

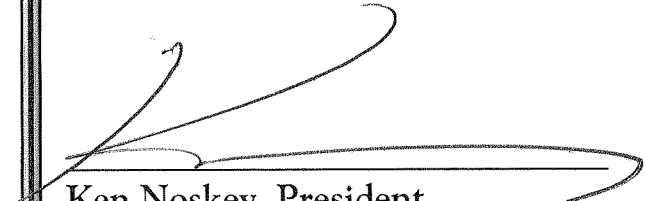
Metis Settlements General Council

Land Policy

Policy GC-P9201

In accordance with section 8.4 (2) of the Metis Settlements General Council Rules and Procedures, by our signatures we confirm the following is the official copy of the *Land Policy* which was adopted by the Metis Settlements General Council on the 26th day of March, 1992 and came into effect on the 28th day of June, 1992.

Signed this 15th day of May, 2000.



Ken Noskey, President
Metis Settlements General Council



Eloyd Thompson, Secretary
Metis Settlements General Council

METIS SETTLEMENTS GENERAL COUNCIL

LAND POLICY

Policy GC-9201
Adopted by the
Metis Settlements General Council
on March 26, 1992

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METIS SETTLEMENTS GENERAL COUNCIL

LAND POLICY

PART 1 - CONTEXT

1.1 Background

Her Majesty has issued letters patent to the Metis Settlements General Council for the fee simple estate in Metis settlement land. Under the *Metis Settlements Act*, the only rights and interests in this land are those made possible by statute, General Council Policy, or settlement by-law.¹ The Act also provides that the General Council can, after consultation with the Minister, make Policies with respect to a number of land related matters, including the creation, transfer and termination of rights in land in the settlement areas.²

This Policy is made by the Metis Settlements General Council to provide a framework for the ownership and management of interests in land in the settlement areas.

1.2 Purpose

The purpose of this Policy is:

- (a) to provide a basic system of interests in Metis settlement land;
- (b) to establish principles governing how those interests can be created and passed from one person to another³; and
- (c) to create a land management system that recognizes and balances the individual rights of the landholder and the collective rights of the settlement as a Metis community.

¹ This provision is found in section 99 of the *Metis Settlements Act*.

² Section 222 of the *Metis Settlements Act*.

³ In this Policy, "person" means a legal entity such as an individual, the settlement or any other incorporated body.

1.3 Definitions

In this Policy,

- (a) **Act** means the *Metis Settlements Act*;
- (b) **improvements** means changes people have intentionally made to the land in order to increase its usefulness, and includes all structures permanently attached to the land⁴;
- (c) **land** includes improvements;
- (d) **Metis settlement land** means land held in fee simple by the General Council under letters patent issued by the Crown;⁵
- (e) **parcel** means a unit of land for which there is a Metis title register in the Registry;
- (f) **Registrar** means the Registrar of the Metis Settlements Land Registry;
- (g) **registered** means entered in a register of the Registry in order to complete the process of registration;
- (h) **Registry** means the land registry established under the *Metis Settlements Land Registry Regulation*;
- (i) **road** means a road allowance, or a road shown on a plan filed with the Registrar;
- (j) **settlement held land** means land for which the settlement holds the Metis title;
- (k) **transfer** means
 - (i) the process, and document, by which a person creates or assigns an interest in land, and
 - (ii) the process by which the law creates or passes an interest,

⁴ A "structure" is anything built, for example houses, buildings, water systems, and fences. A structure is "permanently attached to the land" if all or part of it is buried in order to attach it to the land and keep it there for the foreseeable future. Things permanently attached to the structure are considered as part of the structure for this purpose.

⁵ This is the same definition as given for "patented land" by the Metis Settlements Land Protection Act.

including the passing of an interest to a personal representative and the passing of an interest by operation of a General Council Policy;⁶

and all other words defined in the Act or the *Metis Settlements Land Registry Regulation* have the same meaning in this Policy.

1.4 Footnotes

The footnotes in this Policy are a part of the Policy included to help with interpretation.

