



CONSTANCE LAKE FIRST NATION

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BY-LAW NO. 2024-01

OF THE CONSTANCE LAKE FIRST NATION COUNCIL

A BY-LAW RESPECTING TRESPASSING ON RESERVE

WHEREAS the CLFN Reserve has been set aside for the use and benefit of Constance Lake First Nation (“CLFN”);

AND WHEREAS CLFN possesses unextinguished and inherent jurisdiction over our lands, our people, and topics related thereto;

AND WHEREAS the Council of CLFN has deemed it expedient and necessary for the peace, safety and good governance of its members, to establish a by-law to provide for the removal and punishment of persons trespassing on the Reserve;

AND WHEREAS the Council has the authority to make by-laws regarding the removal and punishment of persons trespassing on the Reserve, and regarding the residence of CLFN members, pursuant to section 81(1)(p), (p.1), (q) and (r) of the *Indian Act*;

AND WHEREAS pursuant to section 30 of the *Indian Act*, anyone who trespasses on the Reserve is guilty of an offence and is liable to a fine or imprisonment, or both;

AND WHEREAS section 81 of the *Indian Act* makes violation of a by-law punishable by a fine or imprisonment, or both;

AND WHEREAS this herein By-Law applies on CLFN’s Reserve, but CLFN indicates that it should apply throughout its entire territory, as shown in Schedule “A” to this Law;

NOW THEREFORE, it is hereby enacted pursuant to section 81(1) of the *Indian Act*:

Short Title

This By-Law may be cited as the *CLFN Trespassing By-Law*.

Interpretation

In this By-Law:

“Band Council Office” means the office where the Council conducts its business;

“BCR” means Band Council Resolution or other duly authorized decision of a quorum of Council;

“Council” means the Chief and Council of CLFN;

“Dependent Family Member” means any of a natural or adopted/adoptive: child, parent, grandparent, or sibling if any such person is dependent on the resident CLFN member for care or financial support; or a spouse whether married or common law of a resident CLFN member;

“First Nation” means CLFN, as represented by its duly elected Chief and Council;

“Notice and Order” means a notice of Trespass and order to vacate the Reserve as set out therein;

“Officer” means any police officer, police constable or other person charged with the duty to preserve and maintain the public peace, and any person appointed by Council for the purpose of maintaining law and order on the Reserve;

“Premise on the Reserve” means a building or structure on the CLFN Reserve owned, controlled or occupied by the CLFN or a business owned or controlled by the CLFN, that is not a dwelling;

“Reserve” means the reserve of the CLFN set apart for the use and benefit of CLFN;

“resident CLFN member” means a CLFN member ordinarily resident on the Reserve at the material times;

“Trespassing” or “Trespass” means the entry onto, or the presence on, the Reserve or a Premise on the Reserve, by a person without lawful authority or justification.

Residence on Reserve

1. The Reserve has been set aside for CLFN’s use and benefit, and is available for residency by Band members and any resident Band member’s Dependent Family Members, subject to sections 18.1, 20, 24, 28(2), 58(3) and any other applicable provisions of the *Indian Act* and this or any other By-Law of the Band.
2. Persons who are not CLFN members, or Dependent Family Members of resident CLFN members, require written authorization from Council to reside on the Reserve.

Trespass Conduct

3. Any person residing on the Reserve who does not do so in accordance with sections 1 or 2 is Trespassing on the Reserve, and may be removed pursuant to the procedure referred to in this By-Law.
4. A person who conducts any of the following activities on the Reserve, or in or on a Premise on the Reserve, namely:

- a. persons other than CLFN members and Dependent Family Members, engaged in hunting, fishing, trapping, or other harvesting, for sustenance or commercial purposes, without a valid permit or licence;
- b. persons reasonably deemed to be: threatening to the peace or safety of CLFN members or those lawfully on Reserve; impeding the ability of Council to govern; or impeding the ability of the Council or the First Nation's employees or agents to effectively function; or
- c. any other activity that is prohibited by law or any other By-Law of the First Nation,

shall be deemed to be on the Reserve for a prohibited purpose and in Trespass, and may be removed pursuant to the procedure referred to in this By-Law.

