

**WESTBANK FIRST NATION
SUBDIVISION,
DEVELOPMENT AND SERVICING LAW NO. 2005-15**

WHEREAS Council of Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to enact a Law to regulate the subdivision of land in order to promote the orderly and economic development of Westbank First Nation;

NOW THEREFORE Council of Westbank First Nation repeals Subdivision Bylaw No. 1979-12, Development Bylaw No. 1996-09 and Amendment No. 3 to Schedule E of Bylaw No. 1996-09 dated 30 November 1999 and enacts the following law:

1. TITLE

- 1.1 This Law may be cited for all purposes as "*WFN Subdivision, Development and Servicing Law No. 2005-15*".

2. PARTS

- 2.1 This Law is divided into seven parts dealing with the following subjects:

Part I - Interpretation

Part II - General Requirements

Part III - Dedication of Land

Part IV - Parcel Standards

Part V - Highway Dedication, Servicing and Construction Standards

Part VI - Development Agreements

Part VII - Payment of Taxes and Charges

PART I - INTERPRETATION

3. DEFINITIONS

- 3.1 In this Law, unless the context otherwise requires

"Application for Development" means the *Physical Development Plan Amendment & Development Permit Application Form* and any other successor or related forms established by Council, from time to time;

"Approving Officer" means a person appointed by Council as Approving Officer, or delegate;

"arterial road" means a road whose primary function is to carry through traffic from one area to another with as little interference as possible from adjacent land uses, but which may provide direct access to property as a secondary function, particularly for large traffic generators;

"boulevard" means all those portions of a highway not occupied by roadway and shall include the "median" area between separated roadways;

“collector road,” means a road whose primary function is to distribute traffic between arterial, other collector, and local roads, within an area but which also usually provides full direct access to properties. Collector roads are classified into two types:

- (a) **“through collector road”** means a collector road which connects, or is part of a route connecting two different arterial roads and is attractive to use as a shortcut between them, and therefore may carry traffic having neither origin nor destination within the area;
- (b) **“limited collector road”** means a collector road which, because of its location, geometric design or length, does not provide an attractive shortcut between two arterial roads and, therefore, will carry only local area traffic;

“complete” or any variation thereof when used with respect to the work or works referred to herein will mean completion to the satisfaction of Westbank;

“construction” means build, erect, install, repair, alter, add, enlarge, move, locate, re-locate, re-construct, upgrade, demolish, remove, excavate or shore;

“contractor” means a person or firm having a contract with a registered holder or with Westbank to construct roads or install works or services or any other items required by this Law;

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

“develop” or “development” means any construction to which the WFN Building Law applies and includes the subdivision of Westbank Lands;

“Developer” means a person who wishes to develop Westbank Lands;

“Development Permit and Servicing Agreement” means the servicing agreement entered into between Westbank and the Developer, in the form developed by Westbank from time to time and includes any forms, schedules and appendices attached thereto;

“drainage works” means a system of works designed and constructed to control the flow of storm water which is in conformity to design criteria and construction standards adopted by Westbank known as the “natural system” wherein the storm water generated by the development of land must be controlled using detention systems, to limit the five year post-development release rate to the five year pre-development release rate;

“Fire Department” includes the fire department of any fire protection district, municipal corporation, or first nation attending fires on Westbank Lands;

“Health Officer” means a medical health officer, or equivalent, of the authority having jurisdiction for Westbank Lands;

“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;

“land use designation area” means any area or district established either in the *Westbank Physical Development Plan*, adopted by resolution of Council or any WFN Land Use Plan law;

“lane” means a highway having a right of way width of not more than eight (8) meters and not assigned a name or number, to provide a secondary access to abutting properties;

“local road,” means a road whose primary function is to serve vehicle trip ends by providing direct access to properties, and which usually connect to other local roads or to collector roads. Local roads are classified into two types:

- (a) **“through local road”** means a local road having access to two different collector or local roads which may, therefore, serve some traffic having neither origin nor destination along its length;
- (b) **“limited local road”** means a local road which, by virtue of its connections to the collector road system, is likely to be used by traffic having either an origin or a destination along its length. Three variations of the limited local road are:
 - (i) cul-de-sac: a limited local road with only one access point;
 - (ii) P-loop: a variation of the cul-de-sac having a loop at one end; and
 - (iii) crescent: a limited local road having access to the same local or collector and at two separate locations.