PART 2 - INTERESTS IN LAND

2.1 Purpose and scope

- (1) This purpose of this Part is to establish and describe certain basic interests in Metis settlement land.
- (2) This Part applies to all Metis settlement land.

2.2 Metis title created

This Policy creates a ***Metis title*** interest in all Metis settlement land except for roads and the beds and shores of water bodies.⁷

2.3 Holder of Metis title

- (1) The Metis title in each parcel in a settlement area is held by the settlement unless registered in the name of a member.
- (2) If a person who cannot legally hold the Metis title is registered as the holder, the settlement holds the Metis title in trust for the person the law determines should hold it.

⁶ So, for example, a transfer would include the passing of an interest on death or a gift of an interest.

⁷ Here "roads" includes existing and future roads, and "water bodies" means bodies of water or waterways.

2.4 Nature of Metis title

- (1) Subject to this Policy⁸ and settlement by-laws, the holder of the Metis title in a parcel has the exclusive right:
 - (a) to use and occupy the land⁹;
 - (b) to make improvements to the land;
 - (c) to transfer the Metis title;
 - (d) to grant lesser interests as set out in this Policy;¹⁰ and
 - (e) to determine who receives the Metis title on the holder's death.
- (2) The holder of the Metis title also has any additional rights with respect to the parcel that are specifically provided for by a General Council Policy or any other enactment.
- (3) The Metis title is subject to the following interests whether or not they are registered:
 - (a) natural rights of light, air, water and support;
 - (b) traditional community pathways and uses.¹¹
- (4) In order to clarify traditional community pathways and uses a settlement can pass a by-law locating and describing them for settlement held land.

⁸ See especially the Council's right to grant access under section 2.11, and the limitations in Part 3.

⁹ By the definitions earlier in this Policy, "land" includes improvements such as houses and other buildings.

¹⁰ Off the settlements, "lesser interests" include things like a life estate, lease, easement, covenant, licence or right of use. This Policy permits the creation of some of these kinds of interests subject to certain conditions protecting the rights of the community.

¹¹ For example, members may walk down a footpath to the lake as they have been doing regularly for the past 20 years. This would make the footpath a traditional community pathway. Also, members may be using a certain part of the parcel as a berry picking patch, as they have regularly been doing for many years. That would create a traditional community use.

2.5 Nature of provisional Metis title

- (1) The settlement council can grant a settlement member provisional Metis title in settlement held land to enable the member to use the land and make improvements to the extent needed to obtain Metis title.
- (2) A provisional Metis title can only be granted in land for which the settlement holds the Metis title.
- (3) The provisional Metis title in a parcel in a settlement area can only be held by the settlement, or someone who is a member of the settlement and has signed a Memorandum of Provisional Metis Title for the parcel.
- (4) A Memorandum of Provisional Metis Title must state
 - (a) the conditions, including improvements to be made to the land, which if met will give the holder the right to acquire the Metis title;
 - (b) how much time the holder has to satisfy the conditions and what rights of renewal, if any, there are if the conditions are not met in time;
 - (c) what rights and duties the holder has with respect to the land; and
 - (d) any other matters that are specified by settlement by-law, regulation or General Council Policy.
- (5) A Memorandum of Provisional Metis Title must be in the form attached to this Policy.
- (6) Subject to this Policy, settlement by-laws, and the terms of the Memorandum, the holder of the provisional Metis title in a parcel has the exclusive right to use and occupy the land for the purpose of improving the land as required to obtain Metis title.

2.6 Nature of an allotment

- (1) A settlement can grant an allotment in settlement held land to a member to operate a farm, ranch or business.
- (2) An allotment can only be granted in land for which the settlement holds the Metis title.
- (3) An allotment in a parcel in a settlement area can only be held by the settlement, or someone who is a member of the settlement and has signed a Memorandum of Allotment for the parcel.

