



**BEECHER BAY FIRST NATION  
LANDS OFFICE**

***SUBDIVISION, DEVELOPMENT AND SERVICING  
LAW (2020)***  
**(Draft June, 2020)**

For discussion purposes only.  
Not for general circulation.  
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## **BACKGROUND**

- A. Beecher Bay First Nation (“Beecher Bay”) is a First Nation with aboriginal rights and title and inherent jurisdiction over our lands;
- B. Beecher Bay also has jurisdiction and authority over Beecher Bay First Nation Land and resources and interests in these lands under the *Beecher Bay First Land Code* dated for reference May 25, 2003, amended August 1, 2013 (the “Land Code”);
- C. Beecher Bay Council has authority under the Land Code including under section 6 to regulate development, conservation, protection, management, land use, possession, zoning, interests and related matters on Beecher Bay First Nation Land;
- D. Council believes it is in the best interest of Beecher Bay to enact a law addressing subdivision, development and servicing of Beecher Bay First Nation Lands to ensure that the lands are developed and used in a manner that respects and reflects the interests of our Members; and
- E. Council intends this law to apply retroactively;

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

### **1. NAME**

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

### **2. PURPOSE**

- 2.1 The purpose of this Law is to promote environmentally sustainable, healthy, safe, convenient and well-planned use of Beecher Bay First Nation Land.

### **3. APPLICATION OF THIS LAW**

- 3.1 The provisions of this Law apply to the whole area of First Nation Land as defined in the Land Code.
- 3.2 If there is any inconsistency or conflict between this Law and the Land Code, the Land Code will prevail to the extent of the inconsistency or conflict.

### **4. DEFINITIONS**

- 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:

“**Enforcement Officer**” means any person or persons appointed by Council, from time to time, to administer and enforce the provisions of Beecher Bay First Nation Laws enacted by Council, and includes any delegate, the RCMP and any peace officer; and

"Person" means any natural person, corporation, and, unless otherwise stated, also includes any person who is a Member of Beecher Bay.

## **5. GENERAL PROVISIONS**

- 5.1 The headings in this Law have been inserted as a matter of convenience and for reference only and in no way define or limit any of its provisions.
- 5.2 This law applies retroactively.
- 5.3 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.

## **6. PROHIBITED ACTIVITIES WITHOUT AUTHORIZATION**

- 6.1 None of the following are permitted within First Nation Land except in strict conformity with the requirements of this Law and any other applicable Laws:
- (a) subdivision or partitioning of one or more parcels of First Nation Land;
  - (b) stratification or other division of legal interests in lands or structures into strata units, sub-leases or shares;
  - (c) development;
  - (d) cutting down trees or any form of clearing a parcel of land for construction or development;
  - (e) installation of roads, intersections, driveways, trails, sewer, water, dyking, flood protection, drainage works or other infrastructure;
  - (f) drilling, blasting or related activities;
  - (g) construction, alteration, enlargement, addition, demolition or removal of any structures, including signs, and including the installation, demolition or removal of swimming pools and decks;
  - (h) deposit or removal of more than 10 m<sup>3</sup> of soil, gravel or other materials; and
  - (i) other activities, uses or matters prescribed by Council.
- 6.2 In addition to the requirements of section 6.1, the activities set out in paragraphs 6.1(c) to 6.1(i) must not be carried out without a Development Permit.

## **7. EXEMPTIONS**

- 7.1 Despite subsections 6.1 and 6.2, the following do not require any approvals under this Law in and of themselves, provided they conform to the *B.C. Building Code* and its successor Codes, although all such structures and activities are required to comply with all other Laws:
- (a) construction of any non-residential structure the footprint of which is less than 200 square feet;
  - (b) minor repairs or renovations of buildings which do not involve bearing walls, installation of new electrical panels, or replacing the roof;
  - (c) 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;

- (d) 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 m<sup>3</sup> of soil, gravel or other materials; and
- (e) installation of trailers and temporary structures provided such trailers and temporary structures have no hook-ups or connections to services and are not used for residential use for longer than 3 weeks without a permit or approval from Beecher Bay.