For the purposes of this Law, a local road which serves more than 100 dwelling units will be considered as a through local road regardless of configuration;

“Manager” means the head of WFN Engineering, Planning and Public Works Department, or delegate;

“occupant” or **“occupier”** means a person who is legally entitled to occupy or simply occupies a parcel of land, building, dwelling or premises within Westbank Lands;

“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;

“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;
“**Professional Engineer**” means a person licensed to practice in the Province of British Columbia as a Professional Engineer;

“**Professional Planner**” means a person who is a member or eligible for membership in the Planning Institute of British Columbia;

“**provide**” in relation to services or other works means doing all that is necessary to make a service available and functioning in a proper manner and will include design, construction or installation, and testing;

“**public utility**” means any system having facilities installed in a highway or in a right of way for the purpose of providing a service to property and includes water distribution, sewage and drainage collection, street lighting, electric power distribution, telephone, cable television, and gas distribution systems;

“**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;

“**Reviewing Agencies**” means those WFN, provincial and federal agencies, ministries and departments, as the case may be, identified by Westbank, from time to time, as a resource to provide technical advice, assessments, recommendations and reports, as required, and includes but is not limited to those listed in paragraph 4.6(c) of this Law;

“**right of way**” includes land or any interest in land acquired for the purpose of:

- (a) public rights of passage with or without vehicles; or
- (b) erecting and maintaining any pole-line; or
- (c) laying, placing, and maintaining drains, ditches, conveyance, transmission, or transportation of water, electric power, forest products, oil, or gas, or both oil and gas, or solids as defined in the *Pipeline Act*; or
- (d) the disposal of sanitary sewage, storm water or drainage;

“**roadway**” means the portion of a highway surfaced for the purpose of facilitating vehicular movement;

“**Stage 1 development cost charges**” means charges for capital cost of water, water drainage, water service (connection);

“**Stage 2 development cost charges**” means charges for capital cost of sanitary sewer, sewer connection, latecomer’s fees, inspection fees and all other applicable charges;

“**storm water control plan**” means the storm water control plan as identified within the natural system of drainage works as adopted by Westbank;

“subdivide” or “subdivision” means:

- (a) the division of land into two or more parcels, whether by plan or by metes and bounds description or by replotting scheme or otherwise;
- (b) the consolidation of two or more parcels into a single parcel, or several parcels into a smaller number of parcels; or
- (c) the creation of a highway or a portion of a highway by plan;

“Surveyor of Taxes” means the official appointed by Council for the purposes of collecting taxes, levies and other charges for Westbank;

“utility” means a public utility owned and operated by Westbank, or any variation thereof means and includes all work required to be done for the setting out, the execution and the completion to the satisfaction of Westbank;

“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*;

“WFN Cashier” means the person or persons appointed by the Director of Operations, from time to time, and includes any delegate;

“WFN Design Criteria” means the *WFN Design Criteria and Construction Standards and Specifications for Development* developed and adopted by Westbank from time to time;

“WFN Engineering Consultant” means a person appointed by Council as an engineering consultant on behalf of Westbank, or delegate.

- 3.2 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*.

PART II - GENERAL REQUIREMENTS

4. DEVELOPMENT PERMIT PROCESS

- 4.1 Council must establish a schedule of development cost charges and fees payable pursuant to this Law.
- 4.2 If a person wishes to develop Westbank Lands, that Developer must submit an Application for Development to the Approving Officer and follow through the Stage 1 and Stage 2 processes of the *WFN Land Development Procedures*.
- 4.3 The Stage 1 process requires that, in addition to the completed Application for Development, the Developer must submit:
 - (a) non-refundable application fees;
 - (b) Stage 1 development cost charges;
 - (c) six (6) copies of a conceptual development plan for the proposed project prepared, signed and sealed by a Professional Engineer, Professional Architect and/or Professional Planner (the "Conceptual Development Plan"), in a manner consistent with the *WFN Design Criteria and Construction Standards and Specifications for Development*;
 - (d) such additional identifying information as may be required by the WFN Planning Department including, but not limited to:
 - (i) the Developer's name, address and telephone number;
 - (ii) the name, address and telephone number of the Professional Engineer, Professional Architect and/or Professional Planner responsible for the preparation of the Conceptual Development Plan;
 - (iii) the legal description of the parcel of land proposed to be developed;
 - (iv) the name of all registered holders in the parcel of land proposed to be developed, and of other persons or entities having any legal or beneficial interest in the Developer;
 - (v) the lease registration number and sublease registration number as contained in the Westbank Lands Register, if applicable;
 - (vi) the development proposal;
 - (vii) all specifications as required, including those with respect to engineering, utilities, water, sewer and roads;
 - (viii) all appraisal reports that have been prepared; and
 - (ix) all engineering reports that have been prepared;