- (4) A Memorandum of Allotment must state
 - (a) the period of time for which the allotment is granted;
 - (b) the allotment holder's rights of renewal, if any;
 - (c) the rights and duties of the allotment holder with respect to the land; and
 - (d) any other matters that are specified by settlement by-law, regulation or General Council Policy.
- (5) A Memorandum of Allotment must be in the form attached to this Policy.
- (6) Subject to this Policy, settlement by-laws, and the terms of the Memorandum, the holder of an allotment has the exclusive right to use and occupy the land.

2.7 Road titles

- (1) The settlement holds a non-transferable **road title** interest in each road over which the settlement council has the right of direction, control and management.¹²
- (2) A settlement council can grant any interest out of its road title, except Metis title, that General Council Policy allows to be granted for other settlement lands.
- (3) A settlement council can create a road title in settlement held land by filing a plan with the Registrar and when it is created the Metis title in that land is terminated.
- (4) The settlement council can terminate a road title by notice to the Registrar and the termination of the road title creates a Metis title in the land in the name of the settlement.

2.8 Leases by Metis title holder

- (1) Subject to the conditions of this Policy, the holder of a Metis title can lease the land to any person.¹³

¹² The settlement council may have direction, control and management of roads under section 109 of the Act.

¹³ It is assumed that the holder of Metis title and the person leasing the land will have reached an agreement on the terms of the lease. In the case of a non-residential lease, the terms listed in section 3.5 will be considered as part of the agreement unless the agreement says they don't apply. Also remember that "person" includes an individual or a corporation.

- (2) No lease can be granted that, together with renewal rights, would exceed 10 years, unless the lease is specifically approved by a bylaw stating the general nature of the lease and how long it could last if renewal rights were exercised.
- (3) A member cannot lease land to a person who is not a member without the settlement council's approval.

2.9 Acquiring other rights in settlement held land

- (1) The settlement council can create covenants, or grant any person a licence, easement, or utility right of way,¹⁴ in settlement held land.
- (2) A grant of a right under this section that could, with renewal rights, last for more than 10 years, has no effect unless approved by a bylaw stating the nature of the grant and how long it could last.
- (3) This section does not apply to the granting of interests in land, or the right to use land, for the purpose of developing oil, gas or other minerals.

2.10 Lesser interests in member held land

- (1) A member who holds the Metis title to a parcel, can, with the approval of the settlement council, create a covenant or grant a license, easement, or utility right of way, on the parcel.
- (2) A grant of an interest under this section that could, with renewal rights, last for more than 10 years, has no effect unless the grant is approved by a bylaw stating the nature of the grant and how long it could last.

2.11 Granting rights of removal

- (1) Subject to settlement by-laws and General Council Policies on resource development, a settlement council can:
 - (a) grant rights of removal for non-renewable contents of the soil¹⁵ from any parcel of land in the settlement area; and

¹⁴ In this Policy "covenant" means what, in common law, is called a "restrictive covenant". This is essentially a restriction on the use of the land that stays with the land even if the Metis title holder changes. An example might be "At least 10 acres must always be left in its original bush condition". The term "easement" has the usual common law definition. It means essentially allowing a neighbour to use part of your land for a purpose related to the use of their land. An example might be allowing your neighbour to move cattle over a specific part of your land to get to water. The phrase "utility right of way" has the same meaning as the term "utility interest" in the *Registry Regulation*. It means essentially an interest that makes it possible to install lines, pipes, ditches, and so on for services like electricity, gas, sewage, and irrigation.

¹⁵ For example sand, gravel, clay and marl.

- (b) grant a right of access to any land in the settlement area to effect the removal.
- (2) The Metis title holder's exclusive right to use and occupy land¹⁶ is subject to the right of access granted under subsection (1)(b).
- (3) Any benefit¹⁷ resulting from a grant under subsection (1) belongs to the settlement.
- (4) If the interests of someone other than the settlement are damaged by the removal, they are entitled to fair compensation for their loss.
- (5) If the settlement and the person whose interests are damaged cannot agree on what is fair compensation, either one can refer the matter to the Appeal Tribunal.
- (6) In deciding how much compensation the person is entitled to the Appeal Tribunal can consider the damage to the person's interests and any other matters it considers relevant.