5. Persons who reside on or visit the Reserve and who do not receive a written notice of Trespass and order to vacate the Reserve or a Premise/Premises on the Reserve under section 6 or 7 as applicable are deemed to have permission to remain on the Reserve or the Premise/Premises on the Reserve as applicable, unless and until
 - a. they receive such written notice; or
 - b. reasonable efforts have been made, by persons authorized to do so under section 6 or 7, to provide them with such written notice.

Procedure for Removal of Trespassers

6. At any time, Council may, at a duly convened Council meeting, pass a BCR authorizing a Notice and Order and an Officer, a Councillor, an administrator, an employee or an agent of CLFN, to deliver such Notice and Order to any person who is Trespassing on the Reserve. Any such Noticed and Order shall take into account the seriousness of the conduct of the person declared in Trespass, being such conduct referenced in sections 3 and 4, the effect of such conduct on Band members and Council, and the time required for such person acting reasonably to vacate. Council shall take all reasonable steps to acquire an opinion from legal counsel prior to passing such a BCR, on the legal merits of such Notice and Order in the circumstances, and shall follow such legal advice as is provided.
7. At any time, Council may, at a duly convened Council meeting, pass a BCR authorizing a Notice and Order and an Officer, a Councillor, an administrator, an employee or an agent of CLFN, to issue and deliver such Notice and Order in respect of a Premise or Premises on the Reserve to any person who is Trespassing on the Reserve, and in particular, any person conducting any activities referenced in subsection 4(b). Any such Notice and Order may prohibit such person from entering, or in any way impeding or obstructing access by others to, any Premise or Premises on the Reserve, subject to the following exceptions:
 - a. Where permission has been obtained from Council;
 - b. Where entry is necessary for such person to access services and 48 hours notice has been given by such person prior to such access, where possible; or

c. In an emergency situation.

Council shall take all reasonable steps to acquire an opinion from legal counsel prior to passing such BCR, on the legal merits of such Notice and Order in the circumstances, and shall follow such legal advice as is provided.

8. For greater certainty, Council may pass a BCR referenced in sections 6 or 7 in respect of any incident or occurrence of Trespass prohibited by this By-law, depending on whether the Trespass was in respect of the Reserve or a Premise/Premises on the Reserve and whether the Order to vacate is intended to apply to the Reserve as a whole or a Premise/Premises on the Reserve.
9. The person authorized under sections 6 or 7 to deliver such Notice and Order shall effect such delivery in person, or to the residence of the person by leaving it in a conspicuous place thereat (tacked to the door, placed in mailbox, slid under door, or the like), sending by registered mail or courier to the last known address of such person, or delivering to an agent of such person. If he or she is unable to deliver such Notice and Order after reasonable efforts to do so have been made, he or she shall complete a written document called "Attempt to Deliver" describing the efforts made to deliver such Notice and Order, which he or she shall certify to be true and provide to Council, and the date on which such Attempt to Deliver document is provided to Council shall be the date on which delivery of the Notice and Order shall be deemed to have been effected.
10. Any Notice and Order shall indicate the specific time period that the person has to vacate the Reserve or within which such person may request a hearing before Council to dispute that the notice should be enforced (i.e. to dispute that the conduct referenced in sections 3 or 4 occurred or to seek to justify such conduct), and such time period shall be reasonable in the circumstances.
11. If a hearing referenced in section 10 is requested within the specified time period, then the following shall apply:
 - a. Council shall as soon as possible after receipt of such request, convene a hearing, giving reasonable notice of such hearing to the person to whom the Notice and Order was delivered.
 - b. Until the hearing is held and Council has rendered a decision after such hearing about such Notice and Order, Council shall defer enforcement of the Notice and Order.
 - c. A written record of the hearing including what each person thereat spoke to, shall be made.
 - d. At the hearing, the person who received the Notice and Order and any agents and witnesses that person wishes to call, and any witnesses that Council wishes to call, shall be permitted a reasonable time, as determined by Council, to make submissions or provide evidence in respect of what led to the delivery of the Notice and Order.

