



TSAWWASSEN FIRST NATION
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2009

LAND USE PLANNING AND DEVELOPMENT
ACT

Date Enacted: 3 April 2009

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Table of Legislative Changes

| Name of Act | Bill Number | Date Enacted | Section(s) Amended |
|--------------------------------------------------|--------------------|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| Off Site Levy Rate Standardization Act | 004-2012 | 15/03/2012 | s.66(3) repealed |
| Building Prosperity Through Land Development Act | 003-2013 | 27/06/2013 | s.69 and 70 repealed and replaced with s.70.1 and 70.2 s.73(1) and 73(2) amended s.73(3) added s.88.1, 88.2, 88.3, 88.4, 88.5, and 88.6 added |
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Tsawwassen First Nation

2009

LAND USE PLANNING AND DEVELOPMENT ACT

Contents

Part 1 – Preliminary Matters

- 1 Citation
- 2 Definitions
- 3 Time of commencement
- 4 Executive Council may delegate powers

Part 2 – Land Use and Zoning Guiding Principles

- 5 Land use to conform to land use plan
- 6 Principles to be used for guidance as to land use and zoning
- 7 Statement of principle policy objectives for land use and zoning

Part 3 – Land Use Plan

Division 1 – Community Approval Required for Land Use Plan Amendment or Replacement

- 8 Land use plan for Tsawwassen Lands
- 9 Proposed amendment or repeal and replacement of land use plan requires majority vote
- 10 Notice of community meeting re land use plan
- 11 Permission for Non-Members to attend community meetings re land use plan
- 12 Quorum for community meeting re land use plan
- 13 Executive right to extend meeting period for community meeting
- 14 Approval by mail-in balloting as alternative to approval at community meeting

Division 2 – Land Use Designations

- 15 Amendment of land use designations
- 16 Requirements for land use designation amendments by land holder application
- 17 Requirements for land use designation amendments by Executive Council resolution
- 18 Review of land use designation amendments applications and resolutions
- 19 Conflict of interest of director in relation to land use designation amendments
- 20 Review of preliminary report and decision whether to proceed with land use designation amendments
- 21 Notice to land holder applicant for land use designation amendments
- 22 Request for community input as to land holder application or Executive Council resolution
- 23 Notice of request for community input about proposed land use designation amendments
- 24 Contents of notice about proposed amendments to land use designation
- 25 Director to prepare final report about land use designation amendments
- 26 Executive Council must meet to consider final report
- 27 Executive Council's decision as to process after receiving final report
- 28 Revised final report if additional information requested about proposed amendments
- 29 Distribution of decision about proposed land use designation amendments
- 30 Notice of community meeting to seek its approval to land use designation amendment
- 31 Information to be included in or to accompany notice of community meeting
- 32 Community meeting that may be held to consider land use designation amendments
- 33 Quorum for community meeting about proposed amendments to land use designation
- 34 Approval by mail-in balloting as alternative to holding community meeting

Part 4 – Zoning

- 35 Definition of “consult” for this Part
- 36 Zoning regulation amendments to be consistent with land use plan
- 37 Application by land holder for zoning regulation amendments
- 38 Proposal by Executive Council for amendments to zoning regulations

- 39 Director's duties on receipt of application or resolution respecting zoning regulation amendments
- 40 Decision whether to proceed with zoning regulation amendments, based on director's report
- 41 Consultation process if zoning regulation amendments are to proceed for decision at community meeting
- 42 Notice to be provided requesting comments about zoning regulation amendments
- 43 Notice requirements about zoning regulation amendments
- 44 Final report about zoning regulation amendments
- 45 Executive Council to consider final report about proposed amendments to zoning regulations
- 46 Distribution of copies of resolution rejecting or approving proposed amendment

Part 5 – Land Use Variance to Relieve Hardship

Division 1 – Variance Board

- 47 Tsawwassen First Nation Variance Board established
- 48 Responsibilities of the variance board
- 49 Meetings
- 50 Secretary to variance board
- 51 Secretary to provide copies of decisions to applicants and to Executive Council
- 52 Retention of records of decisions and public access to decisions
- 53 Quorum
- 54 Confidentiality

Division 2 – Land Use Variances for Reasons of Hardship

- 55 Application to variance board
- 56 Variance board's decision whether to grant application for variance
- 57 Notice of application for land use variance
- 58 Notice to the applicant
- 59 Voting
- 60 Conflict of interest
- 61 Judicial Council may review order made under section 56

Part 6 – Offsite Levies

- 62 Imposition and payment of offsite levies to Tsawwassen Government
- 63 Offsite Levies Reserve Fund and deposits into the fund
- 64 Expenditures from the Offsite Levies Reserve Fund
- 65 Exemptions from payment of offsite levies
- 66 Offsite levies – calculation, inflation index and grace period
- 67 Offsets against offsite levies for green initiatives or projects within Tsawwassen capital works plan
- 68 Use of levies to finance works

Part 7 – Non-Conforming Uses

- 69 Repealed
- 70 Repealed
- 70.1 Non-conforming uses and siting
- 70.2 Extent of damage preventing reconstruction as non-conforming use
- 71 No compensation for reduction in value in relation to land use plan or issuance of permit

Part 8 – Development Permit Areas and Permits for those Areas

- 72 Development permit area offences
- 73 Designation of development permit areas
- 74 Development permits
- 75 Development approval information
- 76 Bond or other security required to guarantee completion of any subdivision or development of Tsawwassen Lands

Part 9 – Subdivisions and Building Permits

Division 1 – Approving Officer

- 77 Appointment of approving officer and requirement for approval to subdivision plan
- 78 Other responsibilities of approving officer
- 79 *Land Title Act* (British Columbia) and Tsawwassen Laws for subdivisions and related matters

Division 2 – Subdivision and Development Requirements

80 Subdivision servicing requirements

81 Conditions applicable to subdivision approvals or building permits

Division 3 – Building Permits for Tsawwassen Lands

82 Building permit offences

83 Building permits

84 Building inspector for Tsawwassen Lands

85 Bond or other security required to guarantee completion of any subdivision or development of Tsawwassen Lands

Part 10 – Development Requirements

86 Development defined for this Part

87 Development requirements may be included in land use plan

88 Bond or other security required to guarantee compliance

88.1 Phased development agreements

88.2 Term and assignment of phased development agreement

88.3 Process for phased development agreement

88.4 Amendments to phased development agreement

88.5 Information that must be available for public inspection

88.6 Filing of notice of phased development agreement

Part 11 – Environmental Assessment

89 Environmental assessments

Part 12 – Manner and Form of Amending this Act

90 Application

91 Preparation of proposed amendments

92 Notice of and meeting about amendments

93 Procedure after meeting

94 Regulations for a vote

Part 13 – Regulations

95 Regulations

96 Regulations respecting fees

97 Regulations governing subdivisions and subdivision control

98 Regulations governing buildings and structures on Tsawwassen Lands

99 Regulations respecting land use plan, land use designations, zones and zoning regulations, variances and related other matters

100 Regulations respecting offsite levies

101 Offences created by regulation

102 Included powers for regulations

103 Interpretation

104 Repeal

105 Commencement

Tsawwassen Legislature enacts as follows:

PART 1 – PRELIMINARY MATTERS

Citation

- 1 This Act may be cited as the *Land Use Planning and Development Act*.

Definitions

- 2 In this Act:
 - “**advisory council**” means the advisory council referred to in clause 5.2 of the Tsawwassen First Nation Constitution;
 - “**approving officer**” means the approving officer for Tsawwassen Lands appointed under section 11 of the *Land Act* (Tsawwassen First Nation) and includes an approving officer for Tsawwassen Lands appointed under section 77 of this Act;
 - “**building inspector**” means the building inspector for Tsawwassen Lands appointed under section 84;
 - “**chief administrative officer**” means a person appointed in that capacity under the *Government Employees Act*;
 - “**community meeting**” means a community meeting of Tsawwassen Members;
 - “**corporation**” means an incorporated association, company, society, municipality or other incorporated entity, where and however incorporated, and includes a corporation sole;
 - “**director**” means the Director of Lands appointed in that capacity by the Executive Council under the *Government Employees Act*;
 - “**Eligible Voter**” means a Tsawwassen Member of age 18 or over;
 - “**final agreement**” means the Tsawwassen First Nation Final Agreement among Tsawwassen First Nation, Her Majesty the Queen in right of Canada and Her Majesty the Queen in right of British Columbia, and includes amendments to that agreement made in accordance with it;
 - “**Judicial Council**” means the Judicial Council established under the *Administrative Review and Judicial Proceeding Act*;
 - “**land holder**” means the holder of an interest in Tsawwassen Lands, but does not include Tsawwassen First Nation or the Executive Council acting on its behalf;
 - “**land use designation**” means the designation of broad land uses for areas of Tsawwassen Lands that are specified in the land use plan;
 - “**land use designation amendments**” means amendments proposed by
 - (a) a land holder by application under section 15 (1), or
 - (b) the Executive Council by resolution under section 15 (2);
 - “**land use plan**” means
 - (a) the land use plan for Tsawwassen Lands entitled “Tsawwassen First Nation Land Use Plan” approved by the Chief and Council of Tsawwassen First Nation prior to the effective date, based on the “Tsawwassen First Nation Community Plan Highlights” that, after a community consultation process, was approved in principle on July 25, 2008, (by vote of members of

Tsawwassen First Nation of age 18 or over), as that plan is amended from time to time, and

- (b) if, under section 99, the Executive Council repeals and replaces that land use plan or a subsequent one, that replacement land use plan for Tsawwassen Lands, as amended from time to time;

“land use principles” means the Tsawwassen First Nation land use principles referred to in section 6;

“Non-Member” has the same meaning as it has in Chapter 1 [*Definitions*] of the final agreement;

“offsite levy” means a levy imposed by the director under section 62;

“person” includes a corporation, unincorporated entity, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;

“Tsawwassen Individual” means an individual who is eligible to be enrolled as a member of Tsawwassen First Nation in accordance with Chapter 21 [*Eligibility and Enrolment*] of the final agreement;

“Tsawwassen Lands” means the lands set out in Appendix C-4 of the final agreement as Tsawwassen lands, as amended from time to time under that agreement, and includes all subsurface resources on or beneath the surface of those lands;

“Tsawwassen Member” means a Tsawwassen Individual who is enrolled under the final agreement in accordance with Chapter 21 [*Eligibility and Enrolment*] of the final agreement;

“variance board” means the Tsawwassen First Nation Variance Board established under section 47;

“zoning regulation amendments” means amendments proposed by

- (a) a land holder by application under section 37 (1), or
- (b) the Executive Council by resolution under section 38 (2).

