

POLICY AND PROCEDURES

For

Request to Land Use Extensions (Residential)



Opaskwayak Cree
Nation Land
Division Office

- located at 151 Fischer Avenue,
The Pas, MB
(Up stairs at the
Post Office Building)

Opaskwayak Cree Nation
Land Authority

P.O. Box 10880
Opaskwayak Cree Nation, Manitoba
R0B 2J0
204-627-7130
1800-265-9638

TABLE OF CONTENTS

1.0	RATIONALE	1
2.0	AUTHORITY	1
2.1.0	Land Law for Governing the Use and Occupancy of OCN Land Provision.....	1
2.2.0	Opaskwayak Cree Nation Land Authority Application for Use of Land Regulation	1
3.0	INITIAL APPLICATION PROCESS	2
3.1.0	Initial Application	2
3.2.0	Initial Application – Residential Occupancy Permit	3
3.3.0	Initial Application – Residential Lease.....	4
3.4.0	Non-Arms Length Application	4
4.0	2 ND APPLICATION FOR SAME LOT	5
4.1.0	No Development Occurred During the Initial Time Period.....	5
4.2.0	Some Development Occurred During the Initial Time Period.....	5
4.3.0	Site Check	5
4.4.0	Land Authority Requirements	5
5.0	3 RD APPLICATION FOR SAME LOT	6
6.0	DENIAL OF APPLICATION	6
7.0	COMING INTO EFFECT	6
	APPENDIX I - DEVELOPMENT PLAN CHECK LIST	7
	APPENDIX II APPLICATION FOR LAND USE SUMMARY	8

1.0 RATIONALE

- 1.1.0 Opaskwayak Cree Nation Land Authority requires a policy which deals with applicants who do not develop the land allocated within the period (time frame) approved and are requesting 2nd or 3rd extensions.
- 1.2.0 To ensure that the land is not held up for an indefinite period of time, this Policy outlines the process to be used as a guideline for the Land Authority when determining whether or not to grant further extension, by way of a new Permit or Lease to an applicant.
- 1.3.0 This Policy is further intended to prohibit the holding up of land for indefinite periods of time, due to succeeding or replacement applicants which are not bona fide or arms lengths, such as those made by immediate family members.

2.0 AUTHORITY

2.1.0 Land Law for Governing the Use and Occupancy of OCN Land Provision

2.1.1 The Land Law for Governing the Use and Occupancy of OCN Lands dated August 11, 2001 #2003/003, as amended from time to time, has the following provisions:

- (a) For processes that encompasses the future generation, Section 4.2 states:
"The governance, occupancy, administration and monitoring of OCN Land will take into consideration the responsibility of keeping the land safe for future generations and at the same time implement the values and vision of OCN Citizens that the land is held collectively by its Citizens and no one person shall have ultimate use of the land."
- (b) For adopting of policies and procedures, Section 12.5 states:
"For each regulation adopted the Land Authority and/or Chief and Council may from time to time, approve and adopt policies and procedures to use as guidelines for the daily, weekly, monthly and/or annual operations as may be required for the allocations, management and administration of Interest and Licenses under this Land Law and any regulations."

2.2.0 Opaskwayak Cree Nation Land Authority Application for Use of Land Regulation

2.2.1 The Opaskwayak Cree Nation Land Authority Application for Use of Land Regulation dated April 11, 2011, as amended from time to time, has the following provisions:

- (a) outlines the criteria when submitting an application, Section 4.1.(f), states:
"The criteria for application shall submit a proposal which will include a development plan, a site plan, financial information, projection and time lines, if applicable, depending on the project and use of land."

- (b) Where an application may be denied, Section 6.5, states:

"The Land Authority may deny the application based on reasonable grounds, including use of failure to fulfill the requirements directed, and shall state the reason for denial."