2.12 Registerable interests

The following interests may be registered, as well as recorded, in the Registry:

- (a) a Metis title, provisional Metis title, or allotment;
- (b) a road title, easement, covenant, or utility right of way;
- (c) a lease;
- (d) a charge against the interest of a non-member;
- (e) an estate under the *Dower Act*,¹⁸
- (f) a right of removal granted under section 2.11.

2.13 Recording of interim allocations

(1) In this section ***interim allocation*** means an interest in land that was either:

- (a) granted to a member under the former Act but not shown in the

¹⁶ See subsection 2.4(1)(a).

¹⁷ Here "benefit" would include any money paid or other consideration given for the grant.

¹⁸ For a description of this estate see section 7.3(3).

Minister's records; or

- (b) granted to a member on or after November 1, 1990, but before the coming into force of the *Metis Settlements Land Registry Regulation*.
- (2) An interim allocation may be recorded in the Registry.
- (3) An interim allocation is deemed to be an allocation under the *Land Interests Conversion Regulation* and may only be extinguished, or converted to a Metis title, allotment, or provisional Metis title, in accordance with that regulation.

PART 3 - LIMITATIONS AND IMPLIED INTERESTS

3.1 Purpose and scope

- (1) The purpose of this Part is to describe limitations and conditions on the basic interests in Metis settlement land.
- (2) This Part applies to all Metis settlement land.

3.2 Limits on interests

- (1) The holder of a Metis title, provisional Metis title, or allotment in a parcel has the right to make direct use of the timber and non-renewable resources found in the parcel to make improvements to the parcel.¹⁹
- (2) The Metis title does not include any rights²⁰ to timber or non-renewable resources²¹ other than those set out in subsection (1).

¹⁹ For example, the person could use trees for fence posts for fencing the land, logs for building a barn, or gravel for gravelling a driveway on the land. They could not sell the trees, timber or gravel to someone to use off the parcel, however.

²⁰ This does not prevent the settlement, or a member, from acquiring rights by some other means established by settlement by-law and General Council Policy. For example, in section 2.11 this Policy says the settlement council can grant rights of removal. The rights to remove timber are set out in the Timber Policy.

²¹ The term "non-renewable resources" means sand, gravel, peat, clay, marl, oil, gas, minerals, and any other original part of the land that nature does not readily replace.

3.3 Limits on length of grants

- (1) Unless provided for in this Policy, or in a settlement by-law made under a General Council Policy that specifically allows a longer term²², neither the settlement nor a member can grant an interest in land that, including renewal rights, could exceed 10 years, and any such grant is void.
- (2) A settlement can provide by by-law that if a member is operating a farm, ranch, or business on the land at the end of the term of an allotment, and has made permanent improvements to the land for that purpose, he or she can apply to renew the allotment or any extension of it for 5 more years and on the application have some form of priority over other applicants.

3.4 Limits on amount of land held by Metis title

- (1) Subject to subsection (2), no member can hold the Metis title to parcels with a total area of more than 175 acres.
- (2) A member can hold the Metis title to more than 175 acres of land if the additional land consists of one parcel of no more than 167 acres and the additional parcel is used and required by the member to operate a farm, ranch or business.
- (3) The number of hamlet lots that a member can hold by Metis title is at most one.
- (4) This section does not apply to limit the amount of land a person can hold for the purpose of acting as a Land Trustee under the provisions of Part 7.

3.5 Implied terms of lease

Every non-residential lease²³ of land in a settlement area, unless it clearly says otherwise in writing, includes the following implied terms in the lease agreement:

²² Such as bylaws made under sections 2.8(2), 2.9(2), 2.10(2) and 3.7(1). It is possible that some other General Council Policy, such as the Resource Policy, could provide for a settlement by-law allowing some form of longer interests.

²³ If a person leases a self-contained dwelling unit (for example a house) just to live there, the lease is a residential lease. Every other kind of lease is a non-residential lease. So, for example, if someone leases a quarter section of land to someone else to farm, that would be a non-residential lease.

