

## Millbrook First Nation Construction and Development Moratorium By law 2021 – 01

WHEREAS: Joe v. Findlay 122 D.L.R. (3d) 377 confirmed that Reserve lands are set apart for the members of a Band as a whole and that no other statutory provision exists that enables individual band members alone to exercise through possession the right to use and benefit which is held in common for all members of a Band;

WHEREAS: section 20 of the Indian Act R.S.C., 1985, c. 1-5 mandates that no one is lawfully in possession of land in a reserve without the approval of the Millbrook First Nation Chief and Council or the Minister of Indian Affairs:

WHEREAS: sections 81, 83 and 85.1 of the Indian Act, confers upon the Millbrook Chief and Council the right to establish certain By laws that are local in nature and applicable to Millbrook Reserve lands:

WHEREAS: the Millbrook First Nation is possessed of reserve land at Millbrook I.R. #27, Cole Harbour #30 and Beaver Dam #17, Sheet Harbour #36 and at Tufts Cove, the maps for which are appended to the By law as Schedule A;

AND WHEREAS: the Millbrook First Nation Chief and Council have identified the need to consider site plan control designations and other amendments to Millbrook First Nation By laws to address issues related to development, growth and land use within the lands of the Millbrook First Nation:

AND WHEREAS: the Millbrook First Nation Chief and Council has the fiduciary duty to ensure all decisions on development consider the entire community's cultural and socio-economic well-being, health, safety, welfare and must ensure such decisions are made without adverse impacts on the community:

AND WHEREAS: to achieve this end, the Millbrook Chief and Council deems it appropriate to impose a moratorium on the use or alteration of reserve lands and on the alteration of existing or construction of new buildings and structures on the lands of the Millbrook Band for 24 months period, beginning May 18, 2021.

### 1. Definitions

In this By law the follow definitions apply:

“**Adjudicator**” includes a practicing Barrister or Solicitor, called to the Bar in the Province of Nova Scotia, or an Adjudicator, Arbitrator or Mediator practicing in the Province of Nova Scotia.

“**Construction**” includes the placement, erection, alteration, repair, dismantling and demolition of structures or buildings and also includes structural maintenance, hammering, land clearing, moving of earth, rock or felled trees, rock breaking, grading excavating, the laying of pipe or conduit whether above or below ground level, working with concrete, alteration or installation of any equipment, the structural installation of construction components or materials in any form whatsoever, the placing or removing of any construction related materials and includes any related work.

“**Construction Equipment**” means any equipment or device designed and intended for use in construction or material handling including but not limited to air compressors, air tracks, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, backhoes, scrapers, pavers, generators, off-highway haulers or trucks, trailers, mobile trailers, ditchers, compactors and rollers, pumps, concrete mixers, graders and other material handling equipment.

“**Council**” means the Chief and Council (as defined in the Indian Act R.S.C 1985) of the Millbrook First Nation Band;

“**Enforcement Officer**” means a member of the Royal Canadian Mounted Police, a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process, or a Millbrook By law Officer.

“**Land**” means the reserve lands held for the use and benefit of the members of the Millbrook First Nation, including but not limited to, Millbrook I.R. #27, Cole Harbour #30 and Beaver Dam #17, Sheet Harbour #36 and Tufts Cove Reserve, the maps for which are appended to the by law as Schedule A.

“**person**” includes an individual, corporation, cooperative, partnership, limited partnership, or unincorporated organization of persons.

## 2. Application of By law

This by law applies to all Reserve Lands of the Millbrook First Nation, attached this by law as Schedule A, which shall also form part of this by law.

## 3. Term

- a. This moratorium shall be effective for an initial period of twenty-four (24) months, beginning on May 20, 2021 and concluding on May 20, 2023.
- b. During this period, Council shall undertake a strategic plan and consider site plan controls and other amendments to Millbrook Band by laws that are deemed necessary to ensure that Land is developed to the best advantage and for the benefit and use of all band members.
- c. Notwithstanding section 3(a), this moratorium may be reconsidered or extended at the discretion of Council through an amending by law to end or extend the Term of the development moratorium.
- d. Where a vote is held accordance with Section 3(c), official notice of the vote shall be posted in the Millbrook Band Office and shared concurrently online thorough official Millbrook Band social media platforms.

