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# LAND ALLOTMENT POLICY OF KAHNAWÀ:KE



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## **PREAMBLE**

**WHEREAS** the Kanien'kehá:ka of Kahnawà:ke have used and occupied these lands known as the Mohawk Territory of Kahnawà:ke since time immemorial;

**WHEREAS** the Kanien'kehá:ka of Kahnawà:ke as part of the Iroquois Confederacy:

- are, and have always been a sovereign people;
- have consistently declared the right to govern their affairs and exercise their jurisdiction within Kahnawà:ke, including surface, sub-surface lands, airways and waterways; and
- are responsible to care for, protect and respect their lands.

**WHEREAS** land in Kahnawà:ke is limited;

**WHEREAS** receiving a Common Land Allotment is a privilege;

**WHEREAS** the purpose of this Policy is to grant community land in Kahnawà:ke to eligible Members for the unique purpose of establishing a Permanent Residence for themselves and their family;

**WHEREAS** a Common Land Allotment must not be sold, transferred, or alienated for personal profit.

## **1. GLOSSARY OF TERMS**

In this Policy,

**“Administrator”** means the staff member of the Ohontsa'shòn:'a Ronterihwatsterístha (Lands Unit) responsible for administering this Policy;

**“Applicant”** means a Member or a Couple (also see Co-Applicant) who has/have made an Application for a Common Land Allotment;

**“Application”** means the process of applying for a Common Land Allotment;

**“Approved for Selection”** means the Applicant(s) has completed the Preliminary Approval, Communal Posting, and Communal Request for Allotment and may proceed to the selection of a Common Land Allotment;



**“Co-Applicant”** means a person who applies for a Common Land Allotment with another person using the same Application form;

**“Cash on Hand”** means money (in the form of currency, coins, cheques, balances in bank accounts, money orders, bills of exchange or sums credited to an account) that would be under the direct control of the Applicant and can be used immediately to build a House or place a mobile home. Cash on Hand need not necessarily be “paper money”;

**“Common Land Allotment”** means the allotment of common land (meaning land belonging to the Mohawks of Kahnawà:ke as a whole and not held by any individual lot-holder) that is an approved lot by the Kahnawà:ke Tsi Ietsenhaientákhkwa and is available for selection to construct a House;

**“Common-Law Relationship”** means an intimate personal relationship, not solemnized by a legal marriage ceremony, law or custom, between two (2) persons who have lived together for not less than one (1) year;

**“Communal Posting”** means a notice informing the Kahnawà:ke community of an Applicant’s request for a Common Land Allotment. Postings are made either by placing notices in several public locations in the community or via electronic and print media;

**“Communal Request for an Allotment”** means the process by which the Applicant attends a community meeting to publicly request a Common Land Allotment and respond to any questions from the community;

**“Couple”** means two (2) people who are either married or living common-law;

**“Divorce”** means a legal dissolution of marriage witnessed by certificate of divorce and divorce judgment issued by a court of competent jurisdiction;

**“Exceptional Circumstance”** means an unexpected or unforeseen situation where an Applicant is either denied or approved for a Common Land Allotment by the Administrator based on the strict application of this Policy, which has led to some unfair, unintended or inadvertent consequence and which may warrant further review;

**“Foundation”** means the solid base of a House which is affixed into the earth and constructed from concrete or some other appropriate material. This includes a regular concrete foundation or slab;

**“House”** means a self-contained dwelling unit with or without a Foundation, at least one (1) bedroom, basic plumbing and electricity or alternate energy source and that is considered to be a Permanent Residence. A prefabricated or modular home that is assembled on a Foundation from fabricated, new sections transported for assembly and a mobile home or trailer are considered a House for the purposes of this Policy;



**“Housing Inspector”** a qualified individual identified by the Kahnawà:ke Tsi Ietsenhaientákhkwa to review and inspect the preliminary housing plan, contract and construction of a House throughout the building process, as well as mobile homes/trailers;

**“Inspection Fee”** means the fee, as established by the Social Development Unit Finance Sub-Committee, that must be paid by the Applicant paying Cash on Hand to have a Kahnawà:ke Tsi Ietsenhaientákhkwa Housing Inspector inspect the placement or construction of a residence;

**“Investigation”** means the process whereby the Administrator consults with an appropriate department of the Kahnawà:ke Tsi Ietsenhaientákhkwa or other organization to verify an Applicant’s current marital status and to verify information provided in an Application form;

**“Kahnawà:ke Administrative Tribunal”** means the tribunal developed under the *Kahnawà:ke Justice Act* to review administrative decisions;

**“Kahnawà:ke Communal Arbitration Procedure”** means the procedure to settle a dispute between two parties. The procedure was enacted by the Kahnawà:kehró:non Ratitsénhaienhs by virtue of MCR No. 113/1989-90 on February 5<sup>th</sup>, 1990;

**“Kahnawà:ke Tsi Ietsenhaientákhkwa”** means the Mohawk Council of Kahnawà:ke or MCK which is comprised of Kahnawà:kehró:non Ratitsénhaienhs, including any Unit, Department, Commission, Committee or person(s) mandated by the Mohawk Council of Kahnawà:ke;

**“Kahnawà:kehró:non Ratitsénhaienhs”** means the duly elected Chief & Council of the Mohawk Council of Kahnawà:ke;

**“Kahnawà:ke Justice System”** means the legal system adopted by and for the Mohawks of Kahnawà:ke governing matters in the Mohawk Territory of Kahnawà:ke;

**“Land Allotment Database”** means the book-keeping system maintained by the Administrator to track the issuance of Common Land Allotments to Members;

