

**WESTBANK FIRST NATION
ROAD DEDICATION LAW NO. 2010-02**

WHEREAS Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to enact a Law to provide for the dedication of roads for public use;

NOW THEREFORE Westbank First Nation Council enacts the following law:

1. TITLE

1.1 This Law may be cited for all purposes as "WFN Road Dedication Law No. 2010-02".

2. DEFINITIONS

2.1 In this law, unless the context otherwise requires:

"Commercial Arbitration Act" means the *Commercial Arbitration Act* [R.S.B.C. 1996] c. 55;

"Highway" means a highway as defined in the WFN Subdivision Law;

"Manager" means:

- (a) the head of WFN Engineering, Planning and Public Works Department, or a delegate, or,
- (b) if the head of WFN Engineering, Planning and Public Works Department is unable to act, the Director of Operations, or a delegate;

"Public Right of Way" means an easement in favour of Westbank without a designated dominant tenant for use by the public as a Highway;

"Registered Highway" means a Highway that has been registered under section 6.2;

"WFN Subdivision Law" means the *WFN Subdivision, Development and Servicing Law No. 2005-15*, as amended or replaced from time to time;

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. ABILITY TO CREATE EASEMENT

3.1 A person may and is deemed always to have been able to create, by grant or otherwise, an easement without a dominant tenement in favour of Westbank.

4. DEDICATION BY WESTBANK LAW

4.1 Where land is provided as a Highway under Part V of the WFN Subdivision Law pursuant to a Development Permit and Servicing Agreement, registration of that interest under section 6.2 operates to make the land provided a Public Right Of Way.

5. DEDICATION BY RESOLUTION OF COUNCIL

5.1 Council may, by resolution at a duly convened meeting, designate a Highway to be a Public Right of Way and registration of that interest under section 6.2 operates to make the land provided a Public Right Of Way.

6. REGISTRATION OF PUBLIC RIGHT OF WAY

- 6.1 If a Highway is provided or designated as a Public Right Of Way under section 4.1 or 5.1, the Manager must:
- (a) prepare a Highway Registration Form, and
 - (b) file a copy of the Highway Registration Form in the Westbank Lands Register.
- 6.2 If the Director of Lands receives a Highway Registration Form under section 5.1, he or she must register the Highway specified in that Highway Registration Form as a Public Right of Way.

7. EFFECT OF REGISTRATION

- 7.1 Except in accordance with Westbank Law, Westbank or any other person must not interfere with the public's right to pass and repass over a Registered Highway.

8. GENERAL AUTHORITY IN RELATION TO HIGHWAYS

- 8.1 Westbank may make laws in relation to all uses of, or involving a Registered Highway or part of a Registered Highway.
- 8.2 Council may, by resolution at a duly convened meeting, restrict the public's right to pass and repass over a Registered Highway, if this restriction is necessary to the exercise of the Manager's authority under this or any other Westbank Law.

9. TEMPORARY TRAFFIC RESTRICTION AND TRAFFIC CONTROL

- 9.1 The Manager may temporarily restrict or prohibit all or some types of traffic on a Registered Highway if this restriction is necessary to the exercise of the Manager's authority under this or any other Westbank Law.
- 9.2 The Manager may authorize a Westbank employee or any other person to control traffic on a Registered Highway, or to temporarily restrict or prohibit all or some types of traffic on a Registered Highway, in relation to matters specified in a Westbank Law.

10. ADDITIONAL POWERS IN RELATION TO REGISTERED HIGHWAYS

- 10.1 The Manager may do one or more of the following:
- (a) assign a name or number to a Registered Highway;
 - (b) assign numbers to buildings and other structures;
 - (c) require owners or occupiers of real property to place assigned numbers in a conspicuous place on or near the property;
 - (d) require persons to take specified actions for the purposes of maintaining the cleanliness or safety of a Registered Highway that is next to property that they own or occupy, or that is affected by property that they own or occupy;
 - (e) require owners or occupiers of land to fence any part of it abutting on a Registered Highway.

11. PERMANENT CLOSURE AND DE-REGISTRATION OF REGISTERED HIGHWAY

- 11.1 Council may, by resolution at a duly convened meeting:
- (a) close all or part of a Registered Highway to all or some types of traffic, or

- (b) reopen all or part of a Registered Highway that has been closed.
- 11.2 Council may, by resolution at a duly convened meeting, de-register a Registered Highway:
 - (a) that has been closed under subsection 11.1 (a), or
 - (b) that is to be closed.
- 11.3 Before Council passes a resolution under this section, it must:
 - (a) give public notice of its intention, and
 - (b) provide an opportunity for persons who consider they are affected by the resolution to make representations to Council.
- 11.4 In addition to the requirement under section 11.3, before adopting a resolution under subsection 11.1 (a), the Manager must deliver notice of Council's intention to pass the resolution to the operators of utilities whose transmission or distribution facilities or works the Manager considers will be affected by the closure.
- 11.5 A resolution under section 11.2 must be filed in the Westbank Lands Register and, on filing, the property subject to the resolution ceases to be a Registered Highway, and the property may be registered in the name of Westbank.