## 4. Exemptions

- a. This by law does not apply to activities or matters in respect of Millbrook First Nation constructed housing or economic development ventures undertaken solely by the Millbrook First Nation Band or by the Millbrook First Nation Band in partnership with another entity or partner, on lands of the Millbrook First Nation, attached as Schedule A.

- b. This by law does not apply to activities or matters that involve the commercial leasing of premises situated in the Millbrook Power Centre at Millbrook I.R. #27.
- c. This by law does not apply to activities of Band members who held a valid, written permit issued by the Millbrook First Nation for an activity or matter prior to May 18, 2021.
- d. Any band member or entity who is exempted from the operation of this by law by virtue of section 4(b) or 4(c) are nonetheless bound by the existing approval processes and provisions contained in current Millbrook by laws guiding zoning, the development of land and construction, regulation, use and repair of buildings.

#### 5. Administration and Enforcement

- a. The administration and enforcement of this by law is hereby delegated to the Executive Director of the Millbrook First Nation Band, who, as an Administrator shall administer and enforce the provisions of this by law.
- b. The Administrator of this by law is authorized to further delegate the administration and enforcement of this by law to a Peace Officer, a Millbrook By law Officer or another designate, as necessary to carry out the provisions of this by law.

#### 6. General Prohibition

- a. During the Term of this moratorium, it is an offence under this by law for a person to undertake, permit, authorize, suffer, or acquiesce to the use of alteration of the Land or construction upon it, except in conformity with the provisions of this by law.

#### 7. Investigation

- a. Where the Administrator or their Designate receive an allegation that a violation of this by law has occurred, the Administrator, their Designate may:
  - i. investigate and compile information to determine the nature or substance of the complaint;
  - ii. require further information;
  - iii. send a warning letter or Stop Work Order to the person subject to the allegation or to any other person the Administrator considers appropriate;
  - iv. attempt to resolve the complaint by agreement or informal action;
  - v. decide not to act on the complaint;
- b. To an exercise of power under this by law, the Administrator or their designate is authorized to obtain information from a person or a public body, about a person named in complaints under this by law, including but not limited to:
  - i. the person's name and address,
  - ii. the whereabouts of the person, and
  - iii. the name and address of the person's employer, contractor or subcontractors;

- c. The Administrator or their designate is authorized to obtain information from any source about the occurrence of activities that could constitute an offence under this by law.
- d. The Administrator or their designate may make and maintain written, recorded or videotaped records of any information received under clause (a) or (b) or (c) or of the occurrence of activities that would be an offence under this by law.
- e. The Administrator or their designate may disclose information or records discovered or made during the course of an investigation to an Enforcement Officer to assist the person to serve or post a Stop Work Order or to do anything necessary under the provisions of this by law.
- f. Anything said, any information supplied and any document or thing produced by a person during an investigation by the Administrator or their designate is privileged in the same manner as if it were said, supplied or produced in a proceeding in a court.

#### 8. Stop Work Order

- a. Where, following an investigation the Administrator is satisfied that activities have been occurring on the Land that give rise to a reasonable inference that Land is being used or altered or that construction or other development on the Land is being contemplated by a person, the Administrator or their designate may:
  - i. Issue a Stop Work Order, requiring any or all persons believed to be contravening the by law and the construction equipment, to vacate the location on the Land where the use, alteration or construction is occurring on or before a date specified by the Order and enjoining any or all of them from re-entering or reoccupying it.
  - ii. The Stop Work Order may contain a provision requiring the closure of the location where the use, alteration or construction is occurring on a specified date and either for a particular period, or may order the use, alteration or construction to cease permanently; and
  - iii. Any other provision that necessary to make the Stop Work Order effective.
- b. A Stop Work Order issued by the Administrator or their Designate shall contain sufficient information to specify the nature of the contravention and its location.
- c. Where the Administrator issues a Stop Work Order pursuant to this by law, an Enforcement Officer may affix a copy thereof to the location of the use, construction or alteration and no person shall remove such copy unless authorized in writing by the Administrator.
- d. Where a Stop Work Order to cease use, alteration or construction is made, no person shall perform any act in respect of the use, alteration or construction in respect of which the order is made other than such work as is necessary to make the site of the use, alteration or construction safe.