Time of commencement

- 3** A provision of this Act must be read as commencing at the beginning of the day on which it comes into force.

Executive Council may delegate powers

- 4** (1) The Executive Council, by conditional or unconditional written authority, may delegate any of the powers under this Act to any person who is employed under the *Government Employees Act* and has responsibilities under this Act.
- (2) Despite subsection (1), the Executive Council must not delegate a power under this Act to prescribe regulations.
- (3) A person to whom the Executive Council, under subsection (1), delegates any powers may exercise the powers and must perform the functions and duties associated with those powers in accordance with the written authority referred to in subsection (1).

PART 2 – LAND USE AND ZONING GUIDING PRINCIPLES

Land use to conform to land use plan

- 5 Except as otherwise provided in this Act, all use of Tsawwassen Lands must conform to the land use plan.

Principles to be used for guidance as to land use and zoning

- 6 Tsawwassen First Nation land use principles, whether set out in this Act or as written policy guidelines will guide
- (a) interpretation of the land use and zoning principles under this Act,
 - (b) the consideration of
 - (i) applications made by land holders, and
 - (ii) resolutions by the Executive Councilproposing amendments to the land use plan or to zones established under that plan, and
 - (c) consideration for any variance under this Act.

Statement of principle policy objectives for land use and zoning

- 7 In respect of Tsawwassen Lands, Tsawwassen First Nation states that for land use and zoning its policy objectives include the following:
- (a) providing diverse recreational and cultural opportunities;
 - (b) generating a wide range of economic opportunities;
 - (c) creating a strong and vibrant village centre based around the government administrative building;
 - (d) honouring the connection of Tsawwassen First Nation to its land, resources and cultural heritage;
 - (e) recognizing the importance of land for Tsawwassen Members' physical and spiritual needs;
 - (f) protecting the land and land resources for future generations;
 - (g) promoting environmentally sustainable development;
 - (h) promoting urban design that reflects the community identity;
 - (i) keeping market oriented land uses separate from the community centre;
 - (j) ensuring a transparent, consistent and credible process for the development of Tsawwassen Lands.

PART 3 – LAND USE PLAN

Division 1 – Community Approval Required for Land Use Plan Amendment or Replacement

Land use plan for Tsawwassen Lands

- 8 (1) The land use plan must not be amended under section 99, and any repeal and replacement of the use plan must not be enacted under that section, unless the amendment or repeal and replacement that is proposed by the Executive Council receives the approval of Eligible Voters at a community meeting.

- (2) The Executive Council must not exercise its powers under section 99 to repeal the land use plan except in conjunction with the enactment under that section of a replacement for the land use plan.

Proposed amendment or repeal and replacement of land use plan requires majority vote

- 9 An amendment or repeal and replacement referred to in section 8 is carried at the community meeting under that section held to consider the proposed amendment or the repeal and replacement, as the case may be, if it is approved by a majority of Eligible Voters present in person at the meeting.

Notice of community meeting re land use plan

- 10 (1) The Executive Council must provide written notice of a community meeting under section 8 by
 - (a) posting the notice at the administration offices of Tsawwassen First Nation at least 21 days before the meeting,
 - (b) mailing the notice to Eligible Voters, and
 - (c) publishing the notice in Tsawwassen First Nation’s newsletter (the “TFN Community Notice”) at least 14 days before the meeting.
- (2) Without prejudice to subsection (1), the Executive Council may additionally give notice of a community meeting under section 8 in any other manner it considers to be appropriate.
- (3) A notice under this section must
 - (a) specify the date, time and place of the meeting, and
 - (b) include a brief description of the amendment or repeal and replacement that is proposed for consideration at the meeting.

Permission for Non-Members to attend community meetings re land use plan

- 11 The Executive Council, by resolution, may allow
 - (a) Non-Members, and
 - (b) others identified in the resolutionto attend at community meetings under section 8.

Quorum for community meeting re land use plan

- 12 The quorum for a community meeting under section 8 is 10% of all Eligible Voters.

Executive right to extend meeting period for community meeting

- 13 The Executive Council may schedule one or more additional meetings to discuss and decide a proposed amendment or repeal and replacement of the land use plan under section 8 and the notice provisions of section 10 apply in respect of the additional meeting or meetings, as the case may be.

Approval by mail-in balloting as alternative to approval at community meeting

- 14 Despite section 8, instead of holding a community meeting to seek the approval of Eligible Voters to the proposed amendment or repeal and replacement referred to in that section, the Executive Council may seek that approval by means of a mail-in balloting system established by regulation of the Executive Council.

Division 2 – Land Use Designations

Amendment of land use designations

- 15** (1) By means of an application that is submitted to the director and that complies with section 16, a land holder may propose amendments to a land use designation.
- (2) By means of a resolution that complies with section 17, the Executive Council may propose amendments to a land use designation.

Requirements for land use designation amendments by land holder application

- 16** An application under section 15 (1) for land use designation amendments must include or be accompanied by
- (a) documentation proving the land holder's ownership or the credentials of the person acting on the land holder's behalf,
 - (b) the particulars of the proposed amendments,
 - (c) the reasons for requesting it,
 - (d) a map showing
 - (i) the area it would affect, and
 - (ii) the adjacent properties,
 - (e) an outline of all servicing information and land use issues,
 - (f) any additional information required by the director, and
 - (g) the application fee prescribed by regulation of the Executive Council.

Requirements for land use designation amendments by Executive Council resolution

- 17** In proposing land use designation amendments under section 15 (2), the Executive Council must
- (a) make a decision in writing that sets out or incorporates as part of the decision each of
 - (i) the particulars of the proposed amendment,
 - (ii) the reasons for requesting it,
 - (iii) a map showing
 - (A) the area it would affect, and
 - (B) the adjacent properties, and
 - (iv) any additional information requested by the director, and
 - (b) deliver to the director a copy of the resolution referred to in section 15 (2) and of the decision referred to in paragraph (a) of this section.

Review of land use designation amendments applications and resolutions

- 18** As soon as practicable after receipt of
- (a) land holder application under section 15 (1), or
 - (b) an Executive Council resolution under section 15 (2)
- in relation to land use designation amendments, the director must
- (c) review servicing and land use issues in relation to the application or resolution,
 - (d) request additional information that he or she considers to be required in the circumstances,

- (e) prepare a preliminary report addressing the impact of the proposed amendment in light of the land use principles referred to in section 6,
- (f) include in the preliminary report a recommendation as to whether the application should proceed for further consideration, and
- (g) provide a copy of the preliminary report to the Executive Council.

Conflict of interest of director in relation to land use designation amendments

- 19**
- (1) In this section, “**conflict of interest**” includes a perceived conflict of interest.
 - (2) The director must absent himself or herself from the review process pertaining to land use designation amendments proposed under 15 (1) or (2) if the director has a conflict of interest in relation to the amendments.
 - (3) If the director has a conflict of interest in relation to the amendments, the chief administrative officer must assume the role of the director in relation to that review process.

Review of preliminary report and decision whether to proceed with land use designation amendments

- 20**
- On receipt of the preliminary report referred to in section 18, the Executive Council
 - (a) must convene for a preliminary assessment of the land use designation amendments proposed by application of a land holder under section 15 (1) or by resolution of the Executive Council under section 15 (2),
 - (b) on the basis of that assessment, must decide whether the application or resolution, as the case may be, should proceed, and
 - (c) if the decision is that the application or resolution should proceed, must schedule a meeting of the Executive Council at which the application or resolution will be considered.

Notice to land holder applicant for land use designation amendments

- 21**
- (1) In the case of an application under section 15 (1) by a land holder for land use designation amendments, the Executive Council must provide the applicant with
 - (a) notice of the Executive Council’s decision under section 18,
 - (b) notice of the meeting of the Executive Council scheduled under section 20 (c), and
 - (c) the director’s preliminary report under section 18
 at least 5 days before the meeting at which the application will be considered.
 - (2) The Executive Council must afford the applicant land holder an opportunity to
 - (a) appear at the meeting at which the application is considered, and
 - (b) address the Executive Council with respect to the application.