**“Land Management Committee”** means the oversight committee that oversees the implementation of this Policy;

**“Land Management Officer”** means an employee of the Kahnawà:ke Tsi Ietsenhaientákhkwa responsible for site inspections of the land;

**“Member”** means a member at birth or a person who is registered as a Kanien’kehá:ka of Kahnawà:ke, according to the criteria and procedures in the *Kahnawà:ke Membership Law*, or its successor, provided the person’s membership has not been revoked or suspended;

**“Mohawk Council Executive Directive”** means a resolution adopted by Kahnawà:kehró:non Ratitsénhaienhs of the Kahnawà:ke Tsi Ietsenhaientákhkwa to authorize a decision or mandate;



**“Non-Member Resident”** means a person who has been confirmed to have permission to reside within the Mohawk Territory of Kahnawà:ke and to receive those privileges as provided in the *Kahnawà:ke Membership Law*, or its successor, provided the person’s permission has not been suspended or revoked, and not including non-Indigenous persons married to a Member prior to or after May 22, 1981;

**“Objection”** means the action taken by a Member to formally protest an Applicant’s request for a Common Land Allotment based on the eligibility criteria and limitations to eligibility set out in this Policy;

**“Objector”** means a Member who has made an Objection or protest to an Applicant’s request for a Common Land Allotment;

**“Permanent Residence”** means a dwelling used by a Member as their primary residence, which is occupied by a Member and, where applicable, his/her family;

**“Policy”** means this *Land Allotment Policy*;

**“Preliminary Approval”** means a formal decision by the Administrator confirming that the Applicant meets the requisite eligibility criteria;

**“Proxy”** means a person who is designated by the Applicant to represent the Applicant at a community meeting for the purposes of making the Communal Request for an Allotment;

**“Quit Claim”** means to relinquish renounce or release any claim to real property;

**“Release And Waiver Form”** means a form that is signed by the Applicant(s) that releases the Kahnawà:ke Tsi Ietsenhaientáhhkwa of any liability to any claim, loss, action or damages related, directly or indirectly, to the actual and post construction period of a House;

**“Request for Decision”** means a request brought to the Land Management Committee, or eventually Kahnawà:kehró:non Ratitsénhaienhs, to render a decision concerning an Exceptional Circumstance or other issue;

**“Request for Review”** means an appeal of the decision to the Lands Management Committee by an Applicant whose Application is denied by the Administrator;

**“Separation”** means the dissolution of a union between two (2) people. A separation agreement, negotiated, agreed to and signed by both parties, will be accepted in the cases of the dissolution of a traditional Marriage or a common-law union that may be accompanied by a Quit Claim. In all other cases, a separation judgment issued by a court of competent jurisdiction will be required;

**“Solemn Affirmation”** means a written statement of facts signed and declared to be true before a person with authority to commission or verify such statements, such as a Commissioner of Oaths;

**“Spouse”** means a person who is married or in a Common-Law Relationship;



**“Suitable Land Parcel”** means a piece of land or lot in Kahnawà:ke which is conducive for the construction of a Permanent Residence and meets the following criteria: physical accessibility, soil qualified for residential use, and size/shape/topography that accommodates a House.

## **2. PRINCIPLES**

The Kanien’kehá:ka of Kahnawà:ke, as part of the Iroquois Confederacy, adhere to the following principles in which this Policy has its foundation:

- 2.1.** The Kanien’kehá:ka of Kahnawà:ke are and have always been a sovereign people with the right to govern their own affairs and exercise their jurisdiction within the Mohawk Territory of Kahnawà:ke concerning surface, sub-surface, airway and waterway rights, to the exclusion of all others;
- 2.2.** The land in the Mohawk Territory of Kahnawà:ke is for the exclusive use and benefit of its Members and, where applicable, certain Non-Member Residents; and
- 2.3.** The common land in the Mohawk Territory of Kahnawà:ke belongs to the Kanien’kehá:ka of Kahnawà:ke as a collective.

## **3. PURPOSE**

The purpose of this Policy is to

- 3.1.** set out the authority of the Administrator and the process for applying for a Common Land Allotment;
- 3.2.** facilitate the Application process for a Common Land Allotment;
- 3.3.** set out the Eligibility Criteria and Limitations to Eligibility of Applicants;
- 3.4.** clarify what constitutes adequate proof of eligibility;
- 3.5.** set out the process for the approval and selection of a lot;
- 3.6.** establish the discretion of the Land Management Committee to set aside the Policy in certain Exceptional Circumstances; and
- 3.7.** establish a review process for Applicants.



#### **4. APPLICABILITY & SCOPE**

This Policy applies to all Applications for a Common Land Allotment in the Mohawk Territory of Kahnawà:ke.

#### **5. LAND ALLOTMENT ADMINISTRATOR**

**5.1.** Kahnawà:kehró:non Ratitsénhaienhs delegate the following responsibilities and authority to the Administrator:

- 5.1.1.** The Administrator serves an advisory function by providing information to Applicants requesting a Common Land Allotment;
- 5.1.2.** The Administrator determines an Applicant's eligibility under the Policy and either approves or denies an Application for a Common Land Allotment on that basis;
- 5.1.3.** The Administrator must adhere to the rules in this Policy and must seek approval from the Land Management Committee and/or Kahnawà:kehró:non Ratitsénhaienhs to suspend or circumvent any of the stated rules;
- 5.1.4.** The Administrator is responsible to administer this Policy;
- 5.1.5.** The Administrator will exercise discretion to identify if an Application requires review and decision by the Land Management Committee;
- 5.1.6.** The Administrator may grant a time extension where permitted;
- 5.1.7.** The Administrator, where necessary, shall rely upon the expertise of other staff;
- 5.1.8.** The Administrator, where necessary may develop any additional forms not specified herein as deemed necessary for the proper management and administration of this Policy; and
- 5.1.9.** Any other powers, rights, and responsibilities as specifically set out in this Policy.