#### 9. Entry and Inspection

- a. An Enforcement Officer has the authority to enter the location, building, or structure without the consent of the person against whom a Stop Work Order is made, to close the building or structures and take necessary measures to keep it closed.
- b. An Enforcement Officer may take any measures that the Administrator or their designate considers necessary to safely and effectively close the location, building or structure and keep it closed including, but not limited to:
  - i. at reasonable hours, enter and inspect any location, building or structure for the purpose of determining compliance or non-compliance with this by law;
  - ii. requesting all persons present to leave it immediately;
  - iii. attaching locks, hoarding and other security devices;
  - iv. erecting fences and barriers to deter access to the site;
  - v. changing or cutting off utility services; or
  - vi. making interior or exterior alterations so that it is not a hazard while it is closed.
- c. An Enforcement Officer may employ any tradespersons and workers necessary to safely and effectively to close the location, building or structure and keep it closed.
- d. An Enforcement Officer may, for any purpose that the Administrator considers appropriate, allow others access to the location, building or structure that is closed under the Stop Work Order.

#### 10. Serving of Order

- a. After a Stop Work Order is Issued, the Administrator shall, without delay,
  - i. serve a copy of the order on the person identified through the investigation; and
  - ii. post a copy of the order in a conspicuous place at the location, building or structure where the use, alteration or construction occurred.
- b. Service of the Stop Work Order may be made through an Enforcement Officer, either through personal service or registered mail to the person identified in the course of the investigation.
- c. After the person identified in the Stop Work Order is served, that person must provide notice of the order on every other person who is present and in violation of this by law.
- d. Where it is apparent the person named in the Stop Work Order has failed to provide notice to every other person who is present at the location, building or structure in violation of the by law, the Administrator may choose to serve them.

#### 11. Appeals

- a. Where a Stop Work Order has been issued under this by law, the person against whom the Order was issued has 14 days to provide a written appeal to the Council demonstrating that they are either exempt from the operation of the by law pursuant to section 4, or their use, alteration or construction is not contrary to the intent and objectives of this by law.
- b. An appeal under 11(a) must set out the reasons for the Appeal and be accompanied by all supporting documentation, where applicable.

## 12. Hearing

- a. Within thirty (30) days of the filing of a written Appeal, Council shall appoint an Adjudicator to conduct the Appeal.
- b. At least fourteen days prior to the hearing, the Adjudicator shall give notice to the applicant of the date, time and place of the hearing and informing the applicant that they have the right to appear at the hearing and to be heard in respect of the Appeal.
- c. At the hearing, the applicant and the Administrator or their designate may present evidence and make oral or written submissions in respect of the Appeal and provide any other person present at the hearing with an opportunity to be heard.

## 13. Rules of Procedure

- a. The Adjudicator may make rules of procedure governing the hearing of applications and shall keep records of the Appeal.

## 14. Decision

- a. After it has heard all the evidence and submissions, the Adjudicator may dismiss or consider the application in the context of the recitals and objectives of this by law and shall issue a decision in respect of the Appeal within 30 days.

## 15. Person of Stop Work Order to Bear Costs

- a. The subject of a Stop Work Order shall, on demand from the Millbrook First Nation, pay to the Millbrook First Nation the costs of closing the location, building or structure and ameliorating the condition of the Land, the amount which shall certified by the Administrator.
- b. An amount payable under subsection (a) is a debt due to the Millbrook First Nation Band, who reserve the right to pursue all remedies to recover such amounts from the person named in the Stop Work Order.

## 16. Offences & Penalties

- a. In addition to the general prohibition under section 6, a person who fails to comply with Stop Work Order is order is guilty of an offence.