Request for community input as to land holder application or Executive Council resolution

- 22**
- (1) If the Executive Council decides under section 20 either that an application under section 15 (1) or a resolution under section 15 (2) should proceed, the director must request comments about the land use designation amendments from
 - (a) the approving officer,
 - (b) Tsawwassen Members,
 - (c) affected land holders,

- (d) affected Non-Members, and
- (e) the advisory council.

(2) In the manner described in section 23, the Executive Council must provide the persons listed in paragraphs (a) to (e) of subsection (1) with notice of the request for comments made under that subsection.

Notice of request for community input about proposed land use designation amendments

23 The request under section 22 for comments about proposed amendments to a land use designation must be made by written notice provided by the Executive Council, at least 14 days before the meeting referred to in section 20 (c), by

- (a) posting the notice at the administration offices of Tsawwassen First Nation,
- (b) either
 - (i) publishing the notice in Tsawwassen First Nation’s newsletter (the “TFN Community Notice”), or
 - (ii) mailing or delivering the notice to Eligible Voters, and
- (c) mailing or delivering the notice to affected land holders and the advisory council.

Contents of notice about proposed amendments to land use designation

24 The notice under section 22 (2) must

- (a) provide a summary of the application or resolution in relation to the land use designation amendments,
- (b) request written comments on the land use designation amendments from the persons listed in paragraphs (a) to (e) of section 22 (1), and
- (c) specify a date by which those persons must respond to the director’s request for the written comments.

Director to prepare final report about land use designation amendments

25 As soon as practicable after the expiration of the time for submitting comments, the director must

- (a) prepare a final report on the land use designation amendments, taking into consideration the comments received, the needs of the community and other relevant matters, including any recommendations among the comments, and
- (b) provide a copy of the final report to the Executive Council.

Executive Council must meet to consider final report

26 The Executive Council must consider the final report at a meeting of the Executive Council that it must schedule for that purpose.

Executive Council’s decision as to process after receiving final report

27 As soon as practicable after considering the final report, the Executive Council must

- (a) reject the proposed amendments to the land use designations,
- (b) request the director to provide additional information with respect to the proposed amendments, or

- (c) refer the proposed amendments to a community meeting for consideration and for a decision of Eligible Voters whether or not to approve the proposed amendments.

Revised final report if additional information requested about proposed amendments

- 28** (1) If the Executive Council requests additional information under section 27 (b), the director must
- (a) prepare a revised final report, and
 - (b) provide a copy of the report to the Executive Council.
- (2) The Executive Council must consider the revised final report at a meeting of the Executive Council that it must schedule for that purpose.

Distribution of decision about proposed land use designation amendments

- 29** A copy of the Executive Council's decision respecting land use designation amendments must be
- (a) posted at the administration offices of Tsawwassen First Nation,
 - (b) mailed to the applicant, if the amendments were proposed by application under section 15 (1), and
 - (c) mailed to the persons listed in paragraphs (a) to (e) of section 22 (1).

Notice of community meeting to seek its approval to land use designation amendment

- 30** If the Executive Council decides to hold a community meeting for the purpose of seeking the approval of Tsawwassen Members to land use designation amendments, the Executive Council must first schedule the meeting and then give at least 21 days written notice of that meeting to Tsawwassen Members by
- (a) posting the notice at the administrative offices of Tsawwassen First Nation, and
 - (b) either
 - (i) publishing the notice in Tsawwassen First Nation's newsletter (the "TFN Community Notice"), or
 - (ii) separate written notice mailed to Eligible Voters.

Information to be included in or to accompany notice of community meeting

- 31** A notice of a community meeting referred to in section 30 must specify the date, time and place of the meeting and include or be accompanied by
- (a) a summary of the proposed land use designation amendments,
 - (b) a summary of the final report of the director on the proposed amendments,
 - (c) a statement that there will be a vote by secret ballot of Eligible Voters to vote on the proposed amendments,
 - (d) a statement that the report of the director on the proposed amendments is available for inspection at the administration offices of Tsawwassen First Nation, and
 - (e) a copy of the Executive Council's final report referred to in section 25 or revised final report referred to in section 28.

Community meeting that may be held to consider land use designation amendments

- 32** (1) At the community meeting referred to in section 30, if the Executive Council under that section decides to hold one to seek community approval for proposed amendments to a land use designation,
- (a) the purpose and provisions of the amendments must be explained to the Tsawwassen Members present at the meeting, and
 - (b) the Tsawwassen Members are entitled to ask questions and provide comments.
- (2) Upon completion of discussion, the Eligible Voters present at the meeting must vote by secret ballot on the amendments.
- (3) The amendments
- (a) are approved if a majority of Eligible Voters present at the meeting vote in favour of the amendments, and
 - (b) become effective on the date of that approval.

Quorum for community meeting about proposed amendments to land use designation

- 33** The quorum for a community meeting referred to in section 30 is 10% of all Eligible Voters.

Approval by mail-in balloting as alternative to holding community meeting

- 34** Despite section 30, instead of holding a community meeting to seek the approval of Eligible Voters for the proposed land use designation amendments referred to in that section, the Executive Council may seek that approval by means of a mail-in balloting system established by regulation of the Executive Council under section 99.

PART 4 – ZONING

Definition of “consult” for this Part

- 35** In this Part, “consult” has the same meaning as “Consult” has in Chapter 1 *Definitions* of the final agreement.

Zoning regulation amendments to be consistent with land use plan

- 36** A land holder or the Executive Council may propose amendments to zoning regulations if the proposed amendments are consistent with the land use plan.

Application by land holder for zoning regulation amendments

- 37** (1) By means of an application that is submitted to the director a land holder may propose zoning regulation amendments.
- (2) An application under subsection (1) for zoning regulation amendments must
- (a) be in the form specified by the Executive Council,
 - (b) be accompanied by the application fee prescribed by regulation of the Executive Council,
 - (c) describe the zoning regulation amendments,
 - (d) sets out the reasons for the zoning regulation amendments,
 - (e) outline the land servicing and land use issues that the land holder considers to be most pertinent, and

- (f) contain or be accompanied by a map showing
 - (i) the area the zoning regulation amendments would affect, and
 - (ii) the adjacent properties.

Proposal by Executive Council for amendments to zoning regulations

- 38** (1) By means of a resolution that complies with subsection (2), the Executive Council may propose zoning regulation amendments.
- (2) A resolution under subsection (1) for zoning regulation amendments must
- (a) describe the zoning regulation amendments,
 - (b) set out the reasons for the zoning regulation amendments,
 - (c) outline the land servicing and land use issues that the Executive Council considers to be most pertinent, and
 - (d) contain or be accompanied by a map showing
 - (i) the area the zoning regulation amendments would affect, and
 - (ii) the adjacent properties.

Director's duties on receipt of application or resolution respecting zoning regulation amendments

- 39** As soon as practicable after receipt of an application under section 37 or a resolution under section 38, the director must
- (a) review servicing and land use issues in relation to the zoning amendment proposed in the application or resolution,
 - (b) request additional information as he or she considers necessary,
 - (c) prepare a preliminary report addressing the impact of the zoning amendment in light of the land use principles,
 - (d) include in the report a recommendation as to whether or not the proposed amendment should proceed for further consideration, and
 - (e) provide the Executive Council with a copy of the report.

Decision whether to proceed with zoning regulation amendments, based on director's report

- 40** As soon as practicable after receipt of a preliminary report under section 39 concerning an application under section 37 or a resolution under section 38, the Executive Council must
- (a) convene to consider the report,
 - (b) decide whether the zoning regulation amendments proposed in the application or resolution, as the case may be, should proceed for further consideration at a community meeting, and
 - (c) provide a copy of the Executive Council's decision to the director.

Consultation process if zoning regulation amendments are to proceed for decision at community meeting

- 41** (1) If the Executive Council decides under section 40 that zoning regulation amendments, whether applied for by application under section 37 or by resolution under section 38, should proceed for further consideration at a community meeting, the Executive Council must fulfill the requirements set out in subsection (2).

- (2) The requirements referred to in subsection (1) are that the Executive Council must
 - (a) by written notice request comments about the zoning regulation amendments from affected land holders, the advisory council and Tsawwassen Members,
 - (b) include with the notice to the applicant a copy of the preliminary report, and
 - (c) consult with Non-Members whom the Executive Council considers may be directly and significantly affected by the proposed zoning amendment.

Notice to be provided requesting comments about zoning regulation amendments

- 42** The request under section 41 (2) for comments about zoning regulation amendments must be made by written notice provided by the Executive Council, at least 14 days before the meeting referred to in section 41 (e), by
- (a) posting the notice at the administration offices of Tsawwassen First Nation,
 - (b) either
 - (i) publishing the notice in Tsawwassen First Nation’s newsletter (the “TFN Community Notice”), or
 - (ii) mailing or delivering the notice to Eligible Voters, and
 - (c) mailing or delivering the notice to affected land holders, and the advisory council.

Notice requirements about zoning regulation amendments

- 43** The written notice must
- (a) provide a summary of the application or resolution seeking amendments to zoning regulations,
 - (b) request written comments from the Advisory Council, affected land holders and Tsawwassen Members about the proposed amendments to the zoning regulations, and
 - (c) specify a date, at least 10 days after the date of the notice, by which the Advisory Council, affected land holders and Tsawwassen Members must respond to the director’s request for comments about the proposed amendments to the zoning regulations.