## **8. APPLICATIONS AND APPROVALS**

8.1 Every applicant, including Beecher Bay departments and entities, developers and contractors, applying for an approval to carry out a project, development, activity or procedure set out in subsection 6.1 shall pay the prescribed fees and submit an application to the Beecher Bay Lands Manager in the prescribed form that meets the applicable requirements set out in the following:

- (a) General Engineering Requirements for Land Development on Beecher Bay First Nation Land;
- (b) General Terms of Reference for Environmental Impact Assessments;
- (c) Beecher Bay archaeological and heritage assessment policies and procedures;
- (d) Subdivision and Development Application and Checklist;
- (e) The *B.C. Building Code*; and
- (f) Directions from certified professionals.

8.2 Council shall establish a schedule of development cost charges and fees payable pursuant to this Law.

### *Parkland Dedication or Payment in Lieu*

8.3 In addition to development cost charges, property taxes, requirements to install infrastructure, and other contributions, charges and taxes, for:

- (a) every subdivision, residential development with more than two units, commercial or industrial development, or other type of development or activity prescribed by Council, the applicant must provide to Beecher Bay, without compensation or set-off of any kind, a dedication of 5% of the area of the land proposed for development or subdivision, in a location acceptable to Beecher Bay, for park, greenspace, trails, protected or cultural areas or pay to Beecher Bay cash in lieu in an amount that equals the fair market value of the land required to be provided; and
- (b) all other development not listed in paragraph (a) and prescribed by Council, pay to Beecher Bay cash in an amount equal to the fair market value of the area of land that would be dedicated under paragraph (a) in accordance with section 8.4.

8.4 For the purposes of paragraph 0(b), the fair market value of the land will be determined based on the following:

- (a) the average fair market value of all the land in the proposed subdivision or development calculated as the value that would be on either:
  - (i) the date of preliminary approval of the subdivision or development, or
  - (ii) if no preliminary approval is given, a date within 90 days before the final

- approval of the subdivision or development;
- (b) as though the land is zoned to permit the proposed use; and
- (c) as though any works and services necessary to the subdivision have been installed.

8.5 Notwithstanding subsection 8.4, if Beecher Bay and the applicant agree on a value for the land to represent the fair market value required in paragraph 8.3(b), the value on which the parties have agreed will be deemed the fair market value for paragraph 8.3(b).

#### *Community Benefits*

8.6 Beecher Bay has limited reserve land. Many developments impose infrastructure and service burdens and do not provide benefits to the community. Therefore, in addition to required contributions of land or cash in lieu as set out in subsection 0, applicants for subdivisions or developments of commercial, industrial or residential structures, other than single family homes or other structures prescribed by Council, shall pay to Beecher Bay a cash or in-kind contribution towards community benefits which may include programs or facilities for elders, youth, members, culture or related projects and the amount and nature of such contribution:

- (a) may be proposed by the applicant; but
- (b) will be set by Council by Resolution, based on recommendations from the Lands Advisory Committee, if the proposal from the applicant is not acceptable by Council.

#### *Additional Dedication of Land Along Water*

8.7 In addition to any other charges, fees, or land dedications, where the parcel being developed adjoins a lake, river, stream, ocean or other body of water, Council or the Lands Manager may, as a condition of approving a subdivision or development, require the conveyance to Beecher Bay, without compensation, of an easement or covenant or a strip of land not exceeding seven (7) metres in width along the bank or shore for the purpose of access or environmental protection, if, in the opinion of Council, such dedication is in the interest of Beecher Bay.

8.8 The parcel of land to be dedicated under subsection 8.7 must be measured from whichever is applicable of:

- (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 provincial *Land Act*.

