

**WESTBANK FIRST NATION**  
**DISCHARGE OF FIREARMS LAW NO. 2005-10**

WHEREAS Council of Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to regulate the discharge of firearms within Westbank Lands;

NOW THEREFORE Council of Westbank First Nation repeals Bylaw 1979-07 and enacts the following Law:

**1. TITLE**

1.1 This Law may be cited as "*WFN Discharge of Firearms Law No. 2005-10*".

**2. DEFINITIONS**

2.1 In this Law unless the context otherwise requires:

**"Chief of Police"** includes the Officer in Charge of the Detachment of the Royal Canadian Mounted Police responsible for policing Westbank Lands or any delegate;

**"chief provincial firearms officer"** means the person designated in writing by the Attorney General of British Columbia as the chief provincial firearms officer;

**"Council"** means the governing body of Westbank elected pursuant to the *Westbank First Nation Constitution*;

**"farm"** includes every parcel of land within a rural agricultural designation under the provisions of any WFN Land Use Plan law, as amended, which is cultivated or worked in a farming operation and which is over two (2) hectares in size;

**"farmer"** includes every person who cultivates or works land in a farming operation on a farm;

**"firearm"** includes a rifle, pistol, shotgun, air gun, air rifle, air pistol or spring gun, but does not include a starting pistol in connection with an athletic event where blank ammunition is used;

**"highway"** includes all public streets, roads, lanes, ways, trails, bridges, viaducts, trestles, ferry landings and approaches and any other public way designated or intended for use by the general public for the passage of vehicles, and every private place or passageway to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited and includes the roadway, shoulder, boulevard, ditch and sidewalk area and whatever lands lie between the property lines of the highway, but does not include a private right of way on private property;

**"parcel of land"** or **"parcel"** means any lot, block, manufactured home pad or other area in which real property within Westbank Lands is held or into which real property within Westbank Lands is subdivided and the improvements affixed to it;

**"peace officer"** means a member of the local detachment of the Royal Canadian Mounted Police responsible for policing Westbank Lands, or any delegate;

“**person**” in addition to its ordinary meaning, includes any association, household, society, corporation, partnership or party, whether acting by themselves or by a servant, agent or employee, and the successors, assigns and personal or other legal representatives of such person to whom the context can apply according to law;

“**registered holder**” means a person who is registered in the Westbank Land Register as the holder of an interest in Westbank Lands and, where applicable, includes the occupant;

“**Westbank**” or “**WFN**” means the Westbank First Nation as defined in the *Westbank First Nation Constitution*;

“**Westbank Lands**” means:

- (a) the following Westbank Indian Reserves:
  - (i) Mission Creek Indian Reserve No. 8
  - (ii) Tsinstikeptum Indian Reserve No. 9
  - (iii) Tsinstikeptum Indian Reserve No. 10
  - (iv) Medicine Hill Indian Reserve No. 11
  - (v) Medicine Creek Indian Reserve No. 12; and
- (b) lands set apart by Her Majesty the Queen in right of Canada in the future as lands reserved for the use and benefit of Westbank, within the meaning of subsection 91(24) of the *Constitution Act, 1867*.

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

### 3. EXEMPTIONS

3.1 The provisions of this Law do not apply to:

- (a) A peace officer discharging a firearm in the lawful performance of duty.
- (b) A farmer or person authorized by the farmer discharging a shotgun only, not using a single projectile, on a farm for the protection of crops, livestock or domestic animals (as defined in the provincial *Wildlife Act*), which are grown or kept on the same farm.
- (c) Any person holding a valid permit for the discharge of firearms issued by the chief provincial firearms officer for:
  - (i) a pistol, rifle, trap and/or shooting range which has received prior approval from Westbank; or
  - (ii) the operation of a commercial slaughterhouse operation for the killing of animals within the said slaughterhouse operation; or
  - (iii) a fair, midway or other such event provided that the operator or operators of such event have received prior approval from Westbank; or

- (iv) the discharge of shotgun only, not using a single projectile, for a registered holder of a parcel of land or person authorized by the registered holder on a parcel of land over two (2) hectares in size for the protection of such parcel from animals or birds; or
- (v) the discharge of a rifle using a single projectile, for a farmer or person authorized by the farmer, for the protection of crops, livestock or domestic animals (as defined in the provincial *Wildlife Act*), which are grown or kept on the same farm, providing the farmer or person authorized by the farmer, can show the necessity for the use of such rifle.

#### **4. PROHIBITIONS**

- 4.1 Except as otherwise permitted by this Law, no person shall discharge a firearm within the limits of Westbank Lands.
- 4.2 Where the discharge of a firearm is permitted by this Law, no person shall discharge a firearm across, along or on a highway.
- 4.3 Where the discharge of a firearm is permitted by this Law, no person shall discharge a firearm within 150 metres of any school building, school yard, public park, playground, church, workshop, place of business, dwelling house, farm building, or other place where persons may be assembled or engaged in work of any kind.