Final report about zoning regulation amendments

- 44** As soon as practicable after expiration of the time for submitting comments, the director must
- (a) prepare a final report on the proposed amendments to the zoning regulations taking into consideration the comments received, the needs of the community, the land use principles and other relevant matters,
 - (b) set out in the final report all conditions required for approval, and
 - (c) provide the Executive Council with a copy of the final report.

Executive Council to consider final report about proposed amendments to zoning regulations

- 45** (1) As soon as practicable after receipt of the final report prepared under section 44, the zoning regulation amendments and the final report must be considered at an Executive Council meeting at which the Executive Council by resolution must
- (a) reject the proposed amendments to the zoning regulations,

- (b) request the director to provide additional information with respect to the proposed amendments, or
 - (c) approve the proposed amendments.
- (2) If the Executive Council requests additional information under subsection (1) (b) the director must
- (a) prepare a revised final report, and
 - (b) provide a copy of the revised final report to the Executive Council
- to be considered at a meeting at which the procedure under subsection (1) must be followed.

Distribution of copies of resolution rejecting or approving proposed amendment

- 46** A copy of a resolution under section 45 must be
- (a) mailed to the applicant, if applicable, and to affected land holders and the advisory counsel, and
 - (b) posted at the administration offices of Tsawwassen First Nation.

PART 5 – LAND USE VARIANCE TO RELIEVE HARDSHIP

Division 1 – Variance Board

Tsawwassen First Nation Variance Board established

- 47** (1) The Tsawwassen First Nation Variance Board is hereby established, comprised of 3 members, as follows:
- (a) a person who is a member of the Executive Council and is appointed to the variance board by resolution of the Executive Council;
 - (b) the Chief Administrative Officer appointed in that capacity under the *Government Organization Act*;
 - (c) the director appointed in that capacity under the *Government Organization Act*.
- (2) The chief administrative officer is the chairperson of the variance board and, in his or her absence, the Executive Council member on the variance board is the acting chairperson.
- (3) The chairperson is responsible for
- (a) organizing, calling and presiding at all meetings of the variance board, and
 - (b) performing such other duties as may be assigned by the variance board.

Responsibilities of the variance board

- 48** The variance board is responsible for
- (a) evaluating and making decisions respecting variance applications under this Part,
 - (b) establishing policies and procedures for its operation and for carrying out its duties, and
 - (c) carrying out such other duties and responsibilities as may be assigned to the variance board by regulation of the Executive Council.

Meetings

- 49**
- (1) The variance board must meet as required to carry out its duties under this Part.
 - (2) The chairperson of the variance board must give notice to variance board members at least 7 days before the date of a meeting specifying the place, day and hour of the meeting.
 - (3) Notice of the meeting may be given to a variance board member either personally, by telephone, facsimile or e-mail at the telephone number or e-mail address provided by him or her.
 - (4) Variance board meetings are closed to all persons except variance board members, the applicant for a variance and invited Tsawwassen First Nation employees or representatives.
 - (5) However, the variance board by vote may invite others to attend a meeting as required to provide information to assist the Board in considering the application.
 - (6) Persons attending variance board meetings may address a variance board meeting only if
 - (a) the matter that concerns them is on the agenda, or
 - (b) the chairperson grants permission.

Secretary to variance board

- 50**
- (1) The Executive Council must appoint a person who is not a variance board member as secretary to the variance board.
 - (2) The secretary is responsible for
 - (a) taking attendance of variance board members present at variance board meetings,
 - (b) recording decisions and votes at the meetings, and
 - (c) performing other duties in accordance this Part or that are assigned to the secretary by the variance board.

Secretary to provide copies of decisions to applicants and to Executive Council

- 51**
- The secretary to the variance board, in a timely manner and by ordinary mail or delivery to the address provided on the application, must provide copies of records of decisions to
- (a) each applicant for a variance, and
 - (b) the Executive Council.

Retention of records of decisions and public access to decisions

- 52**
- (1) All records of decisions of the variance board must be retained by it at the administration offices of Tsawwassen First Nation where copies may be obtained on payment of the copying fee prescribed by regulation of the Executive Council.
 - (2) The variance board may establish rules for its own procedure at meetings.
 - (3) A rule made by the variance board does not invalidate a prior act of the variance board that would have been valid if that rule had not been made.

Quorum

- 53**
- (1) The quorum for a meeting of the variance board is 2 members.

- (2) If a quorum cannot be established because of a conflict of interest, the matter in question must be adjourned to the next meeting or a subsequent meeting at which a quorum can be established.
- (3) The chairperson must be included in counting quorum.
- (4) If a quorum cannot be established within a reasonable time because of a conflict of interest, the matter in question must be referred to the Executive Council for a decision.

Confidentiality

- 54** Variance board members must not release information
- (a) received in their work with the variance board, or
 - (b) related to deliberations, proceedings or other matters for consideration by the variance board unless
 - (i) the information is available to the public under Tsawwassen Law, or
 - (ii) the variance board by resolution releases the information.

Division 2 – Land Use Variances for Reasons of Hardship

Application to variance board

- 55**
- (1) A person may apply under this Part to the variance board for a variance on the grounds, asserted in the application, that the applicant believes that provisions of the zoning regulations that pertain to subject matter described in subsection (2) cause or may cause hardship to the applicant.
 - (2) The provisions referred to in subsection (1) are those provisions of the zoning regulations that pertain to the following subject matter:
 - (a) one or more of the following: siting; dimensions; site coverage; population density; or size of a building or structure;
 - (b) the prohibition of a structural alteration, addition or replacement of or to a building or other structure permitted as a non-conforming use;
 - (c) trees and shrubs as regulated under of the *Community Governance Act*.
 - (3) The application under this Part must include or be accompanied by
 - (a) the application fee prescribed by regulation of the Executive Council,
 - (b) the completed application form,
 - (c) documentation of current ownership,
 - (d) a description of the variance,
 - (e) the reasons for requesting the variance, and
 - (f) a map showing
 - (i) the area the variance would affect, and
 - (ii) the adjacent properties.

Variance board's decision whether to grant application for variance

- 56**
- (1) On an application under this part, the variance board by order, at a hearing which it must schedule for the purpose of dealing with the application, may allow variance, within the limits prescribed by regulation of the Executive Council,

from the requirements of Tsawwassen Law in relation to the zoning regulations, if the variance board

- (a) finds that undue hardship would be caused to the applicant if required to comply with those regulations, and
- (b) considers that the variance will not
 - (i) result in inappropriate development of the site that is the subject of the variance,
 - (ii) adversely affect the natural environment, heritage sites or culturally sensitive areas,
 - (iii) have any substantial adverse affect on the use and enjoyment of adjacent land,
 - (iv) vary permitted uses or densities under the associated zoning regulation for the site, or
 - (v) defeat the intent of the zoning regulation or of the land use plan.
- (2) The granting of a variance by the variance board under this section does not relieve the applicant from compliance with any
 - (a) Act of Canada or regulation of Canada,
 - (b) Act of British Columbia or regulation of British Columbia, or
 - (c) contract to which the applicant is a party.

Notice of application for land use variance

- 57** (1) As soon as practicable after the variance board receives an application under this Part, the variance board must give written notice to land holders whom it considers may be affected by the proposed variance, stating
- (a) the subject matter of the application,
 - (b) the time within which the land holder who receives the notice may send written comments on the application to the variance board, and
 - (c) the address to which the written comments must be sent.
- (2) A copy of the comments received by the variance board in response to the noticed must be provided to the applicants for the variance on or before the hearing of the application.

Notice to the applicant

- 58** The variance board must give notice to the applicant for the variance at least 7 days before the date of the hearing of the application, specifying the place, date and hour of the hearing.

Voting

- 59** (1) All matters before the variance board for decision must be decided by a majority of the members.
- (2) Unless a secret vote is requested and approved by the variance board, all voting must be by a show of hands indicating a “Yes” vote or a “No” vote.
- (3) No abstentions are permitted on a vote.
- (4) The results of a vote must be recorded in the minutes of the meeting.

Conflict of interest

- 60** (1) In this section, “**conflict of interest**” includes a perceived conflict of interest.
- (2) A conflict of interest arises in any situation in which a variance board member or a person in his or her immediate family has a personal or business interest in the matter under consideration.
- (3) A variance board member who has a conflict of interest must
- (a) as soon as possible, disclose the nature and extent of the conflict to the chairperson who must report the conflict to the other member,
 - (b) leave the meeting, not be counted in determining quorum, not participate in discussion and not vote on the matter under consideration

Judicial Council may review order made under section 56

- 61** (1) A person who is affected by an order of the variance board under section 56 may apply to the Judicial Council for a review of that order.
- (2) As soon as practicable after receipt of the application, the variance board must conduct the review applied for, and by order may
- (a) reverse or modify the order, with or without conditions, or
 - (b) confirm the order.
- (3) As soon as practicable after completion of the review, the director must notify the affected person of
- (a) the outcome of the review, and
 - (b) the person’s right under the *Judicial Review Procedure Act* (British Columbia) to apply to the Supreme Court of British Columbia for judicial review of the order.

