westbank Lands described thereon;

"Commission" means the Allotment Commission as constituted under this Law;

"Community Lands" means any Westbank Lands in which no Allotment to a Member has been made or no Member had lawful possession of on the date the Constitution came into force;

“Constitution” means the *Westbank First Nation Constitution*;

“Immediate Family Member” means a spouse (including a common law spouse), parent, grandparent, child (including adopted children or those living with an individual as their child), grandchild, sibling, or the spouse of any of the above;

“Member Housing” means the use of Community Lands to provide housing for Members;

“Natural Resources” means any material on or under the land, in their natural state, which has economic value when extracted;

“Serviced” means accessible via an Arterial Road or a Local Road, as those terms are defined in the *WFN Subdivision, Development and Servicing Law No. 2005-15*, as amended or replaced from time to time;

2.2 Unless otherwise provided in this Law, words, expressions, and rules of construction used in this Law have the same meaning as in the Constitution.

3. GENERAL

3.1 Westbank may grant an Allotment only in accordance with this Law.

3.2 An Allotment granted under this Law:

- (a) includes all Natural Resources on and under the land allotted, unless expressly excluded by the instrument granting the Allotment; and
- (b) must be registered in accordance with the Constitution and all applicable Westbank Law.

4. CIRCUMSTANCES OF ALLOTMENT

4.1 Westbank may grant an Allotment where a survey prepared in accordance with the *Canada Lands Surveys Act* (R.S.C., 1985, c. L-6) as amended or replaced from time to time, identifies that an error was made in a survey describing lands granted by Allotment.

4.2 Westbank may grant an Allotment in order to change the boundary between Community Lands and allotted lands, where it is in the best interests of Westbank to do so, provided that:

- (a) the value of the Community Lands being exchanged is less than twenty five percent (25%) of the value of the allotted lands; and

- (b) the difference in the value of the Community Lands and the allotted lands is less than ten percent (10%).
- 4.3 Where Westbank has entered into a written agreement with a Member to grant an Allotment for Member Housing prior to March 2nd, 2006, Westbank must grant an Allotment to that Member within sixty (60) days of the date of a request by the Member to be granted the Allotment, provided that:
 - (a) the agreement for the Allotment was approved by a Membership vote at a Special Membership Meeting; and
 - (b) the Member has performed all their obligations under the agreement.
- 4.4 Where Westbank has entered into a written agreement with a Member to grant an Allotment for Member Housing after March 2nd, 2006, Westbank must grant an Allotment to that Member within sixty (60) days of the date of a request by the Member to be granted the Allotment, provided that:
 - (a) the Allotment was granted in accordance with this Law; and
 - (b) the Member has performed all their obligations under the agreement.
- 4.5 Where Westbank has entered into a written agreement with a Member cancelling an Allotment for the purposes of allowing a Member to:
 - (a) participate in a Member Housing program; or
 - (b) benefit from a guarantee provided by Westbank, thenWestbank must grant a new Allotment to that Member within sixty (60) days of the date of a request by the Member to be granted the new Allotment, provided that the Member has performed all obligations under the agreement.
- 4.6 Westbank may grant an Allotment where it is in the best interests of Westbank to exchange Community Lands for allotted lands, provided that the difference in the value of the Community Lands and the allotted lands being exchanged is less than ten percent (10%).
- 4.7 Westbank may grant an Allotment where it is in the best interests of Westbank to do so in order to raise revenue, except that lands which are subject to a written agreement as described in sections 4.4 and 4.5 may not be allotted for this purpose.
- 4.8 Westbank may:
 - (a) grant an Allotment; or

(b) enter into an agreement to grant an Allotment,

where the lands are to be used for Member Housing, provided that the subject lands:

(c) have been identified by Resolution as being available for Member Housing;

(d) are designated as "residential" under Westbank Law;

(e) are no greater in size than is permitted for a lot designated for single family residential purposes under Westbank Law;

(f) have been surveyed; and

(g) are or can be Serviced.

5. PROCEDURES FOR ALLOTMENTS

5.1 Where a survey prepared in accordance with the *Canada Lands Surveys Act* (R.S.C., 1985, c. L-6) as amended or replaced from time to time, identifies that an error was made in a survey describing lands granted by an Allotment:

(a) a new survey must be registered immediately;

(b) if necessary, Council must, within sixty (60) days of the registration of survey under subsection (a), pass a Resolution:

(i) cancelling the existing Allotment;

(ii) granting a new Allotment reflecting the new registration; and

(iii) directing that the new Allotment be registered immediately.

5.2 In order for an Allotment to be granted under section 4.1 to 4.5, Council must pass a Resolution authorizing that Allotment.

5.3 In order for an Allotment to be granted under section 4.6, the Allotment must be approved at a Special Membership Meeting in accordance with sections 104.2 to 104.8 of the Constitution, as amended or replaced from time to time.