3.0 INITIAL APPLICATION PROCESS

3.1.0 Initial Application

- 3.1.1 The Land Division staff shall provide background information to the Land Authority such as:

- (a) Does the applicant currently hold a lot on any of Opaskwayak Cree Nation Lands? If so, where and what is the use? and
- (b) Has this applicant:
- i. ever applied for any other land within Opaskwayak Cree Nation Land before?
 - ii. if so, where and was any development ever completed?
 - iii. how long ago; and
 - iv. how many different times have they been previously approved?

- 3.1.2 The following are general requirements that the Land Authority shall set for any initial application, whether it is a Permit or Lease that is granted:

- (a) that the unit must meet National Housing Standards;
- (b) that development cost will not be incurred by Opaskwayak Cree Nation and the Land Authority (costs associated with development of the lots are the responsibility of the applicant);
- (c) for sewer hook-up and water hook-up:
- i. holding tanks for sewer is required, the installation of tanks must be in compliance with Health and Safety Standards; or
 - ii. to the main townsite (21E) system, arrangements are to be made with the Community Works and Operations Department of Opaskwayak Cree Nation and cost associated with the hook-up shall be borne by the applicant;
 - iii. if applicable, for water hook-up to Carrot Valley water system and depending on the capacity, an arrangement must be made with OCN Finance Department whether or not a new hook-up will be permitted;
 - iv. if applicable, wells may be permitted however approval must be granted from Cree Nation Tribal Health and all standards associated must be complied with by the applicant;
 - v. if applicable, septic field may be permitted, however approval must be granted from Cree Nation Tribal Health and all standards associated must be complied with by the applicant;
- (d) where applicable, Residential Rent Regulation may apply depending on the applicant's situation.

3.2.0 Initial Application - Residential Occupancy Permit

3.2.1 The first (1st) or initial application for land use Residential Occupancy Permit where there is no development:

- (a) the applicant approved is required to develop within the period specified in the Permit. The following are the general period (time frame) given for a particular area:
 - i. 1 year to develop for those located at the main townsite 21E, Carrot River 21E, Cow's Head 21E, Big Eddy 21E, Timberland Trailer Court 21A and Drive-Inn Road 21A;
 - ii. 2 years to develop for those located at Young's Point 21A, Rha's Islands 21B, Whitebridge 21C, Dyke Road 21D, Eastside across the tracks 21E, and all of 21I;
 - iii. Watchi Bay area (2 years to develop); Cottage or traditional cabin areas to be determined; and
 - iv. other areas will be determined by the Land Authority;
- (b) if there is no development within the approved period (time frame), the allocation will be subject to review by the Land Authority (this means that the land applied for may or may not be approved- depending on the circumstances);
- (c) where an applicant is approved and there may be a business venture within the home, a Commercial Business Permit (License) for Home Occupation:
 - i. shall be granted for a one (1) year period until such time as no longer required or the Permit system (License) is replaced by another process; and
 - ii. must be renewed each year until such time as the applicant no longer requires or the Commercial Business Permit (License) is replaced with another approved process;
- (d) prior to Residential Occupancy Permit expiring, the applicant may reapply for the same Lot, depending on the circumstances;
- (e) where the Residential Occupancy Permit holder does not reapply for another Permit or a Lease, the lot will become available for other applicants:
 - i. a thirty (30)day notice prior to expiry shall be sent to the Permittee;
 - ii. if there is no response then within the thirty (30) days after the expiration of the Permit the lot will become available; and
 - iii. no further notification is required to be given after the Permit expires.

3.2.2 The first (1st) or initial application for Residential Occupancy Permit where there is some development; the period shall be determined by the Land Authority and Section 3.2.1 (b) (d) & (e). will be applicable.