- (e) such additional technical information as may be required by the WFN Planning Department including, but not limited to:
- (i) a map showing the existing and proposed land uses;
 - (ii) a map showing existing and proposed topography and natural features such as water courses, water bodies and treed areas;
 - (iii) a map showing existing property lines, easements, rights-of way, services (including water, sanitary sewer, drainage, electrical, telephone and gas), and roads, including a statement whether any will be removed as a result of the development;
 - (iv) a map showing the approximate location, dimensions and area of all existing buildings and structures within the proposed development area including a statement whether any will be removed, altered or added to. If a building is to be altered or added to, a description of the proposed alteration or addition;
 - (v) a map showing the approximate location, configurations and dimensions of all proposed parcels within the development. Each proposed parcel must be identified with a parcel number
 - (vi) a map showing the approximate location, maximum dimensions and maximum area of all proposed residential buildings and non-residential buildings with an above grade floor area of less than 280m². Conceptual development plans must be provided for non-residential buildings with an above grade floor area equal to or greater than 280m²;
 - (vii) if the development is to be constructed in phases, a map identifying the phases;
 - (viii) all maps must be in metric and include a scale and an arrow showing the north direction;
 - (ix) where applicable, copies of reports related to soil inspection, percolation tests and any other background studies;
 - (x) a preliminary design report for the proposed municipal services which outlines the rationale, design criteria and calculations related to the design of the services. The design report must be prepared in accordance with the servicing requirements of this Law;
 - (xi) a description of the building scheme which will apply to the proposed development and buildings;
 - (xii) an environmental assessment including consideration of physical, social or economic impacts of the development and a statement of mitigating measures; and

- (xiii) a traffic impact study for a proposed development generating more than 100 trips per day.

4.4 Upon completion by the Developer of the requirements set out in sections 4.2 and 4.3, the Approving Officer must review and process the Application for Development and upon completion must present a report to Council for its consideration, which report must contain:

- (a) a copy of the Application for Development;
- (b) a copy of the proposed Conceptual Development Plan;
- (c) a summary of the various reports, assessments and studies submitted by the Developer under paragraphs 4.3(d) and (e);
- (d) confirmation that the proposed development does not contravene the *Westbank Physical Development Plan*; and
- (e) confirmation of receipt in full by the WFN Cashier of the applicable non-refundable application fee and Stage 1 development cost charges.

4.5 Stage 1 Conceptual Development Plan approval will be given by the Approving Officer once:

- (a) all requirements in respect of any applicable *WFN Design Criteria and Construction Standards and Specifications for Development* and Westbank Laws are satisfied; and
- (b) Council has by resolution approved the Conceptual Development Plan.

4.6 The Stage 2 process requires that:

- (a) the Developer must submit non-refundable processing fees;
- (b) the Developer must enter into a *Development Permit and Servicing Agreement* substantially in the form established by Council from time to time;
- (c) the Approving Officer must review the recommendations of the Reviewing Agencies, which will include but not be limited to:
 - (i) WFN Engineering Consultant;
 - (ii) WFN Environmental Consultant;
 - (iii) Regional District of Central Okanagan;
 - (iv) Fire Department;
 - (v) Ministry of Transportation and Highways;