PART 6 – OFFSITE LEVIES

Imposition and payment of offsite levies to Tsawwassen Government

- 62** (1) For the purpose of providing funds to assist the Tsawwassen Government in carrying out in relation to Tsawwassen Lands the activities set out in subsection (2), the Executive Council, by regulation may impose offsite levies on every person who obtains
- (a) approval of a subdivision on Tsawwassen Lands, or
 - (b) a building permit for the construction, alteration, repair, removal or demolition of a building or other structure on Tsawwassen Lands.
- (2) The activities referred to in subsection (1) are as follows:
- (a) providing, constructing, altering or expanding
 - (i) sewage and water works,
 - (ii) drainage and highway facilities,
 - (iii) parking facilities,
 - (iv) pedestrian infrastructure,
 - (v) community development, including community halls, museums, cultural centres, recreational facilities and schools;
 - (b) acquiring

- (i) Rights of Refusal Lands, being those lands set out in Appendix H-2 of the final agreement, or
 - (ii) land within Tsawwassen Lands for parkland or other community amenities;
- (c) undertaking and carrying out other activities for the benefit of Tsawwassen First Nation as may be prescribed by regulation of the Executive Council, such as
 - (i) land use planning, and
 - (ii) in conjunction with land use planning, conducting market research and obtaining land appraisals, and
 - (iii) legal analysis, feasibility studies, surveys, environmental assessments, landscaping, and project management.
- (3) A person on whom an offsite levy is imposed under subsection (1) must pay to the Tsawwassen Government the amount of the levy before either of the following is granted to the person under this Act:
 - (a) approval of a subdivision on Tsawwassen Lands;
 - (b) a building permit for the construction, alteration, repair, removal or demolition of a building or other structure on Tsawwassen Lands.

Offsite Levies Reserve Fund and deposits into the fund

- 63** (1) There is hereby established a reserve fund
- (a) to be maintained by the Tsawwassen Government separately from other public monies, and
 - (b) to be known as the “Offsite Levy Reserve Fund”.
- (2) Offsite levies must be deposited into the Offsite Levy Reserve Fund.

Expenditures from the Offsite Levies Reserve Fund

- 64** (1) Offsite levies may be paid out of the Offsite Levies Reserve Fund for the purposes of providing funds to assist Tsawwassen Government in carrying out the activities set out in section 62 (2).
- (2) Offsite levies
- (a) must not be paid out of the Offsite Levies Reserve Fund other than as set out in subsection (1), and
 - (b) must be expended only in a manner consistent with the land use plan and the capital works plan.

Exemptions from payment of offsite levies

- 65** (1) Despite section 62, an offsite levy is not payable if one has previously been paid for the same project unless for that project new infrastructure is required.
- (2) An offsite levy is not payable in relation to a development authorized by a building permit
- (a) for the construction, alteration, repair, removal or demolition of places of public worship, community halls, cultural centres and other forms of community amenities, or

- (b) is the value of the work identified in the building permit is appraised at \$50,000 or less under a method prescribed by regulation of the Executive Council.

Offsite levies – calculation, inflation index and grace period

- 66** (1) Offsite levies must be calculated according to a formula or other method prescribed by regulation of the Executive Council
- (2) Offsite levies must be indexed to the annual rate of inflation for British Columbia, as determined by the Statistics Canada consumer price index for British Columbia.
- (3) *[Repealed by Bill 004-2012; Enacted on March 15, 2012]*

Offsets against offsite levies for green initiatives or projects within Tsawwassen capital works plan

- 67** (1) The executive council may provide a rebate against an offsite levy if the development
 - (a) incorporates green initiatives above any contained in the zoning regulations or development permit areas, that reduce the development's use of Tsawwassen First Nation's physical infrastructure, or
 - (b) provides for construction of all or part of a project that is contained within the Tsawwassen capital works plan.
- (2) Under subsection (1) (b), the amount of the rebate must not be greater than the cost to the developer for the construction.

Use of levies to finance works

- 68** The Executive Council on behalf of Tsawwassen Government may secure financing, for one or more of the activities referred to in section 62 (2), by borrowing money against future offsite levy revenues that, under reasonable forecasts, will be paid into the Offsite Levies Reserve Fund.

PART 7 – NON-CONFORMING USES

69 Repealed

[Repealed by Bill 003-2013; Enacted on June 27, 2013]

70 Repealed

[Repealed by Bill 003-2013; Enacted on June 27, 2013]

Non-conforming uses and siting

- 70.1** (1) If, at the time a zoning regulation under this Act is adopted by Executive Council,
- (a) land, or a building or other structure, is lawfully used, and
 - (b) the use does not conform to the zoning regulation,
- the use may be continued as a non-conforming use, but if the non-conforming use is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the zoning regulation.
- (2) The use of land, a building or other structure, for seasonal uses or for agricultural purposes is not discontinued as a result of normal seasonal or agricultural practices, including
- (a) seasonal, market or production cycles,
 - (b) the control of disease or pests, or
 - (c) the repair, replacement or installation of equipment to meet standards for the health or safety of people or animals.
- (3) A building or other structure that is lawfully under construction at the time of the enactment of a zoning regulation under this Act is deemed, for the purpose of this section,
- (a) to be a building or other structure existing at that time, and
 - (b) to be then in use for its intended purpose as determined from the building permit authorizing its construction.
- (4) If subsections (1) and (2) authorize a non-conforming use of part of a building or other structure to continue, the whole of that building or other structure may be used for that non-conforming use.
- (5) A structural alteration or addition, except one that is required by an enactment or permitted by a board of variance under Part 5, must not be made in or to a building or other structure while the non-conforming use is continued in all or any part of it.
- (6) In relation to land, subsections (1) and (4) do not authorize the non-conforming use of land to be continued on a scale or to an extent or degree greater than that at the time of the enactment of the zoning regulation under this Act.
- (7) For the purposes of this section, a change of owners, tenants or occupants of any land, or of a building or other structure, does not, by reason only of the change, affect the use of the land or building or other structure.
- (8) If a building or other structure, the use of which does not conform to the provisions of a zoning regulation is damaged or destroyed to the extent of 75% or more of its value above its foundations, as determined by the building inspector for Tsawwassen First Nation, it must not be repaired or reconstructed except for a conforming use in accordance with the zoning regulation.

- (9) If the use of a building or structure that is on land identified in a phased development agreement under section 88.1 complies with a zoning regulation provision specified under section 88.1 (3) for the phased development agreement, subsection (8) does not apply to the building or other structure while the phased development agreement is in effect, unless
 - (a) the provision has been repealed or amended, and
 - (b) either
 - (i) the developer has agreed in writing under section 88.1 (5) that the changes to the zoning regulation apply, or
 - (ii) the changes to the zoning regulation apply under section 88.1 (6) without the written agreement of the developer.
- (10) If the use and density of buildings and other structures conform to a zoning regulation but
 - (a) the siting, size or dimensions of a building or other structure constructed before the zoning regulation was adopted does not conform with the zoning regulation, or
 - (b) the siting, size, dimensions or number of offstreet parking or loading spaces constructed or provided before the zoning regulation was adopted does not conform with the zoning regulation,
 the building or other structure or spaces may be maintained, extended or altered to the extent authorized by subsection (11).
- (11) A building or other structure or spaces to which subsection (10) applies may be maintained, extended or altered only to the extent that
 - (a) the repair, extension or alteration would, when completed, involve no further contravention of the zoning regulation than that existing at the time the repair, extension or alteration was started, and
 - (b) in the case of protected heritage property, the repair, extension or alteration is permitted or authorized in accordance with the provisions governing the heritage protection of the property.

[Amended by Bill 003-2013; Enacted on June 27, 2013]

Extent of damage preventing reconstruction as non-conforming use

- 70.2**
- (1) A person may apply to the Judicial Council for an order under subsection (2) if the person alleges that the determination by a building inspector of the amount of damage under section 70.1 (8) is in error.
 - (2) On an application under subsection (1), the Judicial Council may set aside the determination of the building inspector and make the determination under section 70.1 (8) in its place.
 - (3) The applicant or the Executive Council, on behalf of Tsawwassen First Nation, may appeal a decision of the Judicial Council under subsection (2) to the Supreme Court of British Columbia.

[Amended by Bill 003-2013; Enacted on June 27, 2013]

No compensation for reduction in value in relation to land use plan or issuance of permit

- 71** (1) In this section “**compensation**” includes damages.

- (2) Compensation is not payable by Tsawwassen First Nation to any person, and proceedings in respect of a reduction in the value of land owned by that person must not be commenced or maintained, as a consequence of
 - (a) anything in the land use plan or in a regulation under Part 12, or
 - (b) the issuance of a development permit, building permit or approval under this Act, in relation to Tsawwassen Lands.
- (3) This section does not apply in relation to an enactment under this Act that restricts the use of land to a public use.

PART 8 – DEVELOPMENT PERMIT AREAS AND PERMITS FOR THOSE AREAS

Development permit area offences

- 72** (1) A person must not, in a development permit area,
- (a) subdivide land,
 - (b) commence any construction, alteration, repair, removal or demolition of a building or other structure (in this section called “the construction”), or
 - (c) commence any clearing, grading, filling or blasting or other alteration of land
- unless the person is in possession of a valid development permit issued under this Part in respect of the activities described in paragraph (a), (b) or (c), as the case may be.
- (2) A person that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$10 000, or to imprisonment for not more than 6 months, or to both.
 - (3) If a corporation commits an offence under subsection (1), a director or officer of the corporation who authorizes, permits or acquiesces in the offence also commits the offence.