3.3.0 Initial Application -Residential Lease

3.3.1 As part of financing requirements, a Lease may be granted, however the Land Authority may add the following conditions as requirement for a Lease approval:

- (a) if financing does not go through the Land Authority shall be notified and the application may be subject to review by the Land Authority;
- (b) clauses will be added to the Lease that state:
 - i. in the event that construction of the housing unit is not completed by ____ day of _____, 20__ this Lease will be terminated as per default provision of the Lease; and will be null and void; and/or
 - ii. the Lessee will not vacate or abandon the Premises at any time during the Term for more than fifteen (15) consecutive days without prior written consent of the Lessor, which consent may not be arbitrarily withheld.
- (c) prior to Residential Lease expiring, the applicant may reapply for the same allocation of land (Lot);
- (d) where the Residential Lease holder does not reapply, the lot will become available for other applicants, upon thirty (30) days after the expiration of the Lease.

3.4.0 Non-Arms Length Applications

3.4.1 An application which by presumption, or by conclusion of the Land Authority, is deemed to be non-arms length, shall be treated either as a second application under Article 4.0, or third application under Article 5.0, or denied entirely under Article 6.0, at the discretion of the Land Authority.

3.4.2 An application which is made by an immediate family member, including a spouse, child, sibling, grandparent, aunt or uncle, including adoptive or common law, of the prior applicant shall be presumed to be non-arms length.

3.4.3 Where an application is deemed to be non-arms length, pursuant to Section 3.4.2, the applicant may submit evidence to rebut the presumption, and attempt to persuade the Land Authority that their application should be considered as a first application.

3.3.3 Where an application is not made by an immediate family member, and the presumption does not apply, the Land Authority may consider, at its discretion, evidence that the application is non-arms length, including any:

- (a) relationship between the current applicant and the prior applicant, whether business or personal;
- (b) similarity between the previous application and the current applicant; and
- (c) other thing, whatsoever, which the Land Authority deems is relevant.

4.0 SECOND (2nd) APPLICATION FOR SAME LOT

4.1.0 No Development Occurred During the Initial Time Period

4.1.1 Where there is a second (2nd) Application for a Residential Lease/Permit and there has been no development at all on the lot, the application may be approved if:

- (a) the applicant during the Initial period, could not develop due to financial restraints or unforeseen circumstances (this must be explained in writing to the Land Authority); or
- (b) the applicant must provide evidence that they have confirmation that at least three (3) of the requirements of Appendix I have been met.

4.2.0 Some Development Occurred During the Initial Time Period

4.2.1 Where there is a second (2nd) Application for a Residential Lease/Permit and there has been some development such as:

- (a) a unit being moved or constructed onto the lot but no hook-up to utilities or no formal inspections (to meet National Housing Standards);
- (b) the lot has been landscaped such as:
 - i. clearing of the lot;
 - ii. placing of a foundation and/or footings;
 - iii. placing a garage or warehouse on the lot;
 - iv. maintaining by planting shrubs, trees, etc. or
 - v. constructing an access or drainage.

4.3.0 Site Check

4.3.1 The Land Staff as part of the application process for the first (1st) extension, second (2nd) extension, same lot, shall conduct a site investigation to confirm, if any, the development that occurred on the lot.

4.4.0 Land Authority Requirements

4.4.1 The Land Authority may approve the second (2nd) renewal of the Permit or Lease and set further requirements. These requirements shall be stipulated in a letter to the applicant and may also be included in the Permit/Lease as a specific clause.

5.0 THIRD (3rd) APPLICATION FOR THE SAME LOT

- 5.0.1 This will be the final application for the same lot and concrete development to be completed within the 1 year timeframe.
- 5.0.2 When applying for the third (3rd) time, the Land Authority requires the following to be attached to the application:
- (a) a concrete Development Plan showing that development will definitely occur within the approved extended period of time which will include, but not limited to:
 - i. funding confirmation;
 - ii. site development drawings;
 - iii. phase of construction or expected date of ready-to-move unit/mobile home/or existing OCN unit is to be moved onto the lot;
 - (b) the majority of the requirements in Appendix I must accompany the application.
- 5.0.3 The applicant shall attend a Land Authority meeting to make a presentation to support their request for the third (3rd) application.