- (vi) Ministry of Water, Land & Air Protection;
 - (vii) Department of Fisheries and Ocean; and
 - (viii) Health Canada;
- (d) upon completion of the review of the recommendations of the Reviewing Agencies, the Approving Officer must present a report to Council for its consideration, which report must contain:
- (i) confirmation that all deficiencies and recommendations have been satisfied;
 - (ii) confirmation of receipt by the WFN Cashier of the applicable non-refundable processing fee;
 - (iii) a *Development Permit and Servicing Agreement* for approval by Council; and
 - (iv) confirmation of receipt of the security to be posted by the Developer.
- 4.7 Council may, upon receipt of the report from the Approving Officer, by Council Resolution:
- (a) authorize the execution of the *Development Permit and Servicing Agreement* by the Approving Officer on behalf of Westbank;
 - (b) authorize the execution of the *Development Permit and Servicing Agreement*, as amended by Council in its Council Resolution, by the Approving Officer on behalf of Westbank; or
 - (c) refuse to authorize the execution of the *Development Permit and Servicing Agreement* by the Approving Officer on behalf of Westbank.
- 4.8 A Development Permit and Servicing Agreement is not in force and effect until such time as it has been approved and consented to by way of Council Resolution and executed by the Approving Officer on behalf of Westbank.
- 4.9 Forthwith upon the passage of the requisite Council Resolution described in section 4.8, the Developer must pay to Westbank the applicable Stage 2 development cost charges.
- 4.10 The Approving Officer may, at any stage of processing the Application for Development, refuse to approve the Application for Development if:
- (a) the Approving Officer is of the opinion that the cost to Westbank of providing public utilities or other works or services would be excessive; or
 - (b) the Approving Officer is of the opinion that the Application for Development does not conform to:

- (i) all applicable provisions of the *WFN Design Criteria and Construction Standards and Specifications for Development*;
- (ii) the recommendations of Westbank's list of reviewing agencies; or
- (iii) any applicable provincial or federal acts or regulations or any other Westbank Law.

4.11 A copy of the *Development Permit and Servicing Agreements* executed by Westbank and the Developer must be retained by the Approving Officer who must make the same available for perusal by any resident of Westbank Lands upon request during normal business hours during which the Westbank Planning Department is open to the public. Copies of *Development Permit and Servicing Agreements*, excluding any schedules, will be made available to residents of Westbank Lands upon written request.

5. SUBDIVISION PROCESS REQUIREMENTS

5.1 Where the development includes the subdivision of Westbank Lands, the Approving Officer must, before providing Stage 1 Conceptual Development Plan approval under section 4.5, also be satisfied that the development:

- (a) is suited to the configuration of the parcel of land being subdivided; and
- (b) is suited to the use to which it is intended; and
- (c) does not make impractical the future subdivision of the parcel of land within the proposed development or of any adjacent parcel.

5.2 Where the development includes the subdivision of Westbank Lands, the Developer must also comply with the following requirements, if the Approving Officer so demands:

- (a) furnish profiles of every new highway shown on the plan and such topographical details as may indicate the engineering problems to be dealt with in opening up the highways shown upon the plan;
- (b) furnish a sketch showing that the smaller parcels into which the parcel of land is to be subdivided by the plan can conveniently be further subdivided into further small parcels, but this will only be demanded if in the opinion of the Approving Officer the situation of the parcel of land is such that there is reason to anticipate its subdivision;
- (c) furnish a contour plan of the parcel proposed for subdivision;
- (d) survey of existing trees on the parcel proposed for subdivision.

5.3 In considering the sufficiency of the highway allowance shown upon the plan, the Approving Officer must take into consideration whether the parcel of land to be subdivided is:

- (a) urban or rural business property;

- (b) urban or rural residential property; or
- (c) rural lands;

and must also consider the configuration of the parcel of land, the relation of the highway allowances to any existing main highway or approach, whether by land or water, and any local circumstances, and on the question of width, whether the respective highways shown are likely to be required or used as main roads or as secondary roads, or merely as road of access to a few parcels, or as lanes.

5.4 The Approving Officer may at any stage of processing the subdivision application refuse to approve the subdivision plan if he is of the opinion that:

- (a) the cost to Westbank of providing public utilities or other works or services would be excessive; or
- (b) the subdivision does not:
 - (i) conform to WFN or other agencies of competent jurisdiction ordinances regulating the subdivision of parcel of land and land use planning; or
 - (ii) conform to the *Westbank Physical Development Plan*; or
 - (iii) conform to the requirements of the Ministry of Transportation and Highways within respect to a control access highway; or
 - (iv) satisfactorily address the recommendations of the Reviewing Agencies, or
- (c) taxes or other WFN charges applicable to the parcel of land being subdivided have not been paid. These include property taxes, development cost charges, and other levies, application fees, inspection fees, approval fees, or any other charges set out in this Law.