- b. A person who, knowing that a Stop Work Order has been made, causes, contributes to, permits or acquiesces in uses, alterations or construction on the Land or who otherwise contravenes the Stop Work Order, is guilty of an offence.
- c. A person who removes, defaces or interferes with a posted copy of a Stop Work Order is guilty of an offence.
- d. A person who fails to vacate a location, building or structure on the Land that is closed under a Stop Work Order or who enters or re-enter a location, building or structure on the Land that is closed under a Stop Work Order, is guilty of an offence.
- e. A person who provides false or misleading information to contractors, subcontractors, the Administrator or their designate, or who interferes with or obstructs the Administrator or their designate in the administration and enforcement of this by law, commits an offence.
- f. Where an act or omission in contravention of this by law continues for more than one day, such act or omission shall be deemed to be a separate offence committed on each day during which it continues and may be punished as such.
- g. A person who commits an offence under this by law is liable on summary conviction to a fine not exceeding \$1,000, or to imprisonment not exceeding thirty days, or to both.
- h. The cause of action created by this Act is in addition to any other cause of action that exists at common law or by statute.

#### 17. Remedies

- a. In addition to the penalties provided under this by law, an action or other legal proceeding may be brought in the Supreme Court of Nova Scotia for any and all relief and remedies provided by law.
- b. Where it has been established that an offence has been committed under this by law or there is a demonstrated failure to comply with Stop Work Order under this by law, a Judge or a Justice of the Peace appointed to hear such matters may:
  - i. make orders, restraining the continuance or repetition of such contravention or failure and the new or further contravention or failure in respect of the same use, alteration, or construction;
  - ii. make orders directing the removal or destruction of any building or structure or that is in contravention of or fails to comply with this by law and authorizing the Administrator, or their designate, if such order is not complied with, to enter upon the location, building or structure, with such necessary workers and remove or destroy the building or structure and ameliorate the land at the expense of the person named in the Stop Work Order; and
  - iii. make such further order as to the recovery of the expense of any such removal and destruction, and to enforce the by law and as to costs, as the


judge or Justice of the Peace deems proper and any such order may be interlocutory, interim or final;

18. No Action

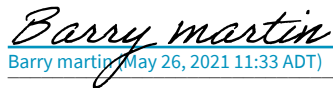
- a. No action or proceeding lies against the Council, the Administrator or their designate or a servant or agent thereof for any matter or thing done or omitted to be done by them in good faith and with reasonable care in exercising their powers or carrying out their duties under this by law.

19. Effective Date of By law

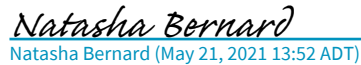
This By law is hereby enacted and comes into force on 18th day of May, 2021.

  
Chief Bob Gloade (May 21, 2021 13:41 ADT)

Chief Bob Gloade

  
Barry martin (May 26, 2021 11:33 ADT)

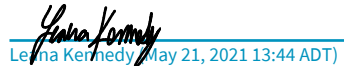
Councillor Barry Martin Sr.

  
Natasha Bernard (May 21, 2021 13:52 ADT)

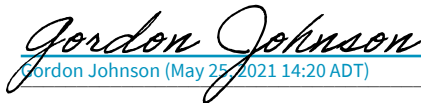
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Alex Cope (May 21, 2021 13:36 ADT)

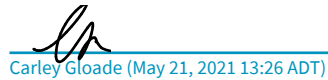
Councillor Alex Cope

  
Leana Kennedy (May 21, 2021 13:44 ADT)

Councillor Leana Kennedy

  
Gordon Johnson (May 25, 2021 14:20 ADT)

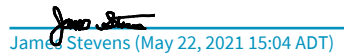
Councillor Gord Johnson

  
Carley Gloade (May 21, 2021 13:26 ADT)

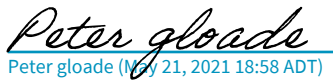
Councillor Carley Gloade

  
Ward Markie (May 22, 2021 16:37 ADT)

Councillor Ward Markie

  
James Stevens (May 22, 2021 15:04 ADT)

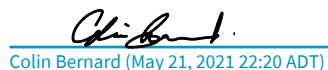
Councillor James Stevens

  
Peter gloade (May 21, 2021 18:58 ADT)