**5.2.** The Administrator serves the following administrative functions:

- 5.2.1.** Provide and review an Application package with a Member;



- 5.2.2. Receive and review all Applications for a Common Land Allotment;
- 5.2.3. Create and manage Applicant files;
- 5.2.4. Verify information contained in an Application;
- 5.2.5. Ensure required communication and correspondence are completed;
- 5.2.6. Identify the need for additional Common Land Allotment locations and report this to the appropriate authority;
- 5.2.7. Determine potential amendments to this Policy in order to better serve community Members;
- 5.2.8. Maintain and regularly update a Land Allotment Database with the inscription of the names of all Members who have been issued a Common Land Allotment for the purposes of constructing or placing a House; and
- 5.2.9. Prepare packages for Kahnawa'kehró:non Ratitsénhaienhs with respect to the adoption of a Mohawk Council Executive Directive when the Common Land Allotment is ready to be registered in the Member's name.

5.3. In the event that the Administrator is deemed to be in a conflict of interest as defined in the Mohawk Council of Kahnawà:ke Administration Manual-Personnel Policy, he/she must recuse himself/herself from the file and the General Manager of Land Management will temporarily assume the functions of the Administrator, unless he/she is also in a conflict of interest at which point the Director of Lands will appoint an acting Administrator.

## **6. APPLICATION FOR LAND ALLOTMENT & PRELIMINARY APPROVAL**

### **6.1. Eligibility Criteria**

Subject to the limitations to eligibility in section 6.2, an Applicant qualifies for a Common Land Allotment if he/she meets all the following eligibility criteria:

- 6.1.1. The Applicant is eighteen (18) years or older;
- 6.1.2. The Applicant is a Member;
- 6.1.3. The Applicant does not possess a Suitable Land Parcel;



- 6.1.4. The Applicant has resided in the Mohawk Territory of Kahnawà:ke for a period of one (1) year or more prior to the filing of the Application; however, the Administrator has the discretion to set aside this requirement where the Applicant(s) does not have continuous residency due to housing shortages or where the Applicant(s) previously resided in Kahnawà:ke, but moved for schooling or to pursue employment opportunities;
- 6.1.5. The Applicant's sole purpose for the Common Land Allotment is for the construction or placement of his/her Permanent Residence; and
- 6.1.6. The Applicant solemnly affirms that all the facts in his/her Application are true.

## 6.2. Limitations to Eligibility

Notwithstanding whether the Applicant meets the eligibility criteria in section 6.1, the Applicant will be deemed ineligible for a Common Land Allotment if any of the following situations apply:

- 6.2.1. The Applicant has a Spouse that already possesses a Common Land Allotment or a Suitable Land Parcel, unless the Applicant provides proof of a Separation agreement or Divorce judgment wherein the Applicant is not the recipient of a Common Land Allotment or other Suitable Land Parcel;
- 6.2.2. The Applicant's Spouse has initiated an Application for a separate Common Land Allotment at the same time (see section 6.3);
- 6.2.3. The Applicant previously successfully applied for a Common Land Allotment, unless all rights to a previous Common Land Allotment were relinquished via a Quit Claim as a result of Divorce or Separation; however, the Applicant may only rely on this exception once;
- 6.2.4. The Applicant possesses or previously possessed a Suitable Land Parcel in Kahnawà:ke, unless the Applicant possessed land as a result of a land transfer while less than eighteen (18) years of age and subsequently transferred the land to another individual;
- 6.2.5. Where a Suitable Land Parcel would be or would have been registered in the Applicant's name were it not temporarily transferred to the Mohawks of Kahnawà:ke, the Kahnawà:ke Tsi Ietsenhaientákhkwa, another Member, or the board of trustees of a financial institution as security pending full payment of a loan or mortgage;



- 6.2.6. Where an Applicant's parents possess more land than required for their own residential purposes, unless the Applicant can demonstrate that their parent(s) refused to transfer land to them. For the purposes of this exception, the parents will be deemed to possess more land than required for their own residential purposes where they possess an unused Suitable Land Parcel;
- 6.2.7. The Applicant is married to or is in a Common-Law Relationship with a non-Indigenous person prior to or after May 22, 1981, regardless of whether the spouse is considered a Non-Member Resident under the *Kahnawà:ke Membership Law*, or its successor; or
- 6.2.8. The Applicant intends to use the Common Land Allotment for a profit-making venture.

### 6.3. Co-Applicants

- 6.3.1. Where the Applicant has a Spouse, the Application must be filed together as Co-Applicants.
- 6.3.2. If the Applicant's Spouse is a person with Indigenous lineage, the person must first apply to be a Member or Non-Member Resident pursuant to the provisions of the *Kahnawà:ke Membership Law*, or its successor, so that the Application can be completed as a couple.
- 6.3.3. Both Applicants must be individually eligible for a Common Land Allotment failing which one (1) Co-Applicant's failure to meet the eligibility criteria will result in a refusal of the Application which is applicable to both Applicants, unless the Co-Applicant is a registered Non-Member Resident.
- 6.3.4. In the event that the Co-Applicant is a Non-Member Resident, the Administrator or any other employee shall not register the Common Land Allotment in his/her name, regardless of whether his/her Member Spouse transfers or bequeaths the land to the Non-Member Resident.