PART III - DEDICATION OF LAND

6. DEDICATION OF LAND

- 6.1 The Developer must convey to Westbank, without compensation, land for public open space in the locations and to the extent required by the Approving Officer for the purpose of providing sufficient open space within the development for park and public use.
- 6.2 Where the parcel being developed adjoins a lake, river, stream or other body of water, the Approving Officer may, as a condition of approving the development, require the conveyance to Westbank, without compensation, of a strip of land not exceeding seven (7) metres in width along the bank or shore for the purpose of providing public access, if, in the opinion of the Approving Officer, such dedication is in the public interest.

- 6.3 The parcel of land to be dedicated under section 6.2 must be measured from:
- (a) the high water mark;
 - (b) the controlled high water mark; or
 - (c) the natural boundary of the lake, river, stream or other body of water as defined in the *Land Act*;

whichever is applicable.

- 6.4 The amount of land required to be conveyed to Westbank under sections 6.1 and 6.2 when combined must not exceed five (5%) percent of the parcel being subdivided.

- 6.5 Sections 6.1 to 6.4 do not apply:

- (a) to subdivisions creating three (3) or less lots; or
- (b) to subdivisions where the smallest lot being created is larger than two (2) hectares; or
- (c) to consolidation of existing subdivided parcels.

PART IV - PARCEL STANDARDS

7. PARCEL STANDARDS

- 7.1 Except as otherwise provided in this Law, no parcel will be created by subdivision which has an area, width, depth or frontage less than the minimal, nor a depth in relation to a width greater than the maximum for the particular land use designation area in which the subdivision is located, as set out in a schedule of Parcel Standards established by Council, from time to time.

PART V - HIGHWAY DEDICATION, SERVICING AND CONSTRUCTION STANDARDS

8. HIGHWAY DEDICATION, SERVICING AND CONSTRUCTION STANDARDS

- 8.1 The Developer must provide, without compensation, to the extent required by the Approving Officer:
- (a) for the purpose of a highway within a development, land not exceeding twenty (20) metres in width; or
 - (b) for the purpose of widening a highway that borders or is within a subdivision, land of a depth not exceeding ten (10) metres.
- 8.2 Where, in the opinion of the Approving Officer, terrain and soil conditions are such that a roadway having a width of seven (7) metres cannot be adequately supported, protected,

and drained within the widths specified in section 8.1, land sufficient to support, protect, and drain such a roadway may be required without compensation.

- 8.3 The Approving Officer may require additional right of way at intersections with arterial roads in order to provide traffic turn-lane channelization.
- 8.4 The Approving Officer may require additional right of way to accommodate utility transformer pads.
- 8.5 The Approving Officer will require additional right of way at intersection between lanes and at right angle turns.
- 8.6 Except as otherwise provided in this Law, the Developer must provide vehicular and pedestrian access systems such that each system:
- (a) serves and can be connected to all parcels created by the development;
 - (b) extends along all highways within the development;
 - (c) provides the required standard of development established by Council, from time to time; and
 - (d) provides for extension and connection of the system to lands and systems beyond the proposed development.
- 8.7 Without limiting the generality of section 8.6, the Developer may not be required to provide vehicular or pedestrian access systems where or to the extent to which:
- (a) a system or part thereof already exists which provides the level of standard required for both the existing parcels and those created by the development, as established by Council, from time to time; and
 - (b) the parcels being created will have access appropriate to their intended use.
- 8.8 The Developer must provide sidewalks on one or both sides of highways within the lands being subdivided in accordance with the standards for the various classifications of road in each land use designation area, established by Council, from time to time.
- 8.9 Without limiting the generality of section 8.8, the Approving Officer may require:
- (a) sidewalks along any highway within the development on which substantial pedestrian traffic is expected to be generated;
 - (b) sidewalks along the side of a highway within the development which fronts on or abuts a school, park, recreation facility, public building, shopping and commercial development; and
 - (c) sidewalks on each side of an arterial or collector road within the development;