#### *Infrastructure Requirements*

8.9 In addition to subsections 8.3, 8.6, and 8.7, and any other requirements set out in this Law, as a condition of approving a subdivision or development, Council or the Lands Manager, at the recommendation of the Land Management Advisory Committee and/or a civil engineer or other professional, may require:

- (a) construction, installation, upgrading and/or maintenance of roads, intersections,

- sidewalks, paths, trails, board walks, street lights, drainage works, dyking, flood protection, sewer, water and other infrastructure;
- (b) landscaping and planting and/or maintaining of trees, shrubs, hedges or other features;
- (c) dedication or transfer of any of the items listed in paragraphs (a) or (b) to Beecher Bay; and
- (d) a bond to ensure ongoing maintenance of the items listed in paragraphs (a) or (b).

#### *Review and processing of applications*

8.10 Applications shall be reviewed and processed in stages, generally in the following order:

- (a) Rezoning (if required under Beecher Bay Law);
- (b) Subdivision;
- (c) Conceptual Plan;
- (d) Approval in Principle;
- (e) Development Permit, which may include permits for clearing, tree-cutting, blasting, road building, construction of infrastructure and connection to services, building permits, and related permits and approvals;
- (f) Substantial Completion;
- (g) Occupancy Permit; and
- (h) Completion and as-built plans.

8.11 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.

#### *Subdivision Process Requirements*

8.12 Where the development includes the subdivision of Beecher Bay First Nation Land, Council or the Lands Manager must, before providing Conceptual Development Plan approval or approval in principle, also be satisfied that the development:

- (a) is suited to the configuration of the parcel of land being subdivided;
- (b) is suited to the use to which it is intended;
- (c) does not reduce the likelihood of remediation of a potentially contaminated site or result in subdividing off a contaminated parcel so development can occur on other parcels without having a certificate or plan approved by Council or the Lands Manager to deal with the potential contamination; and
- (d) does not land lock any parcels of land or make impractical the future subdivision of the parcel of land within the proposed development or of any adjacent parcel.

8.13 Where the development includes the subdivision of First Nation Land and if Council or the Lands Manager so demands, the applicant must also comply with the following requirements:

- (a) furnish profiles of every new proposed road, access and intersection shown on the plan and such topographical details as may indicate the engineering problems to be dealt with in opening up the roads shown upon the plan;
- (b) furnish a sketch showing that the smaller parcels into which the parcel of land is to be subdivided can conveniently be further subdivided into further small

parcels, but this will only be demanded if in the opinion of the Lands Manager 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; and
- (d) survey existing natural resources, water courses, and trees on the parcel proposed for subdivision.

8.14 In determining the sufficiency of the road allowance shown upon the plan of land to be subdivided, Council or the Lands Manager must consider:

- (a) whether the parcel of land is for commercial, industrial or residential use;
- (b) the character of the neighbourhood and area;
- (c) the configuration of the parcel of land;
- (d) the relation of the highway allowances to any existing main highway or approach; and
- (e) 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.

#### *Concurrent Re-zoning Applications*

8.15 An applicant may apply for approvals under this Law concurrently with a re-zoning application under Beecher Bay 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.

#### *Temporary Use Permits, Exemptions and Waivers*

8.16 Council or the Lands Manager may issue a Temporary Use Permit to allow a use or structure for a period of time not to exceed one year. Every Temporary Use Permit issued will be subject to the following conditions:

- (a) the applicant must have submitted an application for a necessary and permanent rezoning, permit or authorization;
- (b) there will be no major change in land use or zoning; and
- (c) the use or structure will not create a significant disturbance or nuisance to neighbours.

8.17 Council or the Lands Manager, in their sole discretion, may reduce or waive minor requirements for applications or approvals under this Law, in writing, in accordance with Beecher Bay policies and regulations and as long as the discretion is exercised in the best interest of Beecher Bay Members.

#### *Heritage and Sacred Lands*

8.18 In the event lands subject to an application for development or subdivision occurs on heritage land or sacred lands, the Lands Manager, Lands Advisory Committee or Council shall ask for recommendations and advice from knowledge elders or cultural advisors.

8.19 Despite subsection 8.1(c), an archaeological or heritage assessment is not required

for construction of single- family homes for Beecher Bay Members unless directed in writing by the Lands Manager.