12. RESTRICTIONS IN RELATION TO CLOSURE OR ALTERATION OF REGISTERED HIGHWAY

- 12.1 If the effect of:
 - (a) a proposed closure of a Highway under subsection 11.1 (a), or
 - (b) a proposed alteration of a Registered Highway,will be to completely deprive an owner of the means of access to their property, the Manager must either:
 - (c) obtain the consent of the owner before the owner is deprived of access, or
 - (d) apply to the Supreme Court for a determination as to the amount, if any, that Westbank must pay to the owner for injurious affection and, in addition to paying any compensation for injurious affection, ensure that the owner has another means of access that is sufficient for this purpose.
- 12.2 The operator of a utility affected by the closure of a Registered Highway under section 11.1(a) may require the Manager to provide reasonable accommodation of the utility's affected transmission or distribution facilities or works on agreed terms.
- 12.3 If the parties are unable to reach an agreement under section 12.2, the matters must be settled by arbitration, and for that purpose the *Commercial Arbitration Act* applies.

13. AGREEMENTS RESPECTING COMPENSATION FOR EXTRAORDINARY TRAFFIC

- 13.1 If a Westbank Law regulates or prohibits extraordinary traffic on a Registered Highway, the Manager may enter into an agreement with a person who is subject to the Westbank Law that provides:
 - (a) for the payment of reasonable compensation to Westbank for the damage to the Registered Highway or the resulting expense to Westbank that may be caused by the extraordinary traffic, and
 - (b) that, so long as the person is in compliance with the agreement, the person is not subject to the Westbank Law, or specified provisions of the Westbank Law, in relation to that traffic.

14. AGREEMENTS RESPECTING WESTBANK EQUIPMENT ON UTILITY POLES

- 14.1 The Manager may require a person who is permitted to erect poles on Registered Highways to provide reasonable accommodation on the poles for wires and equipment of Westbank on agreed terms.
- 14.2 If the parties are unable to reach an agreement under section 14.1, the matters must be settled by arbitration, and for that purpose the Commercial Arbitration Act applies.

15. AGREEMENTS TO RESERVE LAND FOR HIGHWAY PURPOSES

- 15.1 If the Manager enters into an agreement with an owner of land to reserve any part of the land for Highway purposes:
- (a) the agreement has the effect of a restrictive covenant running with the land,
 - (b) the Manager must file the interest in the Westbank Lands Register, and
 - (c) the Director of Lands must register that interest as a restrictive covenant on the land.

16. REMOVAL OF THINGS FROM REGISTERED HIGHWAYS

- 16.1 Except as permitted by a Westbank Law, a person must not excavate in, cause a nuisance on, obstruct, foul or damage any part of a Registered Highway.
- 16.2 The Manager may:
- (a) authorize the seizure of things unlawfully occupying a portion of a Registered Highway, and
 - (b) provide for the recovery of those fees from the owner of the thing, including by sale of the thing if the owner refuses to pay or cannot be identified after reasonable efforts.
- 16.3 Council may establish fees for seizure made under section 16.2 that are payable by the owner of the thing.
- 16.4 If a thing is seized under section 16.2 by the Manager, neither Westbank nor a person to whom the thing is disposed of is liable, in damages or otherwise, for or in respect of any claim that may arise in respect of the thing after its disposal in accordance with this Law.

17. FEES, FORMS AND PROCEDURES

- 17.1 Council may by resolution from time to time establish procedures as are considered necessary and advisable, which are ancillary to this Law but not inconsistent with it, and without limiting the generality of the foregoing will include:
- (a) standard forms;
 - (b) administrative and procedural matters for which no express, or only partial, provision has been made;
 - (c) definitions of words or phrases used but not defined in the Law.
- 17.2 Council may by resolution 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.

18. OFFENCES

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 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.

19. IMMUNITY

- 19.1 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.
- 19.2 Section 19.1 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.
- 19.3 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.
- 19.4 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.

19.5 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.