- (d) walkways within the development connecting points between which pedestrian movement will be generated; and
 - (e) upgrades to the infrastructure servicing the development, the cost of which will be paid for by the Developer.
- 8.10 All sidewalks and walkways must be constructed in accordance with the WFN Design Criteria.
- 8.11 A cul-de-sac must be constructed in length in accordance with the WFN Design Criteria.
- 8.12 The maximum length of a cul-de-sac may be increased in accordance with the WFN Design Criteria established for specific land use designation areas; provided however that such cul-de-sac must not provide frontage to more than twenty (20) lots and further provided that an emergency access must be provided where the length of the cul-de-sac exceeds two hundred and twenty (220) metres.
- 8.13 A P-loop must be constructed in length in accordance with the WFN Design Criteria provided however that all P-loops must be provided with an emergency access.
- 8.14 The maximum total street length of a P-loop may be increased in accordance with the WFN Design Criteria established for specific land use designation areas; provided however that such P-loop must not provide frontage to more than sixty (60) lots created in a development.
- 8.15 The emergency access required in sections 8.11 to 8.13 must directly connect from the turnaround of a cul-de-sac or from the loop road of a P-loop to an adjacent highway.
- 8.16 Emergency access must not be less than three decimal seven (3.7) metres in right of way width and must be constructed in accordance with the WFN Design Criteria.
- 8.17 In a development where the road layout is such that a highway or a portion thereof serves or will serve the adjoining properties outside the development, the Approving Officer may allow the dedication and construction of new half-roads along the perimeter of the development, provided however the following conditions are satisfied:
- (a) additional right of way greater than half is dedicated, where necessary, in order to provide two-way traffic flow, sidewalk, street lights, and drainage collection system;
 - (b) such half-roads must be constructed in accordance with the WFN Design Criteria
- 8.18 The Developer must clear, grade, surface and otherwise construct the required highways including roadways, emergency access and transit bays, in accordance with the required standards established by Council, from time to time.
- 8.19 Where a road passes through more than one land use designation area, the land use designation area having the most significant impact on the roadway, as determined by the Approving Officer, will dictate the applicable road standards.

- 8.20 The Developer must grade and, where required by the Approving Officer, landscape boulevards along all highways within the development in accordance with the required standards established by Council, from time to time.
- 8.21 Except as otherwise provided in this Law, the Developer must provide:
- (a) water distribution, sanitary sewer and drainage works, underground wiring and street lighting systems, such that each system:
 - (i) serves and is connected to all parcels created by the development;
 - (ii) extends along all highways within the development;
 - (iii) connects to the appropriate infrastructure and public utility;
 - (iv) provides the required standards of service established by Council, from time to time; and
 - (v) provides for extensions and connection of the system to lands and systems beyond the proposed development, and
 - (b) road curbs, gutters and sidewalks.
- 8.22 Without limiting the generality of section 8.21, the Developer may not be required to provide water supply, sanitary sewer and drainage works, underground wiring, and street lighting systems where a system already exists which provides the required standards for both the existing parcels and those to be created by development.
- 8.23 Without limiting the generality of section 8.21, where infrastructure services are not available, but are programmed for as part of an approved WFN Capital Works Plan, the Approving Officer may approve a development within which the provision and construction of water supply and/or sewage disposal and/or drainage works may be deferred; provided however that:
- (a) an alternative system satisfactory to both the Approving Officer and the WFN Engineering Consultant is provided at the expense of the Developer and on a temporary basis, and
 - (b) the Developer covenants against each parcel created in the development and agrees to construct and connect the deferred systems at an appropriate time as determined and required by Westbank, and
 - (c) the Developer deposits with Westbank a bond for an amount satisfactory to the Approving Officer having regard to the cost of installing and paying for all works and services related to the deferred systems.
- 8.24 The Developer must provide and design the required drainage works in conformity with the acceptable Storm Water Control Plan.