#### **5. PERMITS AND INSURANCE**

- 5.1 Subject to section 3.1(b) of this Law, the Chief of Police may, by Permit and subject to the provisions of the *Criminal Code of Canada*, *Wildlife Act*, federal *Firearms Act*, and the federal *Migratory Birds Convention Act, 1994* permit a person, properly licensed and qualified to discharge any firearm that is otherwise prohibited by this Law within the limits of Westbank Lands providing the applicant is covered by an existing public liability and property damage insurance policy in the minimum amount of Two Million Dollars (\$2,000,000.00) validated for the duration of the Permit.
- 5.2 The Chief of Police will provide Westbank with a copy of any Permit issued under section 5.1.

#### **6. FEES AND FORMS**

- 6.1 Council may, by resolution passed at a duly convened meeting, establish, correct, revise or update the terms of any applicable fee schedules, forms, protocols or other related documentation which complement and support this Law, and will post notice of same in a public area of the WFN administration building and make a copy of same available for viewing free of charge at the administrative offices of Westbank and available for distribution at a nominal charge.

**7. NOTICES & CHARGES AGAINST REGISTERED HOLDERS**

7.1 Where Westbank is required to give notice to or imposes an additional cost or charge against the registered holder and two or more persons are shown as registered holders in respect of a parcel of land, then a notice given to or a cost or charge imposed against one registered holder is not invalidated by the failure to give notice to or impose a charge against any other registered holder.

**8. OFFENCES**

8.1 No person shall obstruct, interfere with or hinder Council or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law.

8.2 Any person who violates any of the provisions of this Law or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this Law, or who neglects to do or refrains from doing any act or thing required by any of the provisions of this Law, is guilty of an offence under this Law, and is liable to the penalties imposed by this Law.

8.3 Each day a violation of this Law continues will be deemed to be a separate offence for which a fine or imprisonment may be imposed.

8.4 Any person who is guilty of an offence under this Law is liable, on summary conviction to a fine of not more than One Thousand Dollars (\$1,000.00) or to a term of imprisonment not exceeding thirty (30) days, or both.

**9. IMMUNITY**

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

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

9.2 Section 9.1 does not provide a defence if:

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

9.3 Westbank, present or past Council, or members, employees, servants or agents of any of Westbank or Council is not liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other

Westbank Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Westbank Law.

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

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

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

9.5 Westbank is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to Westbank, within two (2) months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:

- (a) there was reasonable excuse, and
- (b) Westbank has not been prejudiced in its defence by the failure or insufficiency.

## **10. APPLICATION OF LAW**

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

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

10.3 The headings given to the sections and paragraphs in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.

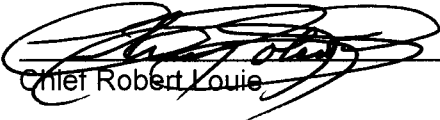
10.4 Unless otherwise noted, any specific statute named in this Law is a reference to a statute of British Columbia and the regulations thereto, as amended, revised, consolidated or replaced from time to time, and any Law referred to herein is a reference to a law of Westbank, as amended, revised, consolidated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

## **11. REPEAL**

11.1 Firearms Bylaw, 1979-07 is hereby repealed.

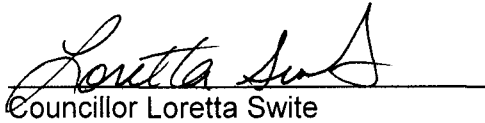
BE IT KNOWN that this Law entitled, "WFN Discharge of Firearms Law No. 2005-10" is hereby read for the first, second, and third and final time and is hereby enacted as Law No. 2005-10 by the Council of Westbank First Nation at a duly convened meeting of Council held on the 7<sup>th</sup> day of February, 2005.

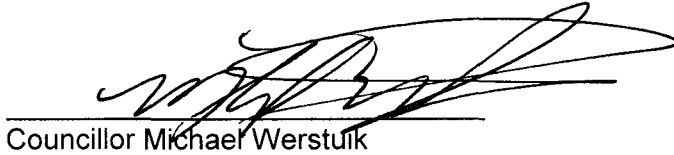
Voting in favour of the Law are the following members of Council:

  
Chief Robert Louie

  
Councillor Michael De Guevara

  
Councillor Brian Eli

  
Councillor Loretta Swite

  
Councillor Michael Werstufk

being a majority of those members of Council of Westbank First Nation present at the aforesaid meeting of Council.

The Quorum of Council is three (3) members.

Number of members of Council present at the meeting: 5.