Designation of development permit areas

- 73** (1) The land use plan, or Executive Council, by regulation, may delineate development permit areas, each of them for one or more of the following objectives:
- (a) protection and preservation of Tsawwassen First Nation’s cultural resources and heritage;
 - (b) protection of the natural environment, its ecosystems and biological diversity;
 - (c) protection of development from hazardous conditions;
 - (d) protection of farming;
 - (e) revitalization of an area in which a commercial use is permitted;
 - (f) establishment of objectives for the form and character of intensive residential development;
 - (g) establishment of objectives for the form and character of commercial, industrial or multi-family residential development;
 - (h) establishment of objectives to promote energy conservation;
 - (i) establishment of objectives to promote water conservation;

- (j) establishment of objectives to promote the reduction of greenhouse gas emissions.

[Amended by Bill 003-2013; Enacted on June 27, 2013]

- (2) With respect to those areas, the land use plan or a regulation enacted pursuant to subsection (1) must
 - (a) describe the conditions or objectives that justify the designation, and
 - (b) specify guidelines respecting the manner by which the conditions or objectives will be addressed.

[Amended by Bill 003-2013; Enacted on June 27, 2013]

- (3) A regulation enacted by Executive Council pursuant to subsection (1) must clearly identify the area of Tsawwassen Lands to which the guidelines established in subsection (2) (b) apply.

[Amended by Bill 003-2013; Enacted on June 27, 2013]

Development permits

- 74** (1) By means of an application that is submitted to the director and that complies with subsection (2), a land holder of land in a development area may apply for
 - (a) a development permit that authorizes the land holder to develop the land to which the permit pertains in a manner that is in compliance with the guidelines, or
 - (b) an amendment to a development permit.
- (2) An application under subsection (1) must include or be accompanied by
 - (a) documentation proving the land holder's ownership or the credentials of any person acting on the land holder's behalf,
 - (b) any additional information reasonably required by the director, and
 - (b) the application fee prescribed by regulation of the Executive Council.

Development approval information

- 75** (1) In this section, "**development approval information**" means information on the anticipated impact of the proposed activity or development on the community including but not limited to information regarding impact on such matters as
 - (a) transportation patterns including traffic flow,
 - (b) local infrastructure,
 - (c) public facilities including schools and parks,
 - (d) community services, and
 - (e) the natural environment of the area affected.
- (2) The Executive Council may require an applicant for a development permit, to provide to the Tsawwassen Government, at the applicant's expense, development approval information in accordance with the procedures and policies applicable within the TFN Lands Department.
- (3) Development approval information is not required under this section if the proposed activity or development is a reviewable project as defined in section 1 of the *Environmental Assessment Act*. (British Columbia).

Bond or other security required to guarantee completion of any subdivision or development of Tsawwassen Lands

- 76** (1) In relation to development of Tsawwassen Lands, a person who has applied for and received approval to proceed must provide to the Tsawwassen Government a bond or other form of security to guarantee the completion of the development or of the construction, as the case may be.
- (2) The person required under subsection (1) to guarantee completion must provide the bond or other security within the period specified by the director that starts on the approval date.
- (3) The bond or other form of security required under subsection (1) must be issued
- (a) in favour of the Tsawwassen Government, and
 - (b) on the terms reasonably required by the director.

PART 9 – SUBDIVISIONS AND BUILDING PERMITS

Division 1 – Approving Officer

Appointment of approving officer and requirement for approval to subdivision plan

- 77** (1) The Executive Council at any time after the effective date, if necessary to replace the approving officer who, on the effective date, was appointed under section 11 of the *Land Act* (Tsawwassen First Nation), must appoint an approving officer for Tsawwassen Lands to act in that capacity under
- (a) the *Land Title Act* (British Columbia), or
 - (b) another enactment, whether of British Columbia or of Tsawwassen First Nation, under which an approving officer has powers, duties or obligations.
- (2) A land holder or a person acting on behalf of a land holder must not subdivide, or allow the subdivision of any Tsawwassen Lands unless the land holder or person
- (a) submits to the approving officer a subdivision plan that meets all zoning, land use and servicing regulations under this Act, and
 - (b) receives the approving officers approval in writing to the subdivision plan.
- (3) For the purposes of granting relief from compliance with section 75 (1) (a) (i) of the *Land Title Act* (British Columbia), access by way of statutory right of way is deemed to be adequate access.

Other responsibilities of approving officer

- 78** The approving officer is responsible for monitoring and enforcing compliance by land holders and persons acting on behalf of landholders with the requirements of
- (a) this Act, and
 - (b) the regulations
- in respect of subdivisions and related matters.

Land Title Act (British Columbia) and Tsawwassen Laws for subdivisions and related matters

- 79** In carrying out his or her responsibilities under this Part the approving officer must take into account the *Land Title Act* (British Columbia) and Tsawwassen Laws as they apply in respect of subdivisions and related matters.

Division 2 – Subdivision and Development Requirements

Subdivision servicing requirements

- 80** The Tsawwassen Government may regulate and require the provision of works and services in relation to the subdivision of Tsawwassen Lands, and for that purpose the Executive Council may make regulations under section 97.

Conditions applicable to subdivision approvals or building permits

- 81** (1) As a condition of
- (a) granting approval for a subdivision of Tsawwassen lands to proceed, or
 - (b) the issuance of a building permit to a land holder
- the Executive Council may require
- (c) the land holder seeking the approval or building permit, as the case may be, to provide works and services on the part of any road that is immediately adjacent to the site of the proposed subdivision or development, up to the centre line of the road, or
 - (d) require a developer to provide works that extend beyond the boundary of Tsawwassen Lands.
- (2) The works and services referred to in subsection (1) (c) and the works referred to in subsection (1) (d) must be carried out in accordance with standards prescribed by regulation of the Executive Council.
- (3) Requirements under this section
- (a) may only be imposed on a land holder insofar as the requirements are directly attributable to the subdivision or development, and
 - (b) must not include specific services that are included in the calculations used to determine the amount of a an offsite levy unless the owner agrees to provide the services.

Division 3 – Building Permits for Tsawwassen Lands

Building permit offences

- 82** (1) A person must not on Tsawwassen Lands commence any construction, alteration, repair, removal or demolition of a building or other structure (in this section called “the construction”) unless the person is in possession of a valid building permit that authorizes the subdivision or construction by that person.
- (2) A person that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$10 000, or to imprisonment for not more than 6 months, or to both.
- (3) If a corporation commits an offence under subsection (1), a director or officer of the corporation who authorizes, permits or acquiesces in the offence also commits the offence.

Building permits

- 83** By means of an application that is submitted to the director and that complies with regulations prescribed by the Executive Council, a land holder may apply for a building permit authorizing the construction, alteration, repair, removal or demolition of one or more buildings or other structures located on Tsawwassen Lands.

Building inspector for Tsawwassen Lands

- 84** (1) The Executive Council must appoint a building inspector for Tsawwassen Lands to exercise the powers and perform the functions and duties of a building inspector under
- (a) this Act or the regulations,
 - (b) the *Community Charter* (British Columbia), or
 - (c) another enactment, whether of British Columbia or of Tsawwassen First Nation, under which a building inspector has powers, functions or duties.
- (2) In appointing a building inspector under subsection (1), the Executive Council must be satisfied that the person appointed has the necessary qualifications for that position, taking into account
- (a) that person's understanding of the British Columbia Building Code and of the construction industry,
 - (b) that person's education and training, skills and experience as they pertain to that code, the construction industry or both, and
 - (c) other factors the Executive Council considers relevant.
- (3) For the purposes of the administration and enforcement of the British Columbia Building Code, this Act, the regulations or any applicable standards, the building inspector, in accordance with the regulations, may
- (a) at any reasonable time, enter and inspect any site located on Tsawwassen Lands on which site any construction, alteration, repair, removal or demolition of one or more buildings or other structures is in progress or has been completed,
 - (b) order a builder or a person acting on behalf of a builder, whether under contract or as an agent or employee, to comply with one or more specified provisions under the British Columbia Building Code,
 - (c) issue a stop work order for all or part of any development work if
 - (i) the development work is proceeding in contravention of the British Columbia Building Code, this Act, the regulations or any applicable standards, or
 - (ii) the building inspector considers the development work to be unsafe,
 - (d) order a builder or agent to provide, at the builder or agent's expense, proof that the development work complies with the British Columbia Building Code, this Act, the regulations or any applicable standards
 - (e) terminate the occupancy of any building or structure, if the building or structure does not comply with
 - (i) the requirements of the British Columbia Building Code that are applicable to that building or structure, or
 - (ii) with this Act, the regulations or any applicable standards, and

- (f) exercise any other powers of the building inspector that may be prescribed by regulation of the Executive Council.
- (4) The powers of the building inspector under subsection (3) are without prejudice to any powers in relation to the subject matter of that subsection, or similar subject matter, that, by regulation of the Executive Council, are conferred on other individuals considered by the Executive Council to have qualifications commensurate with the conferred powers.

Bond or other security required to guarantee completion of any subdivision or development of Tsawwassen Lands

- 85**
- (1) In relation to the subdivision of Tsawwassen Lands, a person who has applied for and received approval to proceed must provide to the Tsawwassen Government a bond or other form of security to guarantee the completion of the development.
 - (2) The person required under subsection (1) to guarantee completion must provide the bond or other security within the period specified by the director that starts on the approval date.
 - (3) The bond or other form of security required under subsection (1) must be issued
 - (a) in favour of the Tsawwassen Government, and
 - (b) on the terms reasonably required by the director.

