

Greater Nisku & Area Off-site Levy Procedures

Leduc County

MARCH 2024



Charges on land development and how they are levied will affect not only land and housing prices and hence housing affordability, but also the demand for developed land, urban growth rates and development patterns, and ultimately, the viability of the development industry and general health of Leduc County's economy. The County may adopt new levies to pay for all of part of the infrastructure (i.e. sanitary sewer, water, arterial roads and storm) in respect of lands to be subdivided or developed. This document outlines the procedures of Leduc County that will guide when to assess levies to developers, when levy amounts are payable, when and how developer front-end construction will be reimbursed.

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1. Introduction

This document is laid out in chronological fashion outlining procedures from initial assessment of off-site levies through to those involving construction of off-site infrastructure and the ultimate disbursement of levy funds.

The Leduc County Greater Nisku and Area Off-site Levy Procedures document will be used to guide off-site levy assessment and collection processes as well as disbursement of levy funds in funding the construction of off-site levy infrastructure.

2. Assessment / Collection Process Overview

The obligation to pay off-site levies occurs in two steps: the levy is “incurred” upon application for a subdivision or development permit, and the Levy paid upon issuance of the subdivision or development permit approval. This section of the Procedure document focuses on the principles and options that will guide the County in determining “when” the submission of an application for a subdivision or development permit would result in a levy obligation being “incurred”.

a. Legislated Exemption

The first criteria to be considered in determining if an application for a subdivision or development permit is eligible or exempt from incurring an off-site levy obligation is outlined in legislation. County guiding procedures are consistent with these legislative requirements.

Municipal Government Act, Section 648(4) states:

“An off-site levy imposed under this Part of the former Act may be collected once only in respect of land that is the subject of a development or subdivision.”



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b. County Exemptions

Off-site levies apply to all “development” or “subdivision” situations within the Greater Nisku Development Area unless such development or subdivision falls under the exemptions.

According to Section 616 of the Municipal Government Act (b) “Development” means

- (i) an excavation or stockpile and the creation of either of them,
- (ii) a building or an addition to or replacement of a building and construction or placing of any of them on, in over or underland,
- (iii) a change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building or
- (iv) a change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building.

According to Section 616 of the Municipal Government Act (ee) “Subdivision” means the division of a parcel of land by an instrument.

As such all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paving or graveling areas, devoting areas to exterior display, etc. might be considered development. Further the placement of any land instrument that divides land might be considered subdivision.

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The intent of the off-site levy assessment is to pay for the construction of off-site levy road, water, sanitary and storm management infrastructure that supports the development. An exemption, unless authorized under the Off-Site Levy Bylaw does not eliminate future obligation to pay off-site levies within the Development Area. A subdivision or development application may be considered exempt from an off-site levy assessment and payment obligation as per the table below:

Table 1 - Assessment Exemptions & Thresholds

Exemption / Exemption Threshold	Rationale
a) Non-residential Farm Buildings – agricultural / farming structures may be considered as exempt. Would include bona fide farming operations encompassing barns, silos and other ancillary development to an agricultural use.	Exempting non-residential farm buildings would permit existing farms to modernize without facing off-site levy assessments and payments.
b) Demolition or Removing of a Structure – This would permit any existing property to demolish or remove existing structures while remaining exempt from off-site levy assessments.	This would allow existing property owners to demolish older structures in readying the property for future development.
c) Division of Lands so that Further Subdivision Can Take Place – includes situations where lands are subdivided into blocks that in turn would require further subdivision of individual lots. A minimum parcel size threshold of greater than 16ha. (40ac.) may be considered.	This allows large tracks of lands to be assembled and divided among developers.



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3. Levy Assessment Deferment and Installment Payments

Once an off-site levy is “incurred” the next decision is when should the Levy be paid.

Off-site levy assessment payment can have a material impact on a developers cash flow, particularly during start up or early stages of development. Off-site levy deferment would allow the developer to pay their levy obligation over a period of time.

Deferment of assessed off-site levy payments has a direct and negative impact on off-site levy cash availability for construction of off-site levy infrastructure and repayment of off-site infrastructure front-ending obligations.

a. Eligibility for Payment Deferment

Off-site Levy payment deferment criterion does not consider the financial capacity of developers—all developers are considered to have equivalent financial capacity and an equal right to payment deferment. Off-site Levy payment deferment criterion is focused on the amount of off-site levy that is to be paid by the developer. Developments below the off-site levy deferment threshold amount are required to pay off-site levy amounts as a condition of subdivision or development permit approval. Developments above the deferment threshold amount may “elect” to defer off-site levy payment over a period of up to two years by entering into agreement (executing a Deferral Agreement) with the County for off-site levy deferred payment.

Guiding Principle

A development or subdivision that are assessed cumulative off-site levy in excess of \$1 million may elect to defer off-site levy payments.