Councillor Peter Gloade

  
Stephen F Marshall (May 23, 2021 16:18 ADT)

Councillor Steven Marshall

  
Colin Bernard (May 21, 2021 22:20 ADT)

Councillor Colin Bernard

Councillor Lisa Marshall

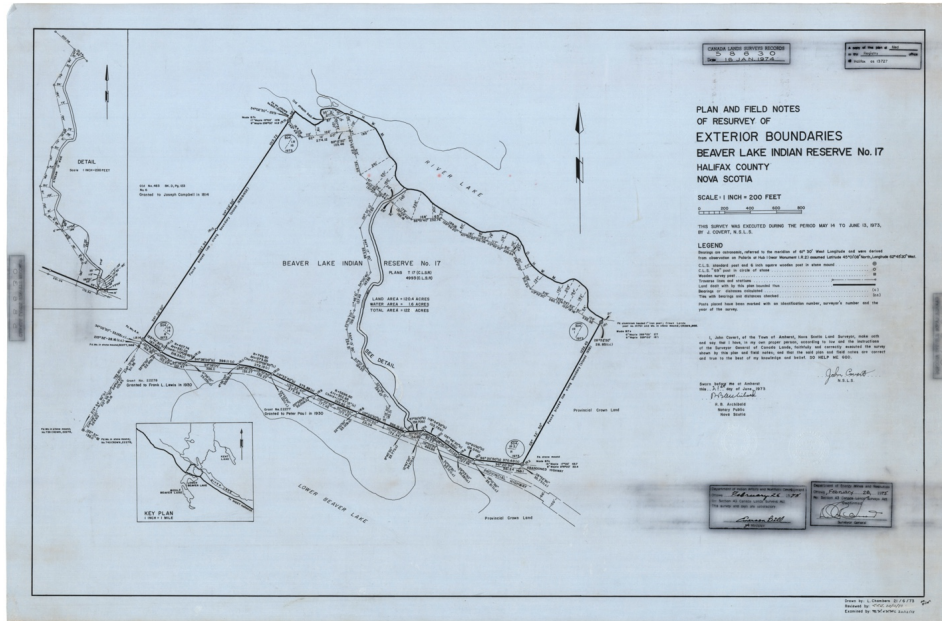


Schedule A to Millbrook First Nation By law 2021 – 01

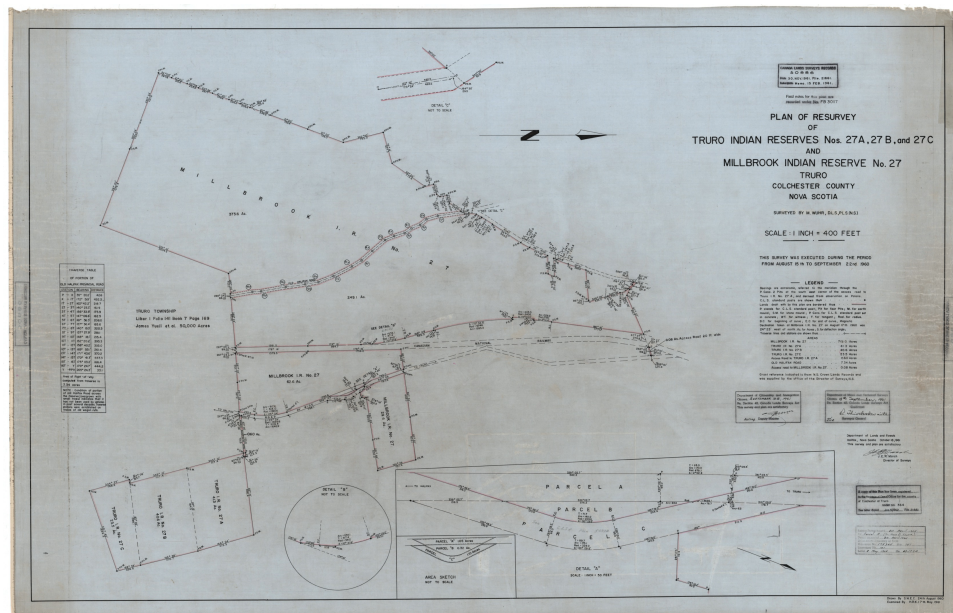
Reserve Lands of the Millbrook First Nation

