

“LAW-MAKING TEST DRIVE”

_____ FIRST NATION SUBDIVISION, DEVELOPMENT AND SERVICING LAW

A. Does your First Nation have a Subdivision, Development and Servicing Law or Bylaw?

Yes_____ No_____ Don't know_____

B. What are the overall strategic directives of policy goals?

C. What are the pros and cons of combining Subdivision, Development and Servicing into one law vs. separate laws?

PROS	CONS

D. Should Zoning be part of the same law or Separate?

TABLE OF CONTENTS

PART 1.	NAME.....	2
PART 2.	PURPOSE.....	2
PART 3.	WHERE THIS LAW APPLIES	3
PART 4.	DEFINITIONS	3
PART 5.	GENERAL PROVISIONS.....	3
PART 6.	SUB-DIVISION, DEVELOPMENT AND SERVICING	3
	Prohibited Activities without Authorization.....	4

PART 7. APPLICATIONS AND APPROVALS 6
 Concurrent Re-zoning Applications..... 7
 Review by Advisory Committee and other Departments 7
 Principles and Factors in Reviewing Applications 8
 Examples of Recommendations..... 9
 Lands Manager May Request Further Information..... 10
PART 8. OFFENCES, PENALTIES AND ENFORCEMENT 10
PART 9. COMING INTO FORCE 11

PREAMBLE

WHEREAS the _____ First Nation has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;

AND the _____ First Nation has taken over control and management of its Reserve lands and resources under the *Framework Agreement on First Nation Land Management* and has enacted the _____ *Land Code* effective the ____ day of _____, 20____;

AND under the _____ *Land Code*, _____ Council is authorized to pass various laws relating to lands including laws relating to regulation of zoning, subdivision and developments under section ____ of the Code;

E. Does your First Nation have any specific background situations you want to mention or any traditional laws or customs you want to draw on for this law? (For example, “Always leave something for the next person”)

NOW THEREFORE this _____ First Nation Subdivision, Development and Servicing Law is hereby enacted as a Law of the _____ First Nation.

PART 1. NAME

1.1 This Law may be cited as the _____ *First Nation Subdivision, Development and Servicing Law*.

PART 2. PURPOSE

2.1 The purpose of this Law is to....

F. What is the Purpose? (It should follow the Strategic Direction or be aimed at addressing specific issues. What is the Bad the law aims to regulate or the Good that it aims to encourage? This should be a short sentence or paragraph that can be used to easily explain the law to members.)

Example: “....to promote environmentally sustainable, healthy, safe, convenient and well planned use of _____ Lands.”

PART 3. WHERE THIS LAW APPLIES

3.1 The provisions of this Law apply to the whole area of the Reserve and _____ Lands as defined in the _____ Land Code.

G. Always state where the law applies. Is it to the whole Territory? To all Reserves? To specific zones?

PART 4. DEFINITIONS

H. Use Definitions sparingly. Only define terms that are not obvious or that need to be limited or set out in a specific way.

4.1 For the purposes of this Law, terms have the same definitions as in the Land Code;

4.2 For the purposes of this Law, the following definitions apply:

"Band Manager" means any person who is appointed and employed by Band Council in the capacity of Administrative Manager of the Band,

"Person" means any natural person, corporation, and, except where stated otherwise, any person who is a Member of _____, and

"Reserve" means the whole of the _____ Indian Reserve No.13, including, without limiting the generality of the foregoing, any conditionally surrendered lands, designated lands, and lands subject to any form of leasehold interest, allotment, certificate of possession or permit.

PART 5. GENERAL PROVISIONS

5.1 The headings of parts and sections in this Law have been inserted as a matter of convenience and for reference only and in no way define or limit or any of its provisions.

5.2 In the event that all or any part of any section or sections of this Law are found by a court of competent jurisdiction to be invalid, such sections shall be severable, and the remaining portions or sections shall remain in full force and effect.

PART 6. SUB-DIVISION, DEVELOPMENT AND SERVICING

I. This section is the 'guts' or core of this law. This is a common formula for a regulatory law, to state that the following list of items is prohibited or is not allowed without a permit. What do you want to prevent or prohibit or prevent or prohibit without a permit? Are there any small scale individual activities that you want to exempt?