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Table 2 - Levy Deferment Thresholds

Deferment Threshold	Rationale
a) Off-site Levy Assessment Threshold - Deferment of levy would be extended to any subdivision application with off-site levy thresholds greater than \$1,000,000. The maximum deferment period is 2 years.	The dollar value thresholds provides the developer with a clearly understood threshold for payment deferment. Off-site levies below the \$1,000,000 threshold are payable as a condition of approving a subdivision application.

b. Repayment Period and Terms

The repayment period is akin to the terms established in a development agreement whereby the lender (the County) determines the term of the Deferral Agreement and the creditor (developer) must meet the terms of the agreement. The creditor has the ability to pay out amounts owing any time prior to the terms of the agreement.

Guiding Principle

Developments or subdivisions that are eligible and elect to defer off-site levy payments must enter into agreement with the County (execute a Deferral Agreement). The Deferral Agreement with the County outlines the terms and conditions upon which off-site levy payments will be made.

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Table 3 - Off-site Levy Payment Terms

<u>Installment Terms</u>	<u>Rationale</u>
a) Initial Off-site Levy Down Payment – The down payment must be at least 50% of the off-site levy assessment. The balance to be paid in installments.	The payment of a portion of the off-site levy ensures that some level of funding will immediately flow into the off-site levy reserves.
b) Installment Payments – The balance owing would be paid within a maximum period of 2-years, as follows: ▪ 1st Year Anniversary Date - 50% of the balance owing will be paid. The Developer will have the opportunity to pay out the entire amount owing. The balance owing is adjusted to reflect calculated interest (Royal Bank of Canada Prime interest rate at time of agreement execution) ▪ 2nd Year Anniversary Date - payment due for the remaining balance plus interest (Royal Bank of Canada Prime interest rate at time of agreement execution)	The payment installment period is intended to provide a cash flow outlet to the developer.
c) Early Repayment – Developers have the ability to pay off any off-site levy balances earlier than the repayment date terms.	This would accommodate situations where a developer wishes to pay out all levy obligations. Early payment may be desired to avoid off-site levy interest charges.
d) Default of Repayment – All payments that are late or missed, the developer will be required to pay the full remaining balance owing at the rate of the day and will be subject to all legal costs.	This would permit for the County to collect an off-site levy payment in full and render the agreement in default.

c. Repayment Indemnification

Off-site levies are required to be paid as a condition of issuing a subdivision approval or development permit.

d. Offsetting Off-site Levies For Front-end Infrastructure Costs

Developers who front-end the construction of off-site levy infrastructure may apply the cost of eligible infrastructure against off-site levies due to the County. If the developer is constructing eligible off-site infrastructure or contributing land that will be used to site eligible off-site levy infrastructure the County will award the developer a credit up to the value of construction. The construction credit however may only be applied against the same category of levy as the constructed eligible front-end infrastructure. No construction credits may be applied to off-site levies owing that differ from the off-site levy infrastructure being constructed. For example, if a developer were front-ending the construction of eligible road off-site infrastructure, then the off-site levy assessment for roads can be offset by the value of the eligible front-ended road infrastructure.

Guiding Principle

Developers that front-end the construction of eligible off-site infrastructure may offset the off-site levy assessments on this category of off-site infrastructure up to the cost of infrastructure construction.

Front-end infrastructure costs may only be applied against the same off-site levy category as the infrastructure being front-ended.



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Table 4 - Front-end Construction/Off-site Levy Offset

Front-end Construction Amount / Offset Credits	Rationale
a) Offset Based Upon Professional Estimate / Adjust for Actual – The offset credit will be based upon the approved construction estimates. The developer estimate must be by a professional engineer or based on a fixed price bid from a contractor. When the infrastructure is ultimately constructed the actual cost of construction, approved by the County, may be applied to adjust any off-site levies still owing.	Obtaining external pricing ensures that all parties understand the potential cost of the project. Final actual construction cost is required to finalize amounts that may be due to the developer and / or the County. The notification and approval of change orders will keep the County and developer apprised of the cost changes and potential impact on levy assessments outstanding.

4. Infrastructure Front-End Claim Reimbursement

a. Construction Inspection and Acceptance

Developers who are front-ending the construction of off-site levy infrastructure will construct infrastructure to the standards and specifications of the County. The County will inspect constructed infrastructure and issue a construction completion certificate when the infrastructure is completed. The developer will be responsible for correcting any deficiencies in off-site infrastructure construction. Front-end off-site infrastructure will be subject to a two-year warrantee period. To ensure that the developer corrects deficiencies in front-end infrastructure, cost reimbursement will be subject to hold back. The County will issue a Final Acceptance Certificate when all deficiencies have been remedied and the two-year warrantee period has expired. The Final Acceptance Certificate will trigger the release of front-end infrastructure reimbursement hold back.