- The person granting the lease promises:
 - I will let you use the land²⁴ without interference as long as you pay the rent and live up to the terms of the lease agreement;
- The person receiving the lease promises:
 - (1) I will pay the rent when, and in the way, the agreement requires;
 - (2) I will pay any charges, levies or taxes related to the ownership or use of the land during the lease;
 - (3) I will take care of the land²⁵ and return it in good condition at the end of the lease;
 - (4) If the land includes farm land, I will work it according to good farming practice;
 - (5) If given reasonable notice, I will let you or your representative enter the land to inspect its condition;
 - (6) If given written notice that I am not living up to the agreement, I will correct the situation within a reasonable time; and if I have not corrected it within 2 months I will let you take the land back without interference.

3.6 No multiple holders of interests

- (1) The Metis title, allotment or provisional Metis title in a parcel cannot be held by more than one person at a time.²⁶
- (2) Any transfer contrary to subsection (1) is void.

3.7 Non-renewable resources

- (1) Subject to subsection (2), a Metis title holder may grant any lease, licence, easement, or right of way required to
 - (a) explore for or develop non-renewable resources, or

²⁴ In this section "land" includes the buildings and other improvements being leased.

²⁵ As noted above, in these implied terms, "land" includes buildings and other improvements.

²⁶ In particular, this means that an interest cannot be held by "tenants in common" or "joint tenants".

- (b) implement authorized projects or development agreements²⁷ as defined in the Act.
- (2) The grant can only be made if it is of a class permitted by settlement by-law and the settlement council approves the specific grant.
- (3) The limits of section 3.3(1) do not apply to this section, and the rights granted under subsection (1) may be for as long a term as required to make the project viable.

PART 4 - GRANTING INTERESTS IN SETTLEMENT HELD LAND

4.1 Purpose and scope

- (1) The purpose of this Part is to provide guidelines for fair and orderly procedures when granting new interests in settlement held land.
- (2) This part **does not apply to** grants of
 - (a) licences, easements, rights of removal²⁸, or rights of way;
 - (b) leases that, together with any right of renewal, are for a term of 5 years or less;
 - (c) interests required for the exploration or development of oil, gas, or other non-renewable resources;
 - (d) Metis title to the holder of a provisional Metis title or an allotment.

4.2 Making settlement held land available

The settlement council can decide, in accordance with this Policy and settlement by-laws:

- (a) what parcels of settlement held land should be made available for use or development;
- (b) the purposes for which they should be made available; and
- (c) the type of interest that should be granted or transferred to enable the desired use or development.

²⁷ The terms "authorized projects" and "development agreements" are defined in section 111 of the Act. They relate to the use of land for mineral development and utilities.

²⁸ This refers to a right of removal granted under section 2.11.

4.3 Notice of available land

- (1) If the settlement council decides that an interest in settlement held land should be made available, it must provide at least 14 days public notice of the availability of the interest and the application requirements.
- (2) The notice must state, for each parcel in which an interest is to be made available:
 - (a) the legal description of the parcel;
 - (b) the interest being offered, including any conditions or limitations on the interest;
 - (c) the purpose for which the interest is being made available;
 - (d) the deadline for submitting an application;
 - (e) the persons who are eligible to apply for the interest; and
 - (f) any special conditions that must be met as part of the application.

4.4 Applications

- (1) Any person who is eligible to apply for a posted interest in settlement held land can file an application in the required form at the settlement office.
- (2) The application must
 - (a) be signed by the applicant seeking the interest;
 - (b) clearly identify the posted interest being sought;
 - (c) indicate that the applicant accepts the limitations or conditions set out in the posting;
 - (d) indicate that the applicant understands that although the settlement council may approve an application it is subject to appeal and is uncertain until the appeal process has concluded;
 - (e) include any required application fees or deposits; and
 - (f) satisfy any other application requirements established by settlement bylaw.