5.4 In order for an Allotment to be granted under section 4.7:

(a) Council must, at least sixty (60) days prior to the date of the proposed Allotment, distribute to every Member a document containing:

- (i) a full and complete description of the lands proposed to be allotted, including location, legal description, zoning, and designation;
 - (ii) the proposed Allotment agreement;
 - (iii) the proposed minimum price;
 - (iv) the proposed process for the Allotment; and
 - (v) such other information as necessary for the Membership to fully understand the proposed Allotment; and
- (b) The Allotment must be approved by a referendum held in accordance with sections 104.9 to 104.11 of the Constitution, as amended or replaced from time to time.

6. ALLOTMENT COMMISSION

6.1 The Commission is established to:

- (a) evaluate and make decisions on applications for Allotments for Member Housing;
- (b) administer Allotments that have been authorized for the purpose of Member Housing;
- (c) establish policies and procedures for the operation of the Commission and the carrying out of its duties, that are consistent with Westbank Law and the Constitution;
- (d) develop and conduct programs of public information and education relating to the Commission's roles and responsibilities with respect to the granting of Allotments for Member Housing; and
- (e) carry out such other duties and responsibilities as may be assigned to the Commission under Westbank Law.

6.2 The Commission must operate in accordance with all governance instruments issued under this Law.

7. OFFENCE AND PENALTY

7.1 Every Person who contravenes any provisions of this Law commits an offence punishable upon summary conviction and is liable to a fine not exceeding ten thousand dollars (\$10,000.00).

7.2 If an offence is a continuing offence, each day that the offence is continued constitutes a separate and distinct offence.

8. FEES AND FORMS

8.1 Council may, by resolution at a duly convened meeting, establish, correct, revise or update the terms of any applicable fee schedules, forms, protocols or other related documentation which complement and support this Law, and must post notice of such resolution in a public area of the Westbank administration building and make a copy of such resolution available for viewing free of charge.

9. APPLICATION OF LAW

9.1 Where any federal Act or regulation or provincial Act or regulation or any other Westbank Law may apply to any matter covered by this Law, compliance with this Law does not relieve a Person from also complying with the provisions of the other applicable Act, regulation or law.

9.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection must be severed from and will not affect the remaining provisions of this Law.

9.3 The headings given to the parts and sections in this Law are for convenience of reference only, do not form part of this Law and must not be used in the interpretation of this Law.

9.4 Unless otherwise noted, any specific statute named in this Law is a reference to an enactment of British Columbia and the regulations thereto, as amended, revised, consolidated or replaced from time to time, and any Law referred to herein is a reference to a Westbank Law, as amended, revised, consolidated or replaced from time to time.

10. IMMUNITY

10.1 No action for damages lies or may be instituted against Council or past Council, employees, servants, or agents of either Westbank or Council:

- (a) for anything said or done, or omitted to be said or done, by that Person in the actual or required performance of the Person's duty, or exercise of their authority; or
- (b) for any alleged neglect or default in the actual or required performance of the Person's duty or exercise of their authority.

10.2 Section 10.1 does not provide a defence if:

- (a) Council, employees, servants, or agents have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence, or malicious or wilful misconduct; or
- (b) the cause of action is libel or slander.

10.3 None of Westbank, Council or past Council, or employees, servants, or agents of Westbank or Council, is liable for any damages or other loss, including economic loss, sustained by any Person, or to the property of any Person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other Westbank Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Westbank Law.

10.4 All actions against Westbank for the unlawful doing of anything that:

- (a) is purported to have been done by Westbank under the powers conferred by this Law or any Westbank Law; and
- (b) might have been lawfully done by Westbank if acting in the manner established by law,

must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.

10.5 Westbank is in no case liable for damages unless notice in writing setting out the time, place, and manner in which the damage has been sustained, is delivered to Westbank within two (2) months from the date on which the damage was sustained. In case of the death of a Person injured, the failure to give notice required by this section is not a bar to the maintenance of an action.

10.6 Failure to give the notice under this Law or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:

- (a) there was reasonable excuse; and

(b) Westbank has not been prejudiced in its defence by the failure or insufficiency.

BE IT KNOWN that this law entitled, "Westbank First Nation Allotment Law 2020" is hereby:

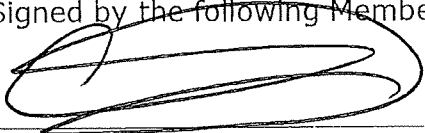
Read a first time by Council of Westbank First Nation at a duly convened meeting held on the 2nd day of December, 2019;

Presented to the Membership at a Special Membership Meeting held on the 13th day of February, 2020;

Read a second time by Council at a duly convened meeting held on the 9th day of March, 2020;


Read a third time and enacted by Council of Westbank First Nation at a duly convened meeting held on the 9th day of March, 2020.

Signed by the following Members of Council:



Chief Christopher Derickson

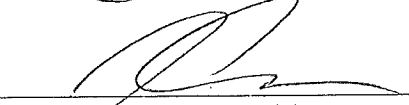
Councillor Fernanda Alexander



Councillor Lorie Hogaboam



Councillor Andrea Alexander



Councillor Jordan Coble