### 6.4. Proof of Eligibility

- 6.4.1. The onus is on the Applicant to demonstrate that he/she meets all the relevant eligibility criteria with supporting documents.
- 6.4.2. Possession of a Suitable Land Parcel is determined, amongst other things, by verifying whether the Applicant has or had land registered in his/her name and by verifying whether parcel of land meets the definition of a Suitable Land Parcel.



- 6.4.3.** The following are deemed acceptable supporting documents with a view to establishing continuous residency in Kahnawà:ke:
- 6.4.3.1.** An invoice from an energy, telephone service, or cable supplier with a date three (3) months or less from the Application date;
  - 6.4.3.2.** A photocopy of a residential lease in its entirety;
  - 6.4.3.3.** A solemn affirmation by the landlord of the dwelling in which they currently reside attesting that the Applicant currently lives in Kahnawà:ke indicating the duration of the period living at the dwelling located in Kahnawà:ke; or
  - 6.4.3.4.** Any other supporting documentation that the Administrator may specifically require to make an informed decision based on the Applicant's situation if the previously listed documents are unavailable or insufficient.
- 6.4.4.** If the Applicant lived outside of Kahnawà:ke for purposes of employment or schooling, the Administrator shall accept the following supporting documents as proof:
- 6.4.4.1.** Transcripts or other proof of enrollment from a recognized college, university, or educational institution;
  - 6.4.4.2.** Pay stubs from an employer; or
  - 6.4.4.3.** Any other supporting documentation that the Administrator may specifically request or accept from the Applicant(s) if the previously listed documents are unavailable or insufficient.
- 6.4.5.** If the parents of the Applicant possess more land than they require for residential purposes (i.e. another unused Suitable Land Parcel), the Applicant must provide a letter explaining his/her attempts to obtain land from his/her parents as well as a letter from his/her parents, where possible, explaining why they are unwilling to transfer the Suitable Land Parcel in their possession to their child.
- 6.4.6.** The Administrator may request any other supporting documentation required to make an informed decision based on the Applicant's particular situation to ensure the Applicant meets the eligibility criteria and is not affected by one (1) of the limitations to eligibility.



## 6.5. Preliminary Approval or Refusal of an Application

- 6.5.1. Preliminary Approval for a Common Land Allotment will be issued by the Administrator only once he/she has confirmed that the Applicant(s) meets the criteria for eligibility.
- 6.5.2. Every Applicant must complete an Application and follow the procedures for the Preliminary Approval of a Common Land Allotment prior to selecting a Common Land Allotment for the construction or placement of a House.
- 6.5.3. The Application package is obtained from the Administrator who will review the contents with the Applicant and answer any questions.
- 6.5.4. The Applicant must complete a *Common Land Allotment Application* (Appendix A). The *Common Land Allotment Application* (Appendix A) is to be submitted to the attention of the Administrator at the Ohontsa'shòn:'a Ronterihwatsteristha.
- 6.5.5. If a person with Indigenous lineage is applying with a Member as a Co-Applicant for a Common Land Allotment, the person must provide proof of membership from his/her respective Territory to the Administrator as part of the Application information. The Kahnawà:ke Tsi Ietsenhaientáhhkwa's Membership Department will verify membership eligibility based on the documents provided.
- 6.5.6. Once the completed Application is returned to the Administrator, the Applicant(s) is required to sign the *Acknowledgement of Land Allotment Policy* (Appendix B) and submit it to the Administrator.
- 6.5.7. The completed *Common Land Allotment Application* (Appendix A) must be reviewed by the Administrator who will verify the membership status of the Applicant(s) (including Non-Member residency status, where required), as well as previous or present land ownership and marital status to determine the Applicant's eligibility.
- 6.5.8. In the event that the Applicant is deemed eligible under this Policy, the Administrator will notify, in writing, the Applicant of their Preliminary Approval of his/her Application within ten (10) calendar days of the decision and advise him/her of the next steps, including the Communal Posting.
- 6.5.9. In the event of a refusal, the Administrator will notify, in writing, the Applicant(s) of a refusal of their Application for a Common Land Allotment within ten (10) calendar days of the date of the decision and will provide the following information in the notification:



- 6.5.9.1. Explanation stating the reasons for the refusal;
  - 6.5.9.2. Opportunity to present observations, rectify any errors in the information on file and provide additional supporting documentation; and
  - 6.5.9.3. A statement that the Applicant may make a Request for Review to the Lands Management Committee to review the decision of the Administrator.
- 6.5.10. Any change in the status of a relationship or any other information which could affect the assessment of an Application following Preliminary Approval, but prior to the Applicant's selection of a lot, will entail the complete re-evaluation of the Applicant's file in order to ensure continued eligibility for a Common Land Allotment; if deemed ineligible at this stage, the Preliminary Approval will be rescinded by the Administrator.
- 6.5.11. An Applicant must inform the Administrator should he/she obtain a Suitable Land Parcel at any time prior to construction of a House on a Common Land Allotment at which point the Applicant will no longer be eligible to obtain a Common Land Allotment.
- 6.5.12. The Preliminary Approval may be revoked by the Administrator at any time prior to the selection of the Common Land Allotment for any of the following reasons:
- 6.5.12.1. The Applicant or Co-Applicant has knowingly misled the Administrator or withheld pertinent information, which would otherwise affect his/her eligibility to receive a Common Land Allotment;
  - 6.5.12.2. A change in the circumstances or status of the Applicant or Co-Applicant, which would affect his/her eligibility to receive a Common Land Allotment.