*Review by Land Management Advisory Committee and other Departments*

8.20 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 within the Beecher Bay administration for comment;
- (c) for applications for sub-divisions, multi-family structures, or significant increases in density, provide notice of the application to all potentially impacted Persons, including, as applicable, adjacent interest-holders, Members, and Beecher Bay residents; and
- (d) if appropriate, refer aspects of the application to Sooke or the Capital Regional District.

8.21 The Land Management Advisory Committee shall review the application and shall provide written recommendations to the Lands Manager including:

- (a) whether the application should be approved, approved with conditions, sent back to the applicant for further information, or denied,; and
- (b) any suggested modifications, terms or conditions that should be set by Council.

*Principles and Factors in Reviewing Applications*

8.22 For each application, the Land Management Advisory Committee shall consider the following general principles and factors:

- (a) the promotion of health, safety, convenience and welfare of Beecher Bay Members and of residents and occupants and other persons who have a lawful interest in Beecher Bay First Nation Lands;  
well planned and orderly development of Beecher Bay First Nation Land and the preservation of amenities and special features of Beecher Bay First Nation Land;
- (b) compliance with Beecher Bay Land Use Plan, if applicable, and Beecher Bay Laws and with relevant federal, provincial and municipal laws and standards;
- (c) environmental protection and enhancement;
- (d) ensuring adequate storm water management and drainage and ensuring no net run-off;
- (e) the necessity or benefit of any of the items listed in subsection 8.9(roads, sidewalks, infrastructure, etc.);
- (f) flooding and erosion measures;
- (g) adherence to Beecher Bay housing policies;
- (h) provision of community benefits including land and/or funds to Beecher Bay for the development of community amenities;
- (i) protection and enhancement of cultural and heritage sites;
- (j) compatibility with Beecher Bay culture;
- (k) viewsapes, aesthetics and visual qualities;
- (l) ensuring adequate parking, access and emergency access;

- (m) the character of the proposed activity or project in relation to the character of the zone, neighbourhood, and the buildings already erected;
- (n) the conservation of property values;
- (o) potential impacts on adjacent uses, owners and occupants;
- (p) the development of the zone, neighbourhood and First Nation Land in a manner that contributes to the economic, environmental, cultural and community health of Beecher Bay and its Members and the occupants of Beecher Bay Land;
- (q) 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
- (r) any other factors which may have an impact on the community or Beecher Bay First Nation Lands.

*Examples of Recommendations*

8.23 In making recommendations to Council, the Land Management Advisory Committee may make any relevant recommendations including:

- (a) any recommendation relating to the general factors set out in subsection 8.22;
- (b) whether there should be bonds posted or irrevocable letters of credit and, if so, in what percentage or what amount and for what purpose;
- (c) proposals for 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, including electric charging stations;
- (g) construction of sidewalks, paths or trails;
- (h) purchase and installation of street lights;
- (i) installation of storm water management and drainage works;
- (j) construction, installation or upgrades of any of the items listed in subsection 0 (roads, sidewalks, infrastructure, etc.);
- (k) completion of servicing agreements with the Capital Regional District or District of Metchosin;
- (l) provision of updated plans, reports or studies, including as-built drawings after the completion of the project;
- (m) requirements for staging or sequencing of the project including requirements for interim reports;
- (n) set-backs or buffers including set-backs or buffers from property lines and environmental features;
- (o) mitigation measures for flood plain requirements;
- (p) noise and dust prevention or mitigation measures such as erosion and sediment control plans; and
- (q) any other relevant terms or conditions.

8.24 The Lands Manager shall ensure that recommendations from the Land Management Advisory Committee are written up within thirty (30) days after the Land Management Advisory Committee meeting.

### *Lands Manager May Request Further Information*

8.25 After reviewing the recommendations from the Land Management Advisory Committee and any comments from adjacent land-owners and other stakeholders and from Beecher Bay administration, the Lands Manager may request further information, plans, reports, or other relevant material from the applicant which the applicant shall provide.