- 8.25 The Developer must, where required by the Approving Officer, convey to Westbank, without compensation, land at an appropriate location or locations for drainage works. The amount of the parcel to be conveyed to Westbank must be sufficient to ensure that an adequate detention system can be built. Where a Community Pond is used for detention, the provision of this section will be waived. Waiving of this provision does not preclude the introduction of a development cost charge, or like charge for the Community Pond.
- 8.26 The standards for servicing of land required under sections 8.21 and 8.22 of this Law for different land use designation areas must be established by Council, from time to time. In developments where the lot sizes and subdivision design stimulate those of a higher land use designation area, the standards of a higher land use designation area will apply.
- 8.27 Where the Developer is required to provide water, sanitary sewer or drainage works, Westbank may provide for sharing all or part of the cost of the trunk water, trunk sanitary sewer, or trunk drainage works so required between Westbank and
- (a) the Developer, or
 - (b) the Developer and the registered holders of any other parcel that will benefit from the trunk water, trunk sanitary sewer, or trunk drainage works;

and Westbank may require that a portion of the water, sanitary sewer or drainage works be provided with a capacity in excess of that required to service the proposed development, but in that case, the cost of the services constructed and installed by the Developer or any part thereof, until:

- (c) the works have been certified by a Professional Engineer as complete and constructed in substantial compliance with the required standards for servicing;
- (d) the Developer has deposited with Westbank one set of paper prints and one set of transparencies of the drawings showing the works as actually constructed, certified as correct by a Professional Engineer;
- (e) the Developer has completed the service connection record cards supplied by Westbank, to show the locations of the sanitary, storm and water service connections;
- (f) Westbank has inspected the said works and notified the registered holder in writing of not detecting any construction deficiencies and that the works are in accordance with the plans, specifications and standards as herein contained;
- (g) the layout of the proposed subdivision has been approved by the Approving Officer;
- (h) the Developer has entered into an agreement with Westbank, in which the Developer covenants and agrees to:

- (i) maintain all of the said works and services in complete repair for a period of one (1) year;
- (ii) remedy any defects appearing within five (5) years from the date of acceptance of the work by Westbank, and pay to Westbank for any damage to other work or property resulting therefrom, save and except for defects caused by reasonable wear and tear, negligence of Westbank, its servants or agents;
- (iii) deposit with Westbank for a period of one (1) year from the acceptance of the said works and services, a sum equal to ten (10%) percent of the cost of the completion of the said works or \$2,000, whichever is greater, as calculated by the Approving Officer, and should the registered holder fail to maintain the said works, remedying any defects or paying any damages from the said deposit;
- (iv) pay to Westbank all inspection fees, administration fees, engineering fees and legal costs incurred by Westbank, in accepting and taking over such works and services, and the cost of connecting all utilities required to service the development, in accordance with the amounts established by Council, from time to time.

8.28 Excess capacity will be paid for by Westbank or by the registered holders of land outside the proposed development. The cost of providing the excess capacity may be recovered from the registered holders of the parcel of land outside the proposed development at the time subsequent development occurs.

8.29 Where the Developer is to provide services in, on or to land in accordance with sections 8.6 to 8.27 hereof, the Developer must, except to the extent the same is caused by the gross negligence of Westbank or its servants or agents, save harmless and effectually indemnify Westbank against:

- (a) all actions and proceedings, costs, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of the construction and installation of all services herein described;
- (b) all expenses and costs which may be incurred by reason of the execution of the said work resulting in damage to any property owned in whole or in part by Westbank or which Westbank by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
- (c) all expenses and costs which may be incurred by reason or liens for non-payment of labor or materials, workers' compensation assessments, unemployment insurance, federal or provincial tax, and for encroachments owing to mistakes in survey.

PART VI - DEVELOPMENT AGREEMENTS

9. DEVELOPMENT AGREEMENTS

- 9.1 All works and services to be constructed and installed to serve any proposed development of any parcel lands must be constructed and installed to the standards established by Council from time to time, at the expense of the Developer prior to the approval of such development, unless:
- (a) the Developer deposits with Westbank, cash or a bond in a form and for an amount satisfactory to the Approving Officer having regard to the cost of installing and paying for all works and services required pursuant to this Law;
 - (b) the Developer enters into an agreement with Westbank to construct and install the works and services by a specified date or forfeit the amount secured by Westbank; and
 - (c) the Developer pays to Westbank, all inspection fees, administration fees, engineering fees, and legal costs incurred by Westbank in accordance with the amounts established by Council from time to time.
- 9.2 Where the Developer constructs and installs the works and services necessary to serve the proposed development without entering into the agreement with Westbank referred to in section 9.1 hereof, the Developer must not connect such works and services to any of WFN's works, services or utilities, and Westbank must not accept the works.