## 7. EXCEPTIONAL CIRCUMSTANCES

- 7.1. The Administrator and the General Manager of Land Management may collectively decide whether the strict application of this Policy has led to an unintended Exceptional Circumstance, which results in the unfair rejection or inadvertent approval of an Application.



- 7.2. If the Administrator and the General Manager of Land Management determine an Exceptional Circumstance exists, they must consult with the Land Management Committee and make a Request for Decision to determine whether the Exceptional Circumstance justifies the suspension of a specific section or procedural step in this Policy.
- 7.3. Where necessary, the Land Management Committee may request the presence of the Applicant to provide an additional explanation.
- 7.4. The Land Management Committee is authorized to render a decision regarding an Exceptional Circumstance only where the strict applicability of this Policy has led to the unfair rejection or inadvertent approval of an Application, except in the following circumstances which must instead be referred to Chief & Council for a decision:
  - 7.4.1. Exceptional Circumstances pertaining to an Applicant's or Co-Applicant's membership;
  - 7.4.2. Exceptional Circumstances where the Land Management Committee is unable to come to a consensus (meaning the consensus of the voting members);
  - 7.4.3. Exceptional Circumstances which involve a contentious or political issue in the community;
  - 7.4.4. Where the action required to rectify the Exceptional Circumstance is not considered in this section of the Policy.
- 7.5. In the event of an Exceptional Circumstance which is within the purview of its authority, the Land Management Committee is authorized to render one (1) of the following decisions:
  - 7.5.1. A one-time suspension of the applicability of one (1) or more eligibility criterion or limitations to eligibility in order to rectify the unfair or inadvertent denial or approval of an Application;
  - 7.5.2. Release the Applicant from the obligation to provide certain proof of eligibility where the Applicant has demonstrated that it is impossible for him/her to provide the required proof; or
  - 7.5.3. Apply a liberal interpretation to this Policy in order to expand the application of the eligibility criterion and limitations to eligibility to rectify the unfair or inadvertent denial or approval of an Application.



- 7.6. The Administrator will notify the Applicant(s) in writing within ten (10) calendar days of the decision by the Land Management Committee or, where necessary, Kahnawa'kehró:non Ratitsénhaienhs.
- 7.7. If the Land Management Committee or, where necessary, Kahnawa'kehró:non Ratitsénhaienhs approves the request for the suspension of a specific section or procedural step in this Policy, the Applicant will proceed with the Common Land Allotment process.
- 7.8. If the request for the suspension of a specific section or procedural step in this Policy is denied by the Land Management Committee, or, where necessary, Kahnawa'kehró:non Ratitsénhaienhs, the Applicant will not be able to proceed with the Common Land Allotment process.

## **8. COMMUNAL POSTING**

- 8.1. Following the Preliminary Approval of an Application for a Common Land Allotment, the Administrator will publish a Communal Posting of the Applicant's request for a Common Land Allotment.
- 8.2. The Kahnawà:ke community will be notified by Communal Posting of those Applicants who have received Preliminary Approval of an Application for a Common Land Allotment via a publication of the following information:
  - 8.2.1. the name(s) of the Applicant(s);
  - 8.2.2. the names of the Applicants' parents, including maiden names;
  - 8.2.3. identify the Co-Applicant's Nation and status where he/she is not Kanien'kehá:ka of Kahnawà:ke; and
  - 8.2.4. the marital status of the Applicant(s).
- 8.3. The Communal Posting will be publicly-posted for one (1) month prior to the community meeting scheduled for a Communal Request for an Allotment and for one (1) month following the Applicant's Communal Request for a Common Land Allotment at the community meeting.

## **9. COMMUNAL REQUEST AT A COMMUNITY MEETING**

- 9.1. Following the Preliminary Approval and the Communal Posting, an Applicant is required to make a Communal Request for an Allotment at a scheduled community meeting.



- 9.2. The Applicant's Communal Request for an Allotment must be made verbally at a community meeting and in person.
- 9.3. If an Application has been made with a Co-Applicant, both Applicants must be present to make their Communal Request for an Allotment.
- 9.4. The Administrator will notify the Applicant in writing at least ten (10) calendar days prior to the community meeting of the time and date of the meeting in which they are to make their Communal Request for an Allotment.
- 9.5. The Applicant must respond to any questions from Members and/or by the elected representatives of the Kahnawà:ke Tsi Ietsenhaientákhkwa attending the community meeting.
- 9.6. When an Applicant(s) is unable to attend the community meeting due to unforeseen circumstances, the Applicant can be represented by a Proxy for the Communal Request for an Allotment at a scheduled community meeting if:
  - 9.6.1. The Applicant(s) informs the Administrator of the situation that calls for use of a Proxy; and
  - 9.6.2. The Administrator provides prior written approval to the Applicant to use a Proxy who will also inform the Portfolio Chief of the use of a Proxy at the community meeting.
- 9.7. If an Applicant is unable to attend the community meeting and fails to mandate a Proxy, he/she must make his/her Communal Request for an Allotment at the next community meeting, but is bound to notify the Administrator if unable to attend the scheduled community meeting.
- 9.8. If the Applicant fails to attend two (2) consecutive community meetings to make a Communal Request for an Allotment, the Administrator will then send a written notification to the Applicant(s) that he/she may re-apply for a Common Land Allotment after six (6) months from the date of the initial notice of the communal meeting in which he/she was to make the request.