BE IT KNOWN that this law entitled, "WFN Road Dedication Law No. 2010-02" is hereby:

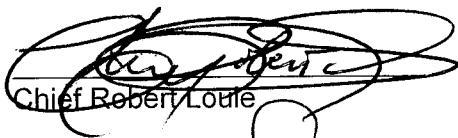
Read a first time by Council of Westbank First Nation at a duly convened meeting held on the 14th day of December, 2009;

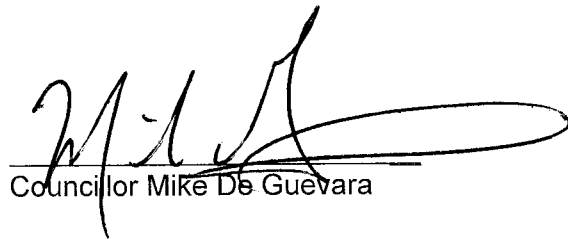
Presented to the Membership at a Special Membership Meeting held on the 26th day of May, 2010;

Read a second time by Council of Westbank First Nation at a duly convened meeting held on the 31st day of May, 2010;

Read a third time and enacted by Council of Westbank First Nation at a duly convened meeting held on the 14th day of June, 2010;

Signed by the following Members of Council:


Chief Robert Louie


Councillor Mike De Guevara


Councillor Brian Eli


Councillor Loretta Swite

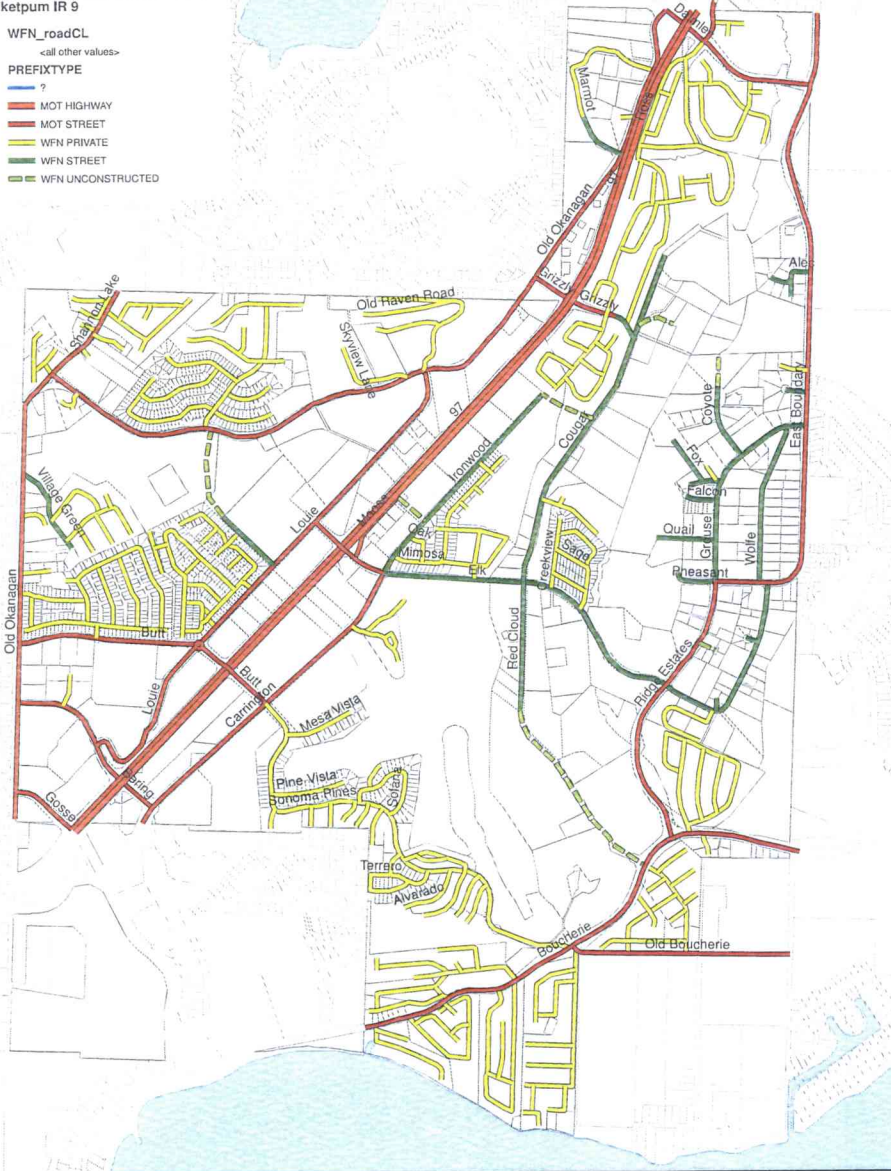

Councillor Larry Derrickson

WFN ROAD LAW (DRAFT SCHEDULE)
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PREFIXTYPE

- ?
- MOT HIGHWAY
- MOT STREET
- WFN PRIVATE
- WFN STREET
- WFN UNCONSTRUCTED



WFN ROAD LAW (DRAFT SCHEDULE)
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