- e.* Council shall render its decision about whether the Notice and Order shall be enforced or rescinded, as soon as possible after the hearing.
 - f.* In its decision, if it decides the Notice and Order shall be enforced, it shall stipulate a reasonable period of time thereafter for the person to vacate the Reserve or a Premise/Premises on the Reserve.
 - g.* If Council decides to rescind the Notice and Order, then such rescission shall take effect immediately without any further action being required.
 - h.* If the person who requested the hearing, fails to attend the hearing, Council may decide without more steps being taken, to enforce the Notice and Order.
 - i.* Council shall take all reasonable steps to acquire an opinion from legal counsel prior to rendering any decision, and shall follow such legal advice as is provided.
12. If no request for a hearing is made within the time period stipulated in the Notice and Order, by the person to whom the Notice and Order were delivered, then Officers may enforce the Notice and Order at the expiry of such time period.
13. If a request for a hearing was made within the time period stipulated in the Notice and Order, by the person to whom the Notice and Order were delivered, and Council decides after such hearing, pursuant to section 11, that such Notice and Order are valid and shall be enforced, then Officers may enforce the Notice and Order on the expiry of such period of time that Council stipulates in its decision that the Notice and Order shall be enforced.
14. Officers are hereby authorized to enforce any such Notice and Order by using such reasonable measures as may be necessary to remove such person from the Reserve or a Premise/Premises on the Reserve.
15. A person who has been declared in Trespass pursuant to this By-Law may at any time hence be permitted to enter, be present on, or reside on, the Reserve or a Premise/Premises on the Reserve, if Council, at a duly convened Council meeting, passes a BCR providing this permission. Council shall issue such permission when Council, acting reasonably, determines that the conduct of such person, being such conduct referenced in sections 3 or 4, is no longer occurring and is not likely to recur, or that such person has provided justification for such conduct, to the satisfaction of Council acting reasonably, such as to render it not a prohibited activity. For greater certainty, this section applies regardless of whether there was a hearing or any decision by Council pursuant to section 11.
16. Council shall permit persons to whom a Notice and Order were delivered, to re-attend on Reserve or the Premise/Premises on the Reserve as applicable once, or more often as Council acting reasonably determines, after the Notice and Order are enforced, to collect personal belongings under the supervision of an Officer, if such person so requests.