## **10. LAND ALLOTMENT OBJECTION**

- 10.1. Objections can be made by a Member to an Applicant's request for a Common Land Allotment.
- 10.2. Only written Objections will be permitted and considered.



- 10.3. To be valid, an Objection must be related to the eligibility of an Applicant per this Policy.
- 10.4. The Administrator will investigate all Objections to ensure they are based on the eligibility criteria or the limitations to eligibility.
- 10.5. If the Administrator determines that the Objection is valid, he/she may temporarily or permanently rescind the Preliminary Approval based on the information received.
- 10.6. If no Objections are received, the Administrator will inform the Applicant after thirty (30) days following the Communal Request for an Allotment that he/she has been Approved for Selection. In other words, the Applicant is permitted to select a Common Land Allotment when he/she is prepared to construct or place a House, subject to the other provisions in this Policy.
- 10.7. An Objection may be submitted to the Administrator for consideration up until thirty (30) days following the public Communal Request for an Allotment at the community meeting.
- 10.8. The name of the Objector will remain confidential.
- 10.9. Written and signed Objections must include the Objector's name, address, telephone or cellular contact number and the Objector's band number.
- 10.10. The Objector must be a Member in order for the Administrator to review the Objection.
- 10.11. Following an Objection at a community meeting, the Portfolio Chief present will obtain the Objector's name and contact information so the Administrator can contact the Objector to arrange completion of an *Objection Form to a Common Land Allotment* (Appendix C).
- 10.12. It is the responsibility of the Portfolio Chief to inform Members of the outcome of the Objection at the next community meeting following the written Objection.
- 10.13. The Applicant(s) will be notified in writing within five (5) calendar days by registered mail from receipt of a written Objection. The notification will include the following information:
  - 10.13.1. the nature of the Objection received,
  - 10.13.2. that the Application will be placed on hold for review and Investigation, and
  - 10.13.3. that the Applicant has ten (10) days from the date of the notification to respond in writing to the Administrator regarding the nature of the Objection.



- 10.14.** An Objection will be investigated by the Administrator within twenty (20) calendar days from receipt of the Objector's signed Objection form or letter. The Administrator may request additional information from the Applicant(s) as necessary to complete the Investigation.
- 10.15.** The Objector and Applicant will be informed in writing by the Administrator of the outcome of the Investigation within the twenty (20) calendar days, unless the Applicant requires more time to provide the necessary proof to contest the Objection.
- 10.16.** If an Objection is determined to be invalid or unsubstantiated by the Administrator, the Applicant will be Approved for Selection following the normal timelines and procedures.
- 10.17.** If an Objection is determined to be valid by the Administrator and the Applicant fails to provide the necessary proof contesting the Objection, the Applicant may be deemed ineligible for a Common Land Allotment.
- 10.18.** If the basis for the ineligibility changes, the Applicant may re-apply for a Common Land Allotment.

## **11. COMMON LAND ALLOTMENT SELECTION REQUIREMENTS**

### **11.1. Selection**

- 11.1.1.** Once the Applicant is Approved for Selection, the Applicant may proceed with the selection of a Common Land Allotment to construct or place a House; however, in order to proceed with the selection of a Common Land Allotment, the Applicant must:
- 11.1.1.1.** Contact the Administrator to confirm his/her intention to select a lot;
  - 11.1.1.2.** Provide written proof to the Administrator that he/she is prepared to build/buy a House (see section 11.2);
  - 11.1.1.3.** Sign a *Release and Waiver Form* (Appendix D);
  - 11.1.1.4.** Attend the site inspection performed by the Land Management Officer; and
  - 11.1.1.5.** Sign the form provided by the Land Management Officer following the inspection of the lot that acknowledges the lot boundary lines,



property pins, and location of infrastructure and utility poles. The Land Management Officer will provide the signed form to the Administrator.

- 11.1.2. The Common Land Allotment selected will be documented in the Land Allotment Database under the name(s) of the person(s) listed on the Application.
- 11.1.3. Only a Member(s) is entitled to have land registered in his/her name.
- 11.1.4. Upon selecting a Common Land Allotment, the Applicant must sign the *Confirmation of Land Allotment* (Appendix E) and the *Acknowledgment of Boundaries and Public Infrastructure* (Appendix F).
- 11.1.5. An Applicant may only select a Common Land Allotment in areas prepared and approved for development by the Kahnawà:ke Tsi Ietsenhaientákhkwa, which shall be lots specifically designated for the construction or placement of a House.

## 11.2. Proof

- 11.2.1. The Administrator will accept the following documentation as proof that the Applicant is prepared to build/buy his/her House:
  - 11.2.1.1.a Kahnawà:ke Tsi Ietsenhaientákhkwa housing loan approval letter; or
  - 11.2.1.2.a mortgage/loan confirmation from a bank.
- 11.2.2. If an Applicant has Cash on Hand to build/relocate a House, which must be displaced, the Applicant shall provide the following three (3) documents to the Administrator as proof:
  - 11.2.2.1. a signed *Release and Waiver Form* (Appendix D);
  - 11.2.2.2. a signed *Solemn Affirmation for Cash on Hand* (Appendix G) to confirm readiness to build or relocate a House as a Permanent Residence; however, the Administrator may rely on the advice of the Kahnawà:ke Tsi Ietsenhaientákhkwa Housing Inspector to determine whether the Applicant has sufficient Cash on Hand to cover the cost of construction, repair, and/or displacement of the House; and
  - 11.2.2.3. proof of payment of the Inspection Fee, where applicable, that is paid at the Kahnawà:ke Tsi Ietsenhaientákhkwa main office.