The following are prohibited:

The following are prohibited without a permit:

The following are exempt from requirements to have a permit:

- 6.1 None of the following are permitted within _____ Lands except in strict conformity with the requirements of this Law and any other applicable Laws:
- (a) subdivision,
 - (b) stratification or other division of legal interests in lands or structures into strata units, sub-leases or shares,
 - (c) development,
 - (d) installation of roads, intersections, sewer, water and other infrastructure,
 - (e) construction, alteration, enlargement, addition, demolition or removal of industrial, commercial or residential structures, including the installation, demolition or removal of swimming pools and decks, and
 - (f) deposit or removal or more than 10 m³ of soil, gravel or other materials.
- 6.2 Without limiting the generality of subsection 6.1, the following are prohibited:
- (a) subdivision or partitioning of one or more parcels of _____ Land without subdivision approval by Council;
 - (b) stratification or other division of legal interests in lands or structures into strata units, sub-leases or shares without approval by Council;
 - (c) construction or use of a street access or exit driveway that is within 7.5m of the point of intersection of the road allowance lines of two streets or a street and a lane when such road allowance intersects at an angle of 135° or less, and
 - (d) Carrying out any of the activities set out in subsections 6.1(c), 6.1(d), 6.1(e), 6.1(f) or 6.1(g) without a Development Permit.
- 6.3 Despite subsections 6.1 and 6.2, the following do not require any approvals under this Law in and of themselves:
- (a) construction of any non-residential structure the footprint of which is less than 200 square feet,
 - (b) construction or finishing of trails, driveways, or internal roads for single family residential sites on which the internal road or driveway is completely within a single parcel of land,
 - (c) landscaping, and minor yard work which does not require an excavation deeper than 1.5 m or the removal or deposit of more than 10 m³ of soil, gravel or other material, and
 - (d) installation of trailers and temporary structures provided such trailers and temporary structures have no hook-ups or connections to services.

PART 7. APPLICATIONS AND APPROVALS

J. This section sets out how a person can get a permit or approval:

What type of approvals do you want to allow for?

_____ Permits

Type of permits _____

_____ Approval by BCR

Type of approvals by BCR _____

_____ Other

Who should review the application or receive a courtesy copy for comment?

_____ Lands Advisory Committee

_____ Capital Department

_____ Highways

_____ Independent Engineer

_____ Municipal government under a servicing agreement

_____ Neighbours

_____ Other _____

What should the fees be for the application? (Fees are intended to cover costs. Check what other First Nations and local governments charge. Be sure to allow for engineering or other review if necessary.)

Who should grant the permit or approval?

(Note that the law for permits is that if an applicant meets the requirements, you have to give them the permit).

_____ Lands Manager

_____ Approving Officer

_____ Building Inspector

_____ General Manager or Band Manager

_____ Council

_____ Other

Concerns or limits regarding who should grant the permit or approval _____

- 7.1 Every applicant applying for an approval to carry out a project, development, activity or procedure set out in section 6.1 or 6.2 shall pay the prescribed fees and submit an application to the Lands Manager in the prescribed form that meets the applicable requirements set out in the following:
- (a) General Engineering Requirements for Land Development on _____ Lands;
 - (b) General Requirements for Environmental Assessments on _____ Lands;
 - (c) _____ Heritage Policy Manual;
 - (d) Subdivision and Development Application and Checklist;
 - (e) The National Building Code; and
 - (f) In any directions from certified professionals.
- 7.2 Applications shall be reviewed and processed in stages, generally in the following order:
- (a) Rezoning (if required under the _____ Zoning and Land Use Law),
 - (b) Subdivision,
 - (c) Conceptual Plan,
 - (d) Approval in Principle,
 - (e) Development Permit,
 - (f) Substantial Completion, and
 - (g) Completion
- 7.3 Applicants shall pay the prescribed fee, post any required bonds, and submit the prescribed application form for each relevant stage set out in this Part.

Concurrent Re-zoning Applications

- 7.4 An applicant may apply for approvals under this Law concurrently with a re-zoning application under the _____ Zoning and Land Use Law. In the case of concurrent applications:
- (a) All fees payable under both Laws are due at the time of application; and
 - (b) The applicant is required to provide completed applications under both Laws.

Single Family Exemptions

- 7.5 Despite subsection 7.1(c), a _____ Heritage Investigation Permit is not required for construction of single family homes for _____ Members.

Review by Advisory Committee and other Departments

- 7.6 As soon as practicable after receiving the prescribed fees and a complete application under this Part, the Lands Manager shall:
- (a) refer the application to a meeting of the Land Management Advisory Committee along with all relevant information and documentation;
 - (b) circulate the application and all relevant information and documentation to internal _____ departments for comment;
 - (c) for applications for sub-divisions, multi-family structures, or significant increases in density, refer the application to all adjacent CP-holders on _____ Lands; and
 - (d) if appropriate, refer aspects of the application to the City of _____.