Offence

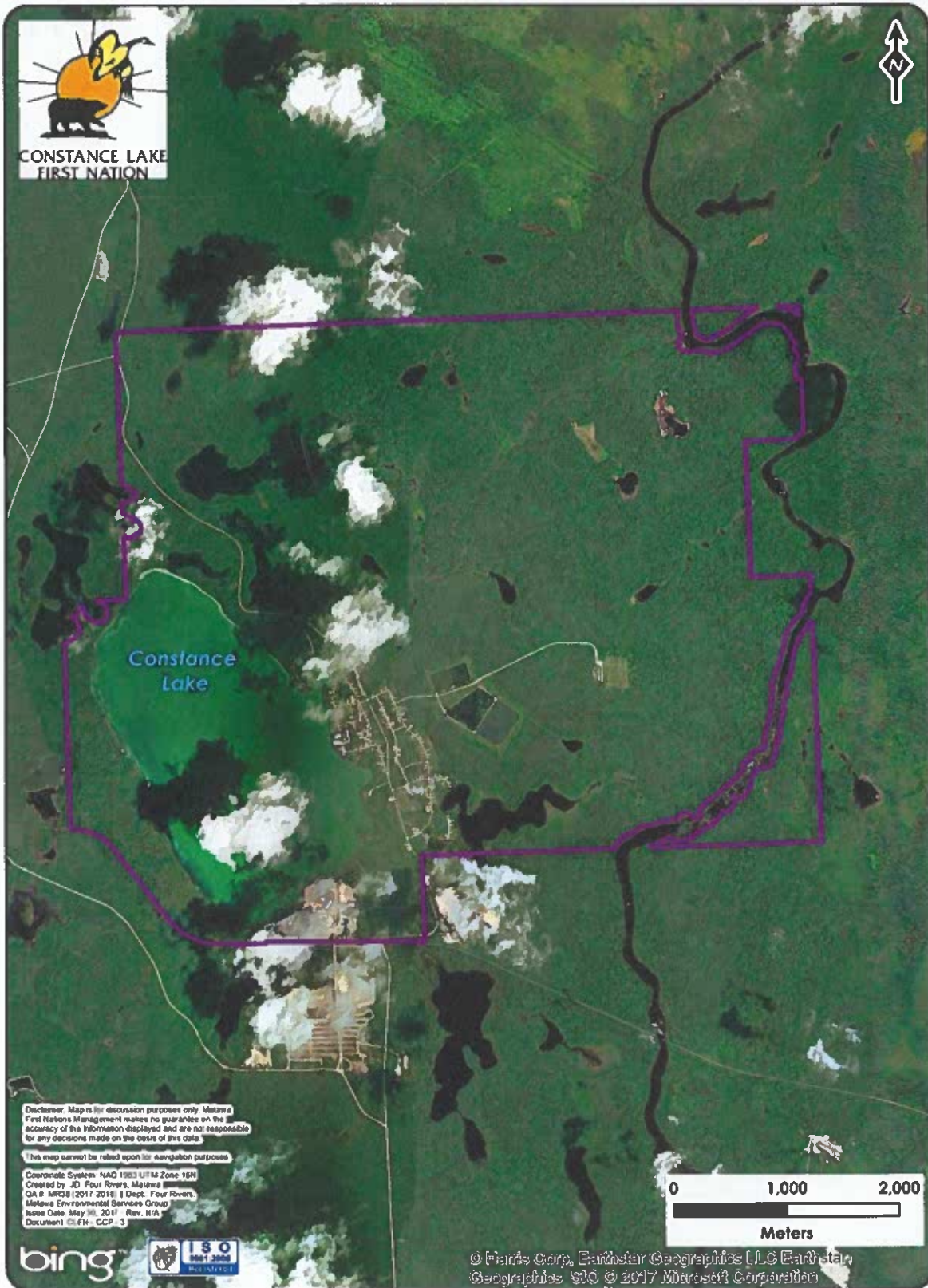
17. A person who fails or refuses to comply with, or interferes with an Officer enforcing, a Notice and Order issued pursuant to, and following the procedural protections provided for in, this bylaw, commits an offence.

18. A person who commits an offence under section 17 is liable on summary conviction to a fine not exceeding \$1, 000 or to imprisonment for a term not exceeding thirty (30) days, or to both.
19. Should a court determine that a provision of this By-Law is invalid for any reason, the provision shall be severed from the By-Law and the validity of the rest of the By-Law shall not be affected. Council shall replace the severed provision with another provision, if necessary, in order to maintain the intent of this By-Law.

SCHEDULE "A" – CLFN Territory





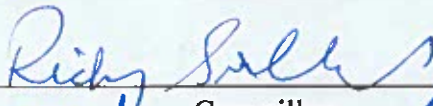


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MAP]



THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the CLFN this May 4, 2024

Voting in favour of the By-Law are the following members of the Council:

	
_____	_____
Chief	
	
_____	_____
Councillor	Councillor
	
_____	_____
Councillor	Councillor
	
_____	_____
Councillor	Councillor

being the majority of those members of the Council of the CLFN present at the aforesaid meeting of the Council.

The quorum of the Council is 4 members.

Number of members of the Council present at the meeting: 7.