6.0 DENIAL OF APPLICATION

- 6.0.1 The Land Authority may deny either the second (2nd) or third (3rd) application request based on the following:
- (a) no concrete development plan has been provided that is satisfactory to the Land Authority, pursuant to Section 5.0.2 a)i, ii, iii;
 - (b) due to the shortage of developed lots and the applicants has had sufficient time to develop the lot as the developed lot has existing water and sewer;
 - (c) where if applicant has had more than one (1) application and has applied for various other lots and has not developed;
 - (d) may be holding the lot for other family members in a specific area with the exception of a traditional area determined by Part 9 of the OCN Land Code; or
 - (e) any other valid reason the Land Authority has determined.

7.0 COMING INTO EFFECT

- 7.0.1 This Policy will come into force as of the 1st day of April, 2014.
- (a) Land Authority approved on August 27, 2013.
 - (b) Chief and Council approved on March 10, 2014.

APPENDIX I

DEVELOPMENT PLAN (FOR NON-DEVELOPED LOTS)

- Blueprint or drawing of the unit to be built;
-example: all site plans to scale showing the dimensions of the boundary lines, and effects that may include adjacent property;
- If financing is required, letter from financial institution (type of interest applicant requires i.e. lease or permit);
- If no financing is required, list the various stages of planned development (budget);
- Confirmation from OCN Housing if allocated a unit
(i.e. letter/memo from Housing);
- Driveway access including ditches, culvert if required
- example, access road location, and if applicable, construction specifications;
- Hydro hook-up estimate (is it included in cost);
- Water & Sewer Hook-up:
 - Main system will require confirmation from Public Works (CWO)
 - that there is capacity for hook-up
 - hook-up costs by way of a payment plan with CWO
 - hook-up costs incorporated in budget process
(financing institution)
 - Holding tanks installation
 - contact Cree Nation Tribal Health
 - registration of system
 - financing in place

(All on-site sewage installations must be approved by Environmental Health Officer)

APPENDIX II

APPLICATION FOR LAND USE SUMMARY

Criteria and Process for an Applicant

1. The criteria required for processing an Application For Use of Land shall be that the applicant:
 - a. makes the inquiry of available sites;
 - b. complete an application form and if applicable, submit a proposal of project use;
 - c. complete the appropriate Environmental Assessment form or report;
 - d. will submit a completed application, Environmental Assessment and supporting documentation to the Lands Division; and
 - e. when looking for available lots, the applicant and Land staff shall:
 - i. ensure that there is an access to the land applied for;
 - ii. if there is no current access to the particular land being applied for, it will be the responsibility, upon approval of application for the applicant to construct an access road at their own cost, if applicable;
 - iii. ensure that the applicant complies with any conditions which may be required for an access road to be constructed;
 - f. that the use is in compliance with uses (purpose) as outlined in the "Land Law for Land Use and Community Plan including Natural Resources" and the "Opaskwayak Cree Nation Zoning Regulation".
2. In the case where the project is considered a small project the Lands Division staff, may assist client in filling out information required for 1. b. & c.
3. In the case where the project is considered larger in nature, the Lands Division staff can only advise what the requirements are of the procedures.
4. If access is required off of any Provincial Highway or road, the applicant:
 - a. is responsible for payment of any application fee required by the Province;
 - b. any such fee(s) are to be made payable to Opaskwayak Cree Nation; and
 - c. OCN through the Land Manager will forward application and fees to the Province – Infrastructure and Transportation to approve (with stipulations that the province may require).
5. The applicant, when requesting for land use, must fill out the basic required information.
6. The initial Administration Fee must be paid prior to an application being forwarded to the Land Authority for processing.
7. All applications must be received a minimum of 24 hours prior to the meeting of the Land Authority.