PART 10 – DEVELOPMENT REQUIREMENTS

Development defined for this Part

- 86** In this Part, “develop” means
- (a) subdivide,
 - (b) construct, alter, repair or demolish a building or other structure, or
 - (c) clear, grade, fill, blast or otherwise alter any land.

Development requirements may be included in land use plan

- 87**
- (1) The land use plan may include requirements in relation to the development of Tsawwassen Lands.
 - (2) A person must not develop Tsawwassen Lands except in accordance with the requirements referred to in subsection (1).

Bond or other security required to guarantee compliance

- 88**
- (1) Before starting any development on Tsawwassen Lands a developer must provide to the Tsawwassen Government a bond or other form of security to guarantee compliance with the requirements referred to in section 87 (1).
 - (2) The bond or other form of security required under subsection (1) must be issued
 - (a) in favour of the Tsawwassen Government, and
 - (b) on the terms reasonably required by the director.

Phased development agreements

- 88.1** (1) In this section and in sections 88.2 to 88.6:

“developer” means an owner or tenant of land who enters into, or who by assignment becomes a party to, a phased development agreement;

“development” means a development on land owned or leased by a developer and described in a phased development agreement;

“phased development agreement” means a phased development agreement under this section;

“specific subdivision servicing regulation provision” means a provision of a regulation made pursuant to section 97 of this Act that is specified under subsection (3) of this section for a phased development agreement;

“specified zoning regulation provision” means a provision of a zoning regulation made pursuant to section 99 of this Act that is specified under subsection (3) of this section for a phased development agreement.

- (2) Executive Council may, by order, approve of a phased development agreement between Tsawwassen First Nation and a developer.
- (3) A phased development agreement must identify the land that is being developed and specify the provisions of a zoning regulation or subdivision regulation to which subsection (5) applies while the agreement is in effect.
- (4) A phased development agreement may include additional terms and conditions agreed to by Executive Council and the developer, including but not limited to terms and conditions respecting one or more of the following:
 - (a) the inclusion of specific features in the development;
 - (b) the provision of amenities;
 - (c) the phasing and timing of the development and of other matters covered by the agreement;
 - (d) the registration of covenants under section 219 of the *Land Title Act* (British Columbia), as amended from time to time;
 - (e) subject to section 88.4 (3), minor amendments to the agreement, including a definition of “minor amendment” for the purpose of the agreement;
 - (f) dispute resolution between the parties;
 - (g) early termination of the agreement, automatically in the event that terms and conditions are not met, or by mutual agreement;
 - (h) the amount and location of any park land or payment in lieu thereof to be provided in respect of land being subdivided that is subject to the phased development agreement.
- (5) Subject to subsection (6), if the specified zoning regulation provisions or specified subdivision regulation provisions are amended or repealed while the phased development agreement is in effect, those changes do not apply to the development unless the developer agrees in writing that the changes apply.
- (6) The following changes to the specified zoning regulation provisions or specified subdivision regulation provisions apply to the development without the written agreement of the developer:
 - (a) changes to comply with the order of a court or arbitrator or another direction in respect of which Tsawwassen First Nation has a legal requirement to obey;

- (b) changes that, in the opinion of Tsawwassen First Nation, are necessary to address a hazardous condition of which Tsawwassen First Nation was unaware at the time it entered into the phased development agreement.
- (7) Subject to subsection (8), if a specified zoning regulation provision is a provision regulating
- (a) the use of land, buildings and other structures,
 - (b) the density of the use of land, buildings and other structures,
 - (c) the siting, size and dimensions of
 - (i) buildings and other structures, and
 - (ii) uses that are permitted on the land, or
 - (d) the location of uses on the land and within buildings and other structures,
- then a development permit that
- (e) varies the siting, size or dimensions of buildings and other structures, or
 - (f) varies the siting, size or dimensions of uses that are permitted on the land
- does not apply to the development unless the developer agrees in writing that the development permit will apply.
- (8) Subsection (7) does not apply to a development permit for land designated under section 73 (1) (a) to (d) and (h) to (j), if the development permit is approved in accordance with applicable development guidelines.
- (9) In considering an application for subdivision approval under section 85 of the *Land Title Act* (British Columbia), as amended from time to time, in respect of land that is subject to a phased development agreement and in determining if the deposit of the subdivision plan is against the public interest under subsection (3) of that section, an approving officer
- (a) must take account of the phased development agreement, and
 - (b) must not consider any amendments to or repeals of specified zoning regulation provisions and specified subdivision servicing regulation provisions that have not been agreed to by the developer under subsection (5) of this section.

[Amended by Bill 003-2013; Enacted on June 27, 2013]

Term and assignment of phased development agreement

- 88.2** (1) Executive Council may, by order, approve of a phased development agreement for a term not exceeding 20 years.
- (2) A phased development agreement may not require Executive Council to renew or extend the agreement or enter into a subsequent phased development agreement for the same development.
- (3) The developer may assign a phased development agreement to a subsequent owner or tenant of the land identified in the agreement only if
- (a) the subsequent owner or tenant is identified in the agreement,
 - (b) the subsequent owner or tenant is a member of a class of persons identified in the agreement, or
 - (c) Executive Council, by order, agrees to the assignment.

[Amended by Bill 003-2013; Enacted on June 27, 2013]

Process for phased development agreement

- 88.3** (1) Executive Council must hold a community meeting before entering into a phased development agreement.
- (2) Not less than 3 days before a community meeting held under subsection (1), Executive Council must post notice of a meeting held under subsection (1) and must include the following information on the notice:
- (a) the name of the developer;
 - (b) a general description of the specified zoning regulation provisions or specified subdivision regulations for the phased development agreement;
 - (c) the term of the phased development agreement; and
 - (d) a general description of the nature of the development that will be the subject of the phased development agreement.

[Amended by Bill 003-2013; Enacted on June 27, 2013]

Amendments to phased development agreement

- 88.4** (1) Subject to subsections (2) to (4), a phased development agreement may be amended if the Executive Council and the developer agree to amend the agreement.
- (2) If the phased development agreement provides for minor amendments, Executive Council may agree to a minor amendment by resolution.
- (3) The following matters may not be dealt with as minor amendments to the phased development agreement:
- (a) a change to the specified zoning regulation provisions;
 - (b) a change to the specified subdivision servicing regulation provisions;
 - (c) a change to provisions regarding the assignment of the agreement to a subsequent owner or tenant;
 - (d) the term of the agreement, unless the amendment will reduce the length of the term;
 - (e) renewal or extension of the agreement;
 - (f) a change to the land that is the subject of the agreement;
 - (g) the definition of “minor amendment” for the purpose of the agreement.
- (4) An amendment to a phased development agreement, other than a minor amendment, may only be approved by order of Executive Council, and sections 88.1 to 88.3 apply to the order.

[Amended by Bill 003-2013; Enacted on June 27, 2013]

Information that must be available for public inspection

- 88.5** A phased development agreement, and any agreement, permits, plans or other documents that are incorporated into the phased development agreement, whether directly or by reference, must be made available for public inspection at the Tsawwassen First Nation administration office during regular office hours and be published to the Tsawwassen First Nation website.

[Amended by Bill 003-2013; Enacted on June 27, 2013]

Filing of notice of phased development agreement

88.6 If a phased development agreement is entered into under section 88.1, a notice that the land described in the notice is subject to the phased development agreement must be filed with the registrar of land titles in the same manner as a notice of a permit may be filed.

[Amended by Bill 003-2013; Enacted on June 27, 2013]

PART 11 – ENVIRONMENTAL ASSESSMENT

Environmental assessments

- 89**
- (1) The Executive Council may establish a Tsawwassen Environmental Assessment Authority.
 - (2) The Executive Council may establish criteria to set threshold triggers that, when met, initiate a Tsawwassen Environmental Assessment.
 - (3) The Executive Council must negotiate participation in any provincial or federal environmental assessment taking place on Tsawwassen Lands or Other Tsawwassen Lands, regardless of whether Tsawwassen First Nation is the principal.

PART 12 – MANNER AND FORM OF AMENDING THIS ACT

Application

90 This Part establishes the manner and form by which amendments to this Act are to be proposed.

Preparation of proposed amendments

- 91**
- (1) The Executive Council must first prepare any proposals to amend this Act for approval by resolution of the Tsawwassen Legislature.
 - (2) If the Tsawwassen Legislature approves the Executive Council's proposals for amendments to this Act, the Legislature must, if the amendments are not otherwise required to be the subject of a referendum, decide in its resolution whether to hold a vote of Eligible Voters on the proposed amendments.

Notice of and meeting about amendments

- 92** If the Tsawwassen Legislature, by resolution, approves the amendments proposed by the Executive Council,
- (a) notice of the proposed amendments must be given in accordance with the regulations, and
 - (b) the proposed amendments must be discussed at a meeting of Tsawwassen members.

Procedure after meeting

- 93**
- (1) After the meeting of Tsawwassen members to discuss proposed amendments to this Act, the Executive Council may decide whether to proceed with the amendment or not.