- 7.8 For each application, the Advisory Committee shall consider the following general principles and factors:
- (a) The promotion of health, safety, convenience and welfare of _____ members and of residents and occupants and other persons who have a lawful interest in _____ Lands;
 - (b) Well planned and orderly development of _____ Lands and the preservation of amenities and special features of _____ Lands;
 - (c) Compliance with _____ Land Use Plan and _____ Zoning and Land Use Law, _____ Laws and with relevant federal, provincial and municipal laws and standards;
 - (d) Environmental protection and enhancement;
 - (e) Adherence to _____ housing policies;
 - (f) Provision of community benefits including land and/or funds to _____ for the development of community amenities;
 - (g) Protection and enhancement of cultural and heritage sites;
 - (h) Compatibility with _____ and _____ culture;
 - (i) Viewscapes, aesthetics and visual qualities;
 - (j) Ensuring adequate parking, access and emergency access;
 - (k) The character of the proposed activity or project in relation to the character of the zone, neighbourhood, and the buildings already erected;
 - (l) The conservation of property values;
 - (m) Potential impacts on adjacent uses, owners and occupants;
 - (n) The development of the zone, neighbourhood and Reserve in a manner that contributes to the economic, environmental, cultural and community health of _____ and its Members and the occupants of _____ Land;
 - (o) Any information provided and any approvals already granted by Council, including any terms or conditions, in relation to the same project or the same parcels of land; and
 - (p) Any other factors which may have an impact on the community or _____ Lands.

Examples of Recommendations

- 7.9 In making recommendations to Council, the Advisory Committee may make any relevant recommendations including:
- (a) any recommendation relating to the general factors set out in subsection 7.8;
 - (b) whether there should be bonds posted or irrevocable letters of credit and, if so, in what percentage or what amount;
 - (c) dedication of up to 5% of the area of the land for parks, greenspace or community use or a cash donation in lieu;
 - (d) preferred lot reconfigurations to ensure viable subdivisions;
 - (e) construction of intersections, access and emergency access routes;
 - (f) construction of parking spaces;
 - (g) construction of side walks;
 - (h) purchase and installation of street lights;
 - (i) completion of servicing agreements with the City of _____;
 - (j) provision of updated plans, reports or studies, including as-built drawings after the completion of the project;

- (k) requirements for staging or sequencing of the project including requirements for interim reports;
- (l) set-backs or buffers including set-backs or buffers from property lines and environmental features;
- (m) noise and dust prevention or mitigation measures; and
- (n) any other relevant terms or conditions.

7.10 The Lands Manager shall ensure that recommendations from the Advisory Committee are written up within 7 days after the Advisory Committee meeting.

Lands Manager May Request Further Information

7.11 After reviewing the recommendations from the Advisory Committee and any comments from adjacent land-owners and from _____ managers and departments, the Lands Manager may request further information, plans, reports, or other relevant material from the applicant which the applicant shall provide.

Timelines

7.12 The Lands Manager shall as soon as practicable after having received the comments under subsection 7.6 and 7.7, or within 7 days of having received the additional information requested under subsection 7.11, forward the application to Council along with:

- (a) All relevant documents, maps, plans, reports and other information;
- (b) Recommendations from the Advisory Committee;
- (c) Any comments received from adjacent land-owners or Members;
- (d) Any comments or recommendations from the Lands Manager and other _____ managers or departments; and
- (e) Any comments from the City of _____.

Council Decisions

7.13 As soon as practicable after receiving the application and information set out in section 7.12 Council shall decide whether or not to approve the application and, without limiting the generality of Council’s authority, Council may:

- (a) Reject the application,
- (b) Approve the application with any reasonable terms or conditions, including, but not limited to terms or conditions relating to the items set out in subsections 7.8 and 7.9.

PART 8. OFFENCES, PENALTIES AND ENFORCEMENT

<p><i>L. What are the possible enforcement measures and which do you want to make available?</i></p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/>
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Penalties

8.1 A person who contravenes this Law or an order made by a Court pursuant to this Law is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than three months, or to both.

8.2 A fine payable under paragraph 8.1 shall be remitted to the _____ First Nation by the Court, after reasonable Court costs have been deducted.

Enforcement and Stop Work Orders

8.3 In addition to any other applicable fine, penalty or remedy, Council, the Lands Manager, or a designated official may:

- (a) issue a Stop Work Order to order any Person who has not received full and proper authorization under this Law to cease carrying out any activity, use or construction listed under subsection 6.1 or 6.2 or any related activity or use;
- (b) order any structures, works or installations carried out in violation of this Law to be removed within 30 days, failing which Council may order them to be removed at the expense of the CP-holder or the Person who constructed or installed the structures, works or installations without proper authorization.

8.4 A Stop Work Order imposed under subsection 8.3:

- (a) may be registered in Court and enforced as a court order; and
- (b) continues in force until the condition that led to it is remedied or until the activity that is the subject of the Stop Work Order receives a permit or authorization under this Law.

PART 9. COMING INTO FORCE

Date Law Comes into Force

9.1 This Law shall come into force and effect on the date it is passed by Council Resolution after complying with the requirements of Part 3 of the Land Code.

BE IT KNOWN that this Law entitled _____ Subdivision, Development and Servicing Law is hereby enacted by a quorum of Council at a duly convened Council of the _____ First Nation held on _____, 20__.

Chief

Councillor

Councillor

Councillor

Councillor

A quorum consists of _____
Council Members