### *Timelines*

8.26 The Lands Manager shall as soon as practicable after having received the comments under subsection 8.20 and 8.21, or within 14 days of having received the additional information requested under subsection 8.25, forward the application to Council along with:

- (a) all relevant documents, maps, plans, reports and other information;
- (b) recommendations from the Land Management Advisory Committee;
- (c) any comments received from the Persons listed in subsection 8.20.

### *Council Decisions*

8.27 As soon as practicable after receiving the application and information set out in section 8.26 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 8.22 and 8.23.

8.28 Council or the Lands Manager may, at any stage of processing any application, including applications for subdivision and development permits, refuse to approve the application if they are of the opinion that:

- (a) the cost to Beecher Bay of providing public utilities or other works or services would be excessive;
- (b) the proposed subdivision, development, use or activity does not:
  - (i) conform to Beecher Bay laws, regulations or policies regulating the subdivision of parcel of land and land use planning;
  - (ii) conform to the Beecher Bay Physical Development Plan or infrastructure plan if applicable;
  - (iii) conform to the requirements of the Ministry of Transportation and Infrastructure within respect to a control access highway;
  - (iv) satisfactorily address the recommendations of any reviewing agencies;
- (c) it does not meet:
  - (i) applicable provisions of the Beecher Bay Design Criteria and Construction Standards and Specifications for Development;
  - (ii) the recommendations of Beecher Bay's list of reviewing agencies;
  - (iii) any applicable provincial or federal acts or regulations;
  - (iv) the Beecher Bay Land Code, Land Use Plan or any Beecher Bay Law;
- (d) the applicant has not paid taxes or other Beecher Bay, fees, charges or fines, including property taxes, development cost charges, and other levies, application

fees, inspection fees, approval fees, or any other fees, charges or fines set out in this Law; or

- (e) Council or the Lands Manager is of the opinion that the application is not in the best interests of Beecher Bay.

## **9. OFFENCES, PENALTIES AND ENFORCEMENT**

- 9.1 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.
- 9.2 A fine payable under subsection 9.1 shall be remitted to the Beecher Bay First Nation by the Court, after reasonable Court costs have been deducted.
- 9.3 Despite subsection 9.1, Beecher Bay may also authorize the Lands Manager, a designated official or an Enforcement Officer to issue a ticket or violation notice to impose a sanction or fine for contraventions of this Law.

### *Enforcement and Stop Work Orders*

- 9.4 In addition to any other applicable fine, penalty or remedy, Council, the Lands Manager, or a designated official or Enforcement Officer 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 any related activity or use; or
  - (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 interest-holder or the Person who constructed or installed the structures, works or installations without proper authorization.
- 9.5 A Stop Work Order imposed under subsection 9.4 may be registered in court and enforced as a court order and 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.

## **10. REGULATIONS**

- 10.1 Council may make any regulations it considers necessary or advisable for purposes under this Law.
- 10.2 For certainty, the powers of Council under subsection 10.1 include the power to make regulations:
- (a) for any purpose in relation to which regulations are provided for in this Law;
  - (b) prescribing any matter or thing referred to in this Law as prescribed or to be prescribed;
  - (c) respecting the form, content, procedures and review criteria for applications, notices, and other documents that are required or permitted under this Law;
  - (d) setting development cost charges, development requirements, other charges and

- fees;
- (e) prescribing building inspection requirements;
- (f) defining words and expressions that are used but not defined in this Law;
- (g) establishing design criteria;
- (h) setting standards or requirements for infrastructure; and
- (i) generally for the purpose of giving effect to this Law.

**11. COMING INTO FORCE**

11.1 This Law shall come into force and effect on the date it is passed by Council Resolution after complying with the requirements of Part 2 of the Land Code.

**BE IT KNOWN that this Law entitled *Beecher Bay Subdivision, Development and Servicing Law* is hereby enacted by a quorum of Council at a duly convened Council of the Beecher Bay First Nation held on \_\_\_\_\_, 2020.**

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