### 11.3. Inspections

- 11.3.1.** If the Applicant is obtaining or purchasing a previously owned mobile home/trailer or House to be relocated, he/she must obtain an inspection report by a Kahnawà:ke Tsi Ietsenhaientáhhkwa Housing Inspector to determine the habitability of the House.
- 11.3.2.** If the Applicant is placing or constructing a House using Cash on Hand, the construction of the House must be inspected throughout the various construction phases by a Kahnawà:ke Tsi Ietsenhaientáhhkwa Housing Inspector to ensure that the construction respects the minimum standards set out in the *Construction Standards and Other Regulatory Requirements* (Appendix H), which may be subject to change from time to time. The inspection process also includes the verification of the preliminary housing plan and contract review and, if applicable, the submission of material and sub-contractor quotations.
- 11.3.3.** Any cost associated with an inspection, such as the Inspection Fee, will be borne by the Applicant, where applicable.
- 11.3.4.** There shall be no Inspection Fees for the inspection of a mobile home, trailer, or existing House save for the following expenses:
- 11.3.4.1.** There shall be no costs associated with inspection if the mobile home, trailer, or existing housing construction is already located within the Territory; however, if the mobile home, trailer, or existing housing construction is located outside of the Territory, the costs associated with the inspection will include mileage, gas, meals, and any other related expense.

### 11.4. Timeframes for Selection and Construction

- 11.4.1.** If the Applicant does not select his/her lot within twelve (12) months from the date of the confirmation that he/she is Approved for Selection, the Administrator will confirm that the Applicant is still eligible for a Common Land Allotment under this Policy before the selection is made by having the Applicant(s) complete a *Common Land Allotment Application Update Form* (Appendix I).
- 11.4.2.** An Applicant who has selected a Common Land Allotment has twelve (12) months to construct or place a House on the lot and to occupy the House. Failure to carry this out may result in revocation of the Common Land Allotment in conformity with this Policy.



- 11.4.3.** If an unfinished structure is on the Common Land Allotment after the twelve (12) month timeframe, the Administrator will remind the Applicant that they must request an extension, in writing, to the twelve (12) month construction timeframe. The Administrator may grant an extension on a case-by-case basis. The Administrator will inform the Applicant, in writing, of the decision for an extension.
- 11.4.4.** If an extension is not granted, the Common Land Allotment may be revoked and the Applicant is responsible to remove any existing structure(s) at his/her own cost, unless the Kahnawà:ke Tsi Ietsenhaientáhhkwa agrees to retain the structure and compensate the Applicant for the incomplete structure or increase in value to the land, where applicable.
- 11.4.5.** If the incomplete structure is deemed uninhabitable, the Applicant has six (6) months from the reception of such notice to remove the existing structure. The Administrator may extend the six (6) month timeframe during winter months at his/her discretion.
- 11.4.6.** With the approval of the Administrator, another Applicant that is Approved for Selection may purchase the unfinished structure directly from the previous Applicant.
- 11.4.7.** The costs associated with the removal of an incomplete structure on a Common Land Allotment shall be borne entirely by the Applicant who has failed to complete the structure within the necessary timeframe. If the Applicant does not remove the incomplete structure of the revoked Common Land Allotment within the established timeframe, the Kahnawà:ke Tsi Ietsenhaientáhhkwa may remove the incomplete structure and invoice the Applicant for all costs and failing reimbursement, the Kahnawà:ke Tsi Ietsenhaientáhhkwa may institute legal proceedings to recuperate the unpaid amounts.

### **11.5. Boundaries**

The Applicant is responsible to ensure that the his/her House is situated at a minimum distance of twenty (20) feet (6.096 meters) from any other House and a minimum distance of ten (10) feet (3.048 meters) from the property boundary in accordance with the *Acknowledgment of Boundaries and Public Infrastructure* (Appendix F).

## **12. REVOKING A COMMON LAND ALLOTMENT**

- 12.1.** The Administrator, with the prior authorization of the Land Management Committee, may revoke a Common Land Allotment if:



- 12.1.1. The Common Land Allotment has been selected and there is no House on the lot to occupy within twelve (12) months of receipt of the *Confirmation of Land Allotment* (Appendix E);
  - 12.1.2. The Common Land Allotment has been selected and there is an incomplete House on the lot within twelve (12) months (or later if an extension has been granted) of receipt of the *Confirmation of Land Allotment* (Appendix E);
  - 12.1.3. Any time before construction has begun, the Administrator learns that the Applicant provided false information on his/her Application which affects the eligibility of the Applicant;
  - 12.1.4. Any time before construction has begun, the Administrator learns that the Applicant's or Co-Applicant's benefits and entitlements have been suspended or revoked under the *Kahnawà:ke Membership Law*, or its successor; or
  - 12.1.5. Any time before construction has begun, the Administrator learns that the Applicant obtained a Suitable Land Parcel.
- 12.2. If the Common Land Allotment is revoked, the Applicant may be prohibited from reapplying for a Common Land Allotment at the discretion of the Land Management Committee, unless the Applicant can demonstrate unforeseeable personal circumstances that prevented the construction, placement or completion of a House. In such circumstances, an Applicant is eligible to apply for a second Common Land Allotment six (6) months from the date of revocation. This exception may be used only once.
- 12.2.1. Where the Applicant's eligibility is maintained due to unforeseeable circumstances, the Application file will be updated using the *Common Land Allotment Application Update Form* (Appendix I) to confirm continued eligibility allowing the Applicant to select another Common Land Allotment once personal circumstance allow for House construction or placement.
- 12.3. Upon revocation, the Administrator will inform the Applicant whose Common Land Allotment was revoked, in writing, that the Common Land Allotment will no longer be listed in that Applicant's name in the Land Allotment Database.
- 12.4. The Administrator will make the revoked Common Land Allotment available for selection by another approved Applicant.