PART VII - PAYMENT OF TAXES AND CHARGES

10. PAYMENT OF TAXES AND CHARGES

- 10.1 The Developer must pay all WFN taxes, rates and charges applicable, assessed and levied against the parcel of land to be developed, and where such taxes, rates and charges for the current year have not been assessed, levied and imposed on the parcel at the date on which the approval of the development is signed by the Approving Officer, pay the amount estimated by the Surveyor of Taxes to be the total of WFN taxes, rates and charges to be assessed, levied and imposed on the parcels for the current year.
- 10.2 Where approval of a development is granted by the Approving Officer at any time between the 30th day of September and the 31st day of December in any year, the Developer must pay all taxes, rates and charges assessed and levied against the parcel to be subdivided and which are outstanding and owing at the date of such application, together with a deposit in the amount estimated by the Surveyor of Taxes to be the total of WFN taxes, rates and charges to be assessed, levied and imposed on the parcel for the next succeeding year; which deposit must be held by Westbank and applied towards payment of the taxes, rates and charges to be assessed, imposed and levied on the parcel in the next succeeding year, in the event that the subdivision is not registered prior to the preparation, completion and authentication of the assessment roll for that year.
- 10.3 Where any deposit made pursuant to section 10.2 is held by Westbank and the subdivision is registered, and the new parcels created thereby are placed on the

assessment roll for the next succeeding year, the said deposit must be refunded to the applicant by the Surveyor of Taxes forthwith upon receipt of notification by the Assessor that the subdivision is registered and the new parcels created thereby have been placed or will be placed on the assessment roll for the next succeeding year.

- 10.4 Every payment made pursuant to the provisions of section 10.1 hereof and every deposit made pursuant to the provisions of section 10.2 hereof will be deemed to be monies to be applied at a future date in payment of taxes levied by Westbank and every such payment and deposit must be accepted by the Surveyor of Taxes.
- 10.5 Every Developer, for any purpose other than the creation of three (3) or less lots to provide sites for a total of three (3) or less self-contained dwelling units, must pay to Westbank the development cost charges for the sole purpose of providing funds to assist Westbank in paying the development cost charges and levies of providing, altering, or expanding sewerage, water, drainage and highway facilities and public open space or any of them, in order to serve, directly or indirectly the development in respect of which the charges are imposed.

11. FEES AND FORMS

- 11.1 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.
- 11.2 Notwithstanding the provisions of section 11.1, any change made to any fees or charges payable under this Law will come into effect on the date which is six months after the date of the Council resolution approving such amendment.

12. NOTICES & CHARGES AGAINST REGISTERED HOLDERS

- 12.1 Where Westbank is required to give notice to or impose a 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 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.

13. OFFENCES

- 13.1 No person must obstruct, interfere with or hinder Council, the Manager or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law.
- 13.2 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.

- 13.3 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.
- 13.4 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.

14. IMMUNITY

- 14.1 No action for damages lies or may be instituted against present or past Council; Manager; 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.
- 14.2 Section 14.1 does not provide a defence if:
- (a) Council, Manager, 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.
- 14.3 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.
- 14.4 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.
- 14.5 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.

15. APPLICATION OF LAW

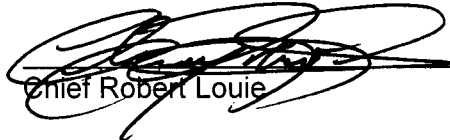
- 15.1 Where any federal Act or regulation or provincial Act or regulation or any other Westbank Law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation or law.
- 15.2 If any 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.
- 15.3 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.
- 15.4 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.

16. REPEAL

- 16.1 Subdivision Bylaw No. 1979-12, Development Bylaw No. 1996-09 and Amendment No. 3 to Schedule E of Bylaw No. 1996-09 dated 30 November 1999 are hereby repealed.

BE IT KNOWN that this Law entitled, "WFN Subdivision, Development and Servicing Law No. 2005-15" is hereby read for the first, second, and third and final time and is hereby enacted as Law No. 2005-15 by the Council of Westbank First Nation at a duly convened meeting of Council held on the 7th 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 Werstuik

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.