4.5 Considerations

When considering an application for an interest in settlement held land, the settlement council can take into account:

- (a) the applicant's ability and commitment to use the interest for the intended purpose;
- (b) the extent to which the applicant will require financial assistance from the settlement to develop the land for the intended use;
- (c) the extent of the applicant's existing debt to the settlement and the likelihood that it will be paid;
- (d) the amount the applicant is prepared to pay;
- (e) whether granting the interest to the applicant is consistent with the settlement's by-laws;
- (f) whether the interest can be registered in the name of the applicant; and
- (g) any other criteria established by settlement bylaw.

4.6 Applying for an allotment

In addition to the factors set out in section 4.5, in deciding whether to approve an application for an allotment the settlement council can consider:

- (a) the extent to which the settlement area is, and has been, the applicant's real home and residence;
- (b) whether the applicant has been and is currently using the land for the intended purpose; and
- (c) the extent to which the applicant needs the land to operate a viable farm, ranch or business; and
- (d) any other criteria established by settlement bylaw.

4.7 Decisions

- (1) The settlement council must provide notice²⁹ of its decision on the granting of interests within 45 days of the posted deadline for applications.

²⁹ Here "notice" means posting the decision and mailing notice of the decision to all applicants.

- (2) The settlement council may accept an application or reject all applications for the posted interest.

PART 5 - CHANGES IN INTEREST HOLDER

5.1 Purpose and scope

- (1) The purpose of this Part is to set out procedures for the acquisition of interests in land in a way that will respect the rights of the individual and the rights of the community.
- (2) This Part applies only to the acquisition³⁰ of Metis title, provisional Metis title, and allotments.

5.2 Acquiring Metis title from the settlement

- (1) Any member who holds a parcel by provisional Metis title or by an allotment can apply at the settlement office for the Metis title to the parcel.
- (2) The settlement council must approve the transfer of Metis title to the applicant if:
 - (a) the applicant is a member who is living in the settlement area;
 - (b) the applicant has no overdue debts owed to the settlement;
 - (c) the applicant would, if the Metis title were transferred, not exceed the land holding limits;
 - (d) the applicant is living on the land or operating a business, farm or ranch on it; and
 - (e) the land has been improved
 - (i) by constructing a house or permanent business buildings on it, or
 - (ii) by fencing, clearing, cultivating, or otherwise working a significant part of the land to enhance its productive capacity.
- (3) A settlement may, by by-law, provide more details for the conditions set out in 5.2(2)(d) or 5.2(2)(e).

³⁰ This includes acquiring an interest from the settlement or from another member even if the interest is acquired as the result of the member's death.

- (4) Within 45 days of receiving the application, the settlement council must either
 - (a) notify³¹ the applicant that the conditions for transferring Metis title have not been met, or
 - (b) provide the applicant with a transfer of Metis title.

5.3 Acquisition of interests

- (1) In order to acquire an interest, a notice in the form prescribed by the Registrar's rules must be filed with the settlement administrator.
- (2) The settlement administrator must provide the applicant and the Registrar with a copy of the notice showing the date and time it was received.
- (3) Within 14 days³² of receiving the notice the settlement administrator must notify the applicant and the Registrar in writing if the acquisition requires review by the settlement council.
- (4) If not notified within 14 days, the Registrar may assume that the council has no objection.
- (5) This section does not apply if the interest is being acquired from the settlement.

5.4 Objections to acquisitions

- (1) A settlement council can object to an acquisition if it
 - (a) decides that the acquisition is contrary to settlement land use or land management by-laws; and
 - (b) notifies the applicant and the Registrar in writing that the settlement objects to the acquisition.
- (2) The objection is not valid unless
 - (a) the settlement administrator has given the notice required under section 5.3(3), and

³¹ A requirement in this Part to provide written notice to a person will be satisfied if every reasonable effort is made to ensure the person receives the notice in writing or by fax.

³² In this context "14 days" means 14 actual days total, counting the filing day, holidays and weekends. So, for example, if the transfer notice was filed on April 2, the administrator would have to provide a notice of review by midnight April 15th.