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Table 5 - Infrastructure Inspection & Acceptance Conditions

Inspection / Acceptance	Rationale
a) Inspection, Correction of Deficiencies, Acceptance –Developer constructed infrastructure will be built to County standards and specification. At completion, infrastructure will be subject to County inspection. The developer will remedy construction deficiencies. A Construction Completion Certificate will be issued by the County to signify that infrastructure conforms to County standards.	The developer is accountable for the infrastructure constructed. The inspection process will ensure that standards have been met and that deficiencies are noted and subject to future correction by the developer. The Construction Completion Certificate “starts” the guaranteed repayment schedule.
b) Hold Back on Deficiencies, Issuance of Final Acceptance Certificate – The County will withhold 125% of the cost of front-end off-site infrastructure repayment amounts to expedite correction of deficiencies. Two years after construction and after construction deficiencies are completed a final acceptance inspection will be undertaken, a Final Acceptance Certificate will be issued and holdback on reimbursement will be released.	To ensure that a developer corrects any off-site infrastructure deficiencies a hold back amount will be established. The issue of a Final Acceptance Certificate by the County will be used to signal release of holdback on payment to the developer.

b. Interest on Unpaid Balance

Developers who construct “qualified” off-site infrastructure, where the cost of construction exceeds off-site levies payable, will earn interest up to five (5) years on balances due to them. Interest will accrue from the point of the issuance of the Construction Completion Certificate, and will be posted to the developers account annually and upon final repayment of the construction cost by the County. Interest accrued on unpaid balances owed to the developer will be earned at the borrowing rates periodically agreed to by the County in the “County Banking Agreement”. The “County Banking Agreement” represents the interest cost to the County if it were to borrow money to front-end construction of the off-site infrastructure. Interest will not be paid on holdback amount held by the municipality.

Guiding Principle

Balances due to developers as a result of front-ending the construction of “qualified” off-site infrastructure will earn interest at the nominal cost of capital to the County as would be received in a loan through the County’s Banking Agreement.

Table 6 - Interest on Outstanding Balances

Interest Payment Options	Rationale
a) Interest on Outstanding Balance at County Cost of Capital – Developer constructed off-site infrastructure will earn interest on any outstanding balance at the interest rate the County would receive if it were to borrow money under the terms and conditions of the “County Banking Agreement”. Interest will be credited to developer accounts annually and at time of final payment to the developer.	Developer who construct “qualified” infrastructure will receive credit for the working capital invested in constructing front-ending off-site infrastructure. The MGA indicates that parties that front-end infrastructure construction will be entitled to interest on their investment.



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The County will develop an annual plan of how it intends to distribute off-site levy reserve funds. The plan will consider future off-site front-ending guarantees, future staging of off-site infrastructure, the balance in off-site levy reserves, the balance of outstanding qualified front-end obligations, the County's borrowing capacity, interest rates, development trends etc. This information will be used to create the County's Funded Major Capital Plan as well as a Finance Plan that outlines anticipated levy receipts, expenditures and the allocation of expenditures between guaranteed payment, front-end debt draw down, monies draw by the County to construct off-site infrastructure and amounts retained in the reserve to finance future disbursements including future construction, etc.

Table 7 - Off-site Levy Reserve Repayment Prioritization

Reserve Use	Rationale
a) Use for Fund Guaranteed Payouts Construction of New Off-site Infrastructure or Draw Down of Off-Site Infrastructure Debts – Off-site levy funds will be drawn down as may be required to meet front- end guaranteed payouts. Off-site reserve funds may also be used / retained for future infrastructure projects or draw down of eligible front-end obligations at the discretion of the County.	Repayment of developer guarantee payouts will be given priority. Funding of new infrastructure or draw down of front-end debts will have equivalent priority.

c. Payments on Developer Front-End Debts

As described above the establishment of guarantees will be given priority on the use of off-site levy reserve funds. Any off-site levy reserve funds that are assigned to the drawdown of obligations related to eligible front-end construction will be distributed to front-ending parties (County and/or private developers) in an equitable fashion. Equity will be achieved by prorating repayment funds across the outstanding balance of all non-guaranteed amounts owed.



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Appendix A

Definitions:

Off-site Levy Offset – Front-end infrastructure costs incurred by the developer used to reduce the amount of off-site levy assessment payable by the developer. Note offsets may only be granted if the infrastructure and off-site levy categories are the same.

Off-site Levy Deferral Agreement – An agreement executed between the developer and County that permits the developer to pay off-site levies on an installment basis.

Off-site Levy Down Payment – The amount of off-site levy that is immediately due upon the issuance of a subdivision or development permit.

Off-site Levy Installment – The amount of off-site levy assessment that is due annually.

Eligible Off-site Infrastructure – Developer front-ended infrastructure that is outlined on Leduc County's Off-site Levy Bylaw.

Exemption – A subdivision or development application may be considered exempt from an off-site levy assessment and payment obligation at that time, however it does not entirely eliminate the obligation to pay off-site levies for the development area.

County's Major Capital Plan – Outlines off-site infrastructure that will be approved for construction.

County Annual Financial Plan – Outlines future anticipated disbursement / retention of off-site levy reserve funds. The plan considers development infrastructure staging, off-site levy reserve balances, future off-site levy receipts, County debt capacity etc.

Construction Completion Certificate – Issued by the County to signify that front-end off-site infrastructure has been constructed to standard. The certificate issue date also commences the guaranteed repayment schedule.

Final Acceptance Certificate – Is issued at the completion of a two-year warrantee period and when front-end infrastructure is free of defects and deficiencies. The Final Acceptance Certificate signals the release of hold back on front-ended construction.