subject to Construction & Development Moratorium

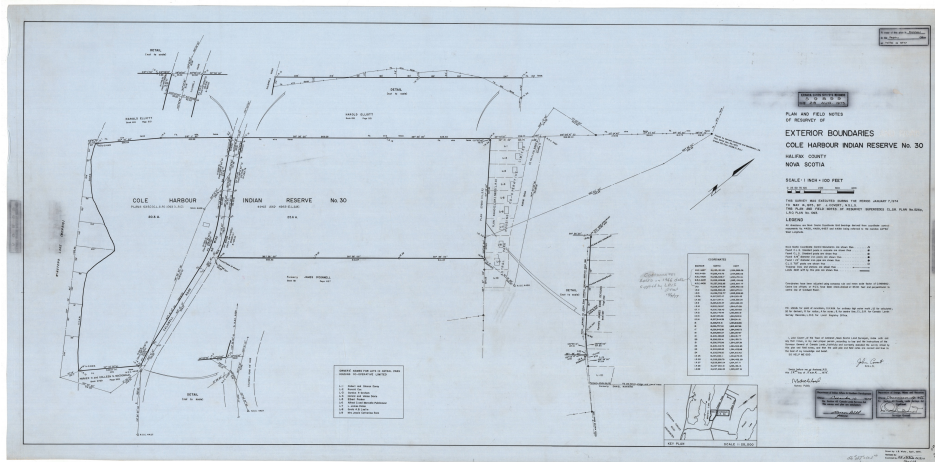
Beaver Lake Indian Reserve #17



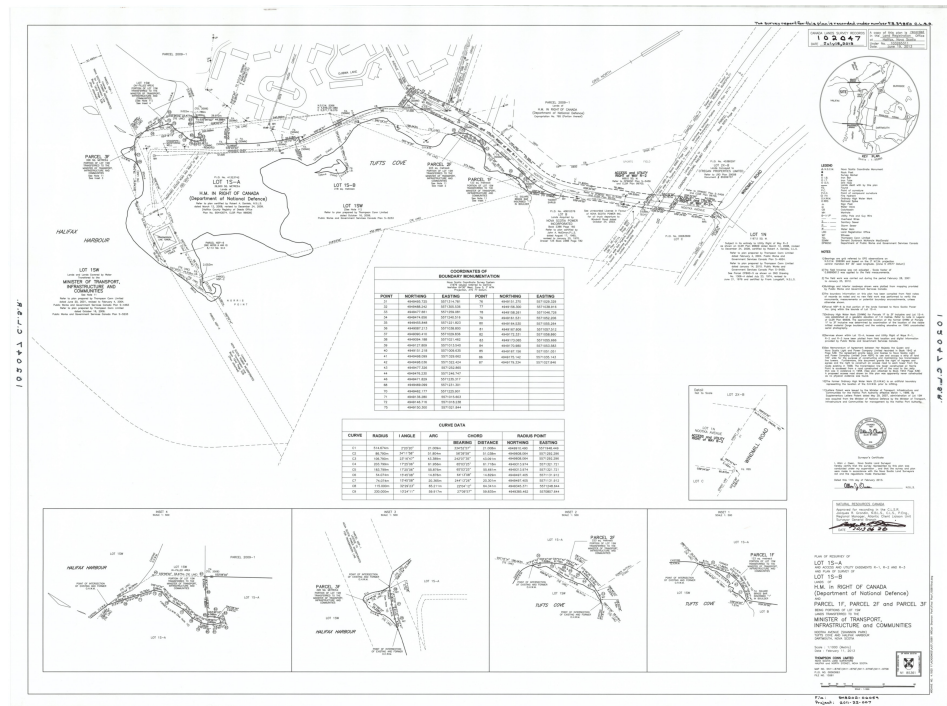
Millbrook Indian Reserve #27



### Cole Harbour Indian Reserve #30



### Tufts Cove Indian Reserve



Sheet Harbour Reserve #36

