



TSAWWASSEN FIRST NATION  
s'cəwaθən məsteyəx<sup>w</sup>

**BUILDING PROSPERITY BY FACILITATING LAND  
DEVELOPMENT ACT, 2013**

Enacted on June 26, 2013

A handwritten signature in blue ink, appearing to read 'Bryce Williams', is positioned above a horizontal line.

CHIEF BRYCE WILLIAMS

The Tsawwassen Legislature enacts as follows:

***Land Act***

- 1 Section 2 of the Land Act is amended by adding “, but does not include lands held by the Tsawwassen Government as a nominee, agent or trustee for any other person” to the end of the definition of “Tsawwassen Public Lands”.***
- 2 Section 2 of the Land Act is amended by adding the following new definitions in the correct places in alphabetical order:***

**“Tsawwassen Corporation”** has the same meaning as in Chapter 1 [*Definitions*] of the final agreement;

**“Tsawwassen Partnership”** means a British Columbia partnership (including a limited partnership) formed and maintained in existence in accordance with the *Partnership Act* (British Columbia), as amended from time to time, all of the partners of which are Tsawwassen First Nation or a Tsawwassen Corporation and all of the partnership interests in which are held by Tsawwassen First Nation or a Tsawwassen Corporation and in which no person other than Tsawwassen First Nation or a Tsawwassen Corporation, directly or indirectly, legally or beneficially, owns, or has any direct or indirect interest (including, without limitation, by way of mortgage, charge, pledge or security interest) in, the partnership or has any direct or indirect ability to exercise any control or direction over the partnership or any partnership interest in the partnership or any direct or indirect right or power to direct the management of the partnership.

- 3 The Land Act is amended by adding the following new section 6.1:***

- 6.1 (1) For the purpose of this section:

**“provincial highway”** means a highway designated on a plan as a highway that, on deposit of the plan in the Land Title Office, will vest in the Crown in right of the Province or in the BC Transportation Financing Authority.

- (2) Notwithstanding section 6, Tsawwassen First Nation may dedicate a portion of its land owned in fee simple to British Columbia for a provincial highway pursuant to section 107 (1) of the *Land Title Act* (British Columbia), as amended from time to time, and a community approval under section 51 will not be required for any such dedication.

**4    *Section 13 of the Land Act is amended by adding the following new subsections (5) and (6):***

- (5) For the purposes of this section 13, the potential mandatory five year renewal term set out in section 210 (4) of the *Strata Property Act* (British Columbia), as amended from time to time, will not be counted in the determination of the term of a lease.
- (6) For the purposes of this section 13, at the time of the renewal of any subsisting lease, the term and subsequent renewal rights will be determined as of the time of such renewal, without regard to the previous part of the term of such lease.

**5    *The Land Act is amended by adding the following “, or a Tsawwassen Partnership” to the end of subsection 16 (1) (d).***

**6    *The Land Act is amended by adding the following new subsections 51 (3), (4) and (5):***

- (3) Community approval is not required for a disposition of a Tsawwassen Fee Simple Interest in a parcel of Tsawwassen Public Lands to a Tsawwassen Corporation or a Tsawwassen Partnership if the community has previously approved of the disposition of a leasehold interest in such parcel of Tsawwassen Public Lands to an applicant pursuant to subsection (1) (a) or (1) (b), as the case may be, and the disposition is made on the condition that the land use of the Tsawwassen Fee Simple Interest must be consistent with that identified in such community approval.
- (4) A Tsawwassen Fee Simple Interest granted to a Tsawwassen Corporation or Tsawwassen Partnership pursuant to subsection (3) reverts to Tsawwassen First Nation at the end of the term of the leasehold interest granted by the Tsawwassen Corporation or Tsawwassen Partnership referred to in subsection (3), including any renewals thereof.
- (5) Any reversion of a Tsawwassen Fee Simple Interest of Tsawwassen Lands pursuant to subsection (4) will be subject to any right, title or interest in or to such Tsawwassen Lands existing at the time of such reversion.

***Land Use Planning and Development Act***

***7 The Land Use Planning and Development Act is amended by repealing sections 69 and 70 and inserting the following new sections 70.1 and 70.2:***

**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.

**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.

**8 *The Land Use Planning and Development Act is amended by inserting the following new sections 88.1, 88.2, 88.3, 88.4, 88.5, and 88.6:***

**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.

#### **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.

**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.

**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.

**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.

**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.

**9** *Section 73 (1) of the Land Use Planning and Development Act is amended by inserting “or Executive Council, by regulation,” before “may delineate development permit areas”.*

**10** *Section 73 (2) of the Land Use Planning and Development Act is amended by inserting “or a regulation enacted pursuant to subsection (1)” following “With respect to those areas, the land use plan”.*

**11** *Section 73 of the Land Use Planning and Development Act is amended by inserting the following new subsection (3):*

- (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.