### 13. OFFICIAL REGISTRATION OF A COMMON LAND ALLOTMENT

- 13.1. If title of the Applicant's land is withheld by the Kanien'kehá:ka of Kahnawà:ke as security in exchange for a Kahnawà:ke Tsi Ietsenhaientákhkwa housing loan, the title for the lot will be transferred to the Applicant only once the Applicant has fully reimbursed their mortgage as confirmed by the Kahnawà:ke Tsi Ietsenhaientákhkwa Housing Department at which time, a Mohawk Council Executive Directive will be adopted officially allotting the lot to the Applicant.
- 13.2. If the Applicant requires the immediate allotment of the land in order to transfer title to the board of trustees of a financial institution as security (or mortgage holder), the Kahnawà:ke Tsi Ietsenhaientákhkwa will adopt a Mohawk Council Executive Directive officially allotting the land to the Applicant for this purpose specifically. The mortgage holder is responsible to transfer title of land allotment back to the Applicant once the mortgage is paid in full.
- 13.3. If an Applicant constructs or places his/her House without a mortgage loan, a Mohawk Council Executive Directive will be adopted officially allotting the Common Land Allotment by the Administrator, provided that the Kahnawà:ke Tsi Ietsenhaientákhkwa Housing Inspector has deemed the House habitable and the Applicant can demonstrate that he/she has occupied the House within twelve (12) months of receipt of the *Confirmation of Land Allotment* (Appendix E).

### 14. DELIVERY DATES

- 14.1. In computing any time limit fixed by this Policy,
  - 14.1.1. the day which marks the start of the time limit is not counted, but the due date is counted;
  - 14.1.2. the clock is paused on days where the Kahnawà:ke Tsi Ietsenhaientákhkwa offices are officially closed and shall only start running again on the next business day;
  - 14.1.3. where a due date happens to fall on a weekend or on a day where the Kahnawà:ke Tsi Ietsenhaientákhkwa offices are officially closed, the due date shall be on the following business day.
- 14.2. The Administrator is bound to respect the deadlines imposed in this Policy to the extent possible; however, reasonable delays may be justified depending on the circumstances.



## 15. REVIEW PROCESS

- 15.1. An Applicant(s) who disagrees with a decision pertaining to the allotment of land shall discuss it directly with the Administrator for purposes of resolving the issue.
- 15.2. The Applicant will be provided with the opportunity to present his/her observations and explanations and, where necessary, to produce supporting documents to rectify any inconsistencies or errors in the file.
- 15.3. The Administrator will provide an explanation and reasons to the Applicant outlining his/her decision within ten (10) days.
- 15.4. An Applicant may submit a Request for Review within thirty (30) days to the Lands Management Committee of any unfavourable decision or omission made by the Administrator or any other decision rendered by an employee under this Policy.
- 15.5. The Applicant must submit his/her Request for Review in the form of a letter addressed to the Land Management Committee, including the following information:
  - 15.5.1. The date of the decision being disputed;
  - 15.5.2. A summary of the decision rendered by the Administrator that is in dispute;
  - 15.5.3. An explanation as to why the decision rendered by the Administrator is incorrect or should be overturned;
  - 15.5.4. Conclusions being sought by the Applicant;
  - 15.5.5. Copies of relevant supporting documents; and
  - 15.5.6. Any other relevant information.
- 15.6. The review of the decision by the Land Management Committee will be conducted in conformity with the procedures set out in the *Land Management Committee By-laws*.
- 15.7. If the Applicant disagrees with the decision of the Land Management Committee, he/she may appeal the Land Management Committee's decision within thirty (30) days of reception of the written decision to communal arbitration per the *Kahnawà:ke Communal Arbitration Procedure*, until such time as the Kahnawà:ke Justice System is established at which point the Kahnawà:ke Administrative Tribunal shall have the sole authority to hear all such appeals.



- 15.8. The *Kahnawà:ke Communal Arbitration Procedure* is available from the Court of Kahnawà:ke or upon request from the Administrator.
- 15.9. The Applicant appealing a decision made by the Land Management Committee must, in writing, notify the Administrator of the intent to appeal the decision.
- 15.10. Pending a decision by the Land Management Committee or other appeal body, it may be necessary to suspend the continuation of the Application process.

## 16. AMENDMENTS

- 16.1. This Policy will be reviewed every five (5) years to ensure that this Policy continues to reflect effectively the needs of the community and the organization as it relates to Common Land Allotments.
- 16.2. The Administrator will collaborate with the General Manager of Land Management to conduct the mandatory review.
- 16.3. If an amendment is required prior to the amendment review period, the Administrator will submit a request to the Director of Lands to recommend an amendment, which must then be referred to the Land Management Committee for their approval. Amendments to this Policy must be approved via a Mohawk Council Executive Directive.
- 16.4. An appendix under this Policy may be modified as necessary by the Administrator with the approval from the Land Management Committee.

## 17. TRANSITIONAL PROVISIONS

- 17.1. Upon formal approval of this Policy by Kahnawa'kehró:non Ratitsénhaienhs, this Policy applies immediately to all new Applications and ongoing Applications under the former Policy.
- 17.2. All ongoing Application under the formal Policy will proceed under this Policy at the equivalent stage under the former Policy.