- (2) If The Executive Council decides to proceed with the proposed amendments, or any modifications to the amendments made with the approval of the Tsawwassen Legislature, then
 - (a) if the amendments are required to be the subject of a referendum, the referendum must be conducted,
 - (b) if no referendum is required and the Tsawwassen Legislature requires a vote of the proposed amendments to be conducted, that vote must be conducted in accordance with the regulations, and
 - (c) if neither paragraph (a) nor (b) applies, the Executive Council may decide whether to introduce a Bill into the Tsawwassen Legislature respecting the proposed amendments.
- (3) If a vote of Eligible Voters, by referendum or otherwise,
 - (a) approves the proposed amendments, a Bill may be introduced and passed in the Tsawwassen Legislature making the amendments, with minor technical or editorial modifications not affecting the substance of the amendments as may be required, or
 - (b) does not approve the proposed amendments, no Bill containing the amendments proposed may be tabled in the Tsawwassen Legislature in the current session of the Legislature.

Regulations for a vote

- 94**
- (1) The Executive Council may make regulations
 - (a) respecting the notice to be provided to Tsawwassen members about proposed changes to the identified provisions and where the notice must be posted,
 - (b) respecting the distribution of and explanation of the proposed changes, and the collection and distribution of comments in favour of and opposed to the changes proposed,
 - (c) governing the location and date of meetings, how they are to be conducted, and who is to present information at them, and
 - (d) respecting the notice, calling, conduct and count of votes at a vote of Eligible Voters called to vote on proposed amendments.
 - (2) As an alternative to a vote conducted under regulations made under subsection (1) (d), the Executive Council may conduct the vote in accordance with the *Government Organization Act*.

PART 13 – REGULATIONS

Regulations

- 95**
- (1) The Executive Council may make regulations it considers necessary or advisable for purposes under this Act.
 - (2) Without prejudice to the generality of subsection (1), the Executive Council may make regulations
 - (a) for any purpose in relation to which regulations are provided for in this Act,
 - (b) prescribing any matter or thing referred to in this Act as prescribed or to be prescribed,

- (c) respecting the form and content of applications, notices and reports that are required or permitted under this Act,
- (d) defining words and expressions that are used but not defined in this Act, and
- (e) generally for the purpose of giving effect to this Act.

Regulations respecting fees

- 96**
- (1) Without prejudice to the generality of section 95, the Executive Council may make regulations respecting fees for matters connected with the administration of this Act.
 - (2) The Executive Council must ensure that fee schedules setting out all fees prescribed under this Act are
 - (a) prepared and maintained, and
 - (b) publicly available for viewing free of charge at the administration offices of Tsawwassen First Nation.
 - (3) Any person may request and obtain a copy of a fee schedule on payment of the copying fee prescribed by regulation of the Executive Council.

Regulations governing subdivisions and subdivision control

- 97**
- (1) Without prejudice to the generality of section 95, the Executive Council may make regulations governing subdivisions and subdivision control, including but not limited to, regulations as follows:
 - (a) prescribing criteria to determine whether a subdivision or the development of Tsawwassen Lands may proceed;
 - (b) imposing requirements, conditions or both with which persons must comply in the course of subdividing or developing Tsawwassen Lands;
 - (c) prescribing minimum standards for the dimensions, locations, alignment and gradient of highways in connection with subdivisions of land;
 - (d) requiring that, within a subdivision, highways, sidewalks, boulevards, boulevard crossings, transit bays, street lighting or underground wiring be
 - (i) provided, and
 - (ii) located and constructedin accordance with the prescribed standards;
 - (e) requiring that, within a subdivision, a water distribution system, a fire hydrant system, a sewage collection system, a sewage disposal system, a drainage collection system or a drainage disposal system be provided, located and constructed, each in accordance with the standards prescribed by regulation.
 - (2) A regulation under subsection (1) may provide differently in relation to one or more of the following:
 - (a) different circumstances;
 - (b) different areas;
 - (c) different land uses;
 - (d) different zones;
 - (e) different classes of highways.

- (3) A local government must not impose a requirement under subsection (1) (b) or (c) in respect of a subdivision under the *Strata Property Act*.

Regulations governing buildings and structures on Tsawwassen Lands

- 98 (1) Subject to clauses 123 to 126 of Chapter 16 [*Governance*] of the final agreement, and without prejudice to the generality of section 95, the Executive Council may make regulations governing buildings and structures on Tsawwassen Lands, including but not limited to, regulations as follows:
- (a) providing for a system of permits and approvals;
 - (b) requiring landholders to obtain and provide to the building inspector, or to another individual acting in a similar capacity (whether or not on behalf of the Tsawwassen Government),
 - (i) certification,
 - (ii) assurances, and
 - (iii) reportsprepared by qualified professionals in relation to site conditions, the size or complexity of developments or other aspects of developments;
 - (c) requiring land holders, builders, contractors, tradespersons and consultants, in specified circumstances,
 - (i) to be insured under a specified type of insurance policy and to satisfy the Tsawwassen Government or a designated official of the Tsawwassen Government as to that insurance, and
 - (ii) to provide damage deposits or other securities to guarantee completion, in accordance with a permit or approval under this Act, of the construction, alteration, repair, removal or demolition of a building or other structure to which the permit or approval pertains;
 - (d) in relation to a development, prescribing requirements respecting essential services and facilities, including, but not limited to, road access, sewage disposal and storm drainage;
 - (e) requiring any land holder of land being developed, or to be developed, to provide to the Tsawwassen First Nation, for registration in the land title office, covenants that
 - (i) under the *Land Title Act* (British Columbia) may be lawfully registered against the land, and
 - (ii) include conditions
 - (A) requiring use of the land and any improvements in, on or under the land only in accordance with whichever permits or approvals are applicable under the regulations to that land, and
 - (B) requiring the land holder to reimburse the Tsawwassen First Nation for expenses incurred by it as a result of a breach of covenant;
 - (f) respecting the health, safety or protection of persons or property;
 - (g) respecting the conservation of energy, water or both;
 - (h) respecting the reduction of greenhouse gas emissions;
 - (i) providing for access by a person with disabilities to
 - (i) a building or other structure, or

- (ii) part of a building or other structure.

Regulations respecting land use plan, land use designations, zones and zoning regulations, variances and related other matters

- 99**
- (1) Subject to Chapter 15 of the Tsawwassen Constitution and to section 8, and without prejudice to the generality of section 95, the Executive Council may make regulations it considers necessary or advisable governing the use of Tsawwassen Lands.
 - (2) The regulations made under subsection (1) include, but are not limited to, regulations
 - (a) respecting the land use plan,
 - (b) for the purposes of either section 14 or 34,
 - (i) establishing the system of mail-in balloting,
 - (ii) prescribing the form and contents of the ballot,
 - (iii) respecting information to be included together with the ballot in mailing it to each Eligible Voter,
 - (iv) prescribing the time within which the ballots sent to Eligible Voters must be returned to the Executive Council in order to be counted, and
 - (v) respecting notification of Eligible Voters as to the result of the balloting.
 - (c) respecting land use designations (referred to in this Act as “land use designation regulations”),
 - (d) respecting zones and zoning (referred to in this Act as “zoning regulations”), including but not limited to making changes to zone boundaries or to metes and bounds descriptions of zone boundaries,
 - (e) respecting variances under Part 5 in relation to the zoning regulations under Part 5, including but not limited to prescribing the limits referred to in section 56,
 - (f) respecting development permit areas, development permits or variances or amendments of development permits,
 - (g) respecting building permits,
 - (h) establishing requirements to be satisfied in relation to the subdivision or development of Tsawwassen Lands, and
 - (i) respecting other matters the Executive Council considers to be related or ancillary to any of items listed in paragraphs (a) to (h).
 - (3) Regulations made under subsection (2) (f) may provide differently for different development permit areas according to whichever of the objectives under section 73 are relevant.

Regulations respecting offsite levies

- 100**
- (1) Without prejudice to the generality of section 95, the Executive Council may make regulations it considers necessary or advisable respecting offsite levies, including but not limited to, regulations
 - (a) providing
 - (i) the formula, or
 - (ii) another method

of calculating offsite levies for the purposes of and in accordance with section 66, and

(b) respecting rebates referred to in section 67.

(2) Regulations made under subsection (1) may provide differently for different formulas or different other methods of calculating offsite levies.

Offences created by regulation

- 101** (1) The Executive Council may provide by regulation that
- (a) a contravention of a regulation is an offence, and
 - (b) a person convicted of an offence for a contravention of a regulation is liable to a fine not exceeding a maximum amount
 - (i) that is prescribed for that offence by regulation of the Executive Council, and
 - (ii) that is not more than \$10, 000.
- (2) If the maximum fine prescribed under a regulation referred to in subsection (1) is less than that provided by a provision of this Act, then the regulation prevails.
- (3) For greater certainty, the maximum amount under subsection (1) (b) may differ for different offences.

Included powers for regulations

- 102** Subject to section 8, a power conferred under this Act to make regulations includes a power exercisable in the same manner, and subject to the same consent and conditions, if any, to repeal or amend the regulations and make others.

Interpretation

- 103** The *Interpretation Act* (British Columbia) applies to this Act and the regulations, unless the context or another Tsawwassen enactment otherwise requires.

Repeal

- 104** The following are repealed:
- (a) General Zoning Bylaw No. 1995/11/1 (adopted in 1995);
 - (b) General Zoning Amendment Bylaw no. 1995/10/3 (adopted in 1997);
 - (c) Constructions and Buildings Bylaw No. 1995/10/1 (adopted in 1995, amended in 1997);
 - (d) Local Works and Water Supplies Bylaw No. 1995/10/2 (adopted in 1995).

Commencement

- 105** This Act comes into force on the date of its enactment by Tsawwassen Legislature.