

TOQUAHT NATION GOVERNMENT

EMERGENCY PREPAREDNESS ACT

TNS 5/2020



This law enacted on March 29, 2020

Signed *Anne Mack*
Anne Mack, ḥaʔwił of the Toquaht Nation

DEPOSITED IN THE
REGISTRY OF LAWS AND
OFFICIAL RECORDS
ON 2020/03/29
Kristen Johnson
Signature of Law Clerk

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PREAMBLE

The Toquaht Nation assumes the responsibility of providing measures to protect the health, safety and welfare of Toquaht citizens and to protect Toquaht lands for present and future generations of Toquaht citizens. This includes assisting in the preparation for, response to and recovery from an emergency or disaster on Toquaht lands, or with present or imminent effects on Toquaht lands.

The Toquaht Nation acknowledges that the rugged beauty of the West Coast of Vancouver Island can pose challenges to the management of emergencies, health hazards and disasters on and around Toquaht lands. Other governments, non-government agencies and the private sector may also have a role in preparing for, responding to and recovering from an emergency or disaster that affects Toquaht citizens or Toquaht lands.

Under 13.26.2 of Chapter 13 Governance of the Maa-nulth Treaty, the Toquaht Nation has the rights, powers and duties of a local authority under federal or provincial law in respect of emergency preparedness and emergency measures on Toquaht lands, including the power to declare a state of local emergency on Toquaht lands.

Having clear lines of responsibility within the Toquaht government as well as an emergency plan to guide our emergency and disaster preparedness, response and recovery measures are critical to ensuring those measures are timely, effective and coordinated.

The Toquaht Nation adopts this Act based on these values and objectives.

PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Emergency Preparedness Act.

Executive oversight

1.2 The chairperson is responsible for the executive oversight of this Act.

Authority and application

- 1.3 (a) This Act is enacted under
- (i) 13.26.2 of Chapter 13 Governance of the Maa-nulth Treaty, and
 - (ii) section 3.2(bb) of the Constitution.
- (b) This Act applies to Toquaht lands and Toquaht foreshore.

Definitions

1.4 In this Act,

“annual budget” has the meaning given to that term in the Financial Administration Act;

“disaster” means an event that

- (a) is caused by accident, fire, explosion or technical failure or by the forces of nature, and
- (b) has resulted in serious harm to the health, safety or welfare of people, or in widespread damage to property;

“emergency” means a present or imminent event that

- (a) is caused by accident, fire, explosion or technical failure or by the forces of nature, and
- (b) requires prompt coordination of action or special regulation of persons or property, to protect the health, safety or welfare of people or to limit damage to property;

“emergency plan” means the plan approved by the Executive under section 3.1, as amended from time to time;

"health hazard" means

- (a) a condition, a thing or an activity that
 - (i) endangers, or is likely to endanger, public health, or
 - (ii) interferes, or is likely to interfere, with the suppression of infectious agents or hazardous agents, or
- (b) a prescribed condition, thing or activity, including a prescribed condition, thing or activity that
 - (i) is associated with injury or illness, or
 - (ii) fails to meet a prescribed standard in relation to health, injury or illness;

“Toquaht emergency declaration” means a declaration of a state of local emergency made by the Executive under section 2.4(a);

“Toquaht emergency operations centre” means a centre established under section 3.3;

“Toquaht emergency program” means the program established under this Act;

“multi-year financial plan” has the meaning given to that term in the Financial Administration Act;

“named person” means a person named in a demand under section 3.7(a).

PART 2 - ADMINISTRATION

Creation of emergency program

2.1 The emergency program of the Toquaht Nation is hereby established.

Role of Council

2.2 Council must ensure that the annual budget provides sufficient financial resources for the Toquaht Nation to maintain an essential level of preparedness for emergencies and disasters on Toquaht lands, or with present or imminent effects on Toquaht lands.

Role of the Executive

- 2.3 (a) The Executive is at all times responsible for the general direction and control of the Toquaht emergency program.
- (b) Without limiting subsection (a), the Executive must perform the following duties and may exercise the following powers from time to time where necessary or advisable:
- (i) provide strategic direction and oversight to the director of operations and the director of Community Services in connection with their duties and powers under this Act;
 - (ii) approve the emergency plan and any amendments to that plan;
 - (iii) enter into agreements on behalf of the Toquaht Nation to facilitate implementation of the Toquaht emergency program, including
 - (A) agreements with other governments for the purpose of emergency or disaster assistance or the formulation of coordinated preparation for, response to or recovery from an emergency or disaster, and
 - (B) agreements with individuals, bodies, corporations or non-government agencies for the provision of goods or services;
 - (iv) enact regulations or approve policies to facilitate implementation of the Toquaht emergency program; and
 - (v) authorize or direct one or more of the response measures specified in section 3.4 while a Toquaht emergency declaration is in effect;
 - (vi) approve emergency expenditures requiring Executive approval under the Financial Administration Act; and

- (vii) exercise any powers available to the Toquaht Nation under federal or provincial law.
- (c) The Executive may delegate, in writing, the performance of any of the Executive's duties or the exercise of any of the Executive's powers under this Act to
 - (i) a committee of the Executive,
 - (ii) a Toquaht Nation employee, or
 - (iii) an independent contractor of the Toquaht Nation.
- (d) Despite subsection (c), the Executive must not delegate its power to enact a regulation under this Act.
- (e) Despite the delegation of any duties or powers under subsection (c), the Executive remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately.

Role of the ɥaʔwɨl

2.4 The ɥaʔwɨl must perform the following duties and may exercise the following powers from time to time:

- (a) where necessary or advisable, make, extend or cancel a declaration of a state of local emergency on Toquaht lands; and
- (b) where because of the circumstances of an emergency or disaster, it is not possible to assemble a quorum of the Executive, and provided the ɥaʔwɨl has made every effort to obtain the consent of the other members of the Executive,
 - (i) authorize or direct one or more of the response measures specified in section 3.4 while a Toquaht emergency declaration is in effect, or
 - (ii) approve an emergency expenditure requiring Executive approval under the Financial Administration Act.

Role of the director of operations

2.5 The director of operations must perform the following duties and may exercise the following powers from time to time where necessary or advisable:

- (a) serve as director of any Toquaht emergency operations centre;
- (b) approve emergency expenditures not requiring Executive approval under the Financial Administration Act; and

- (c) any other duties given, delegated or assigned under this Act or by the Executive.

Role of the Director of Community Services

2.6 The director of Community Services must perform the following duties and may exercise the following powers from time to time where necessary or advisable:

- (a) provide leadership and administration for the Toquaht emergency program;
- (b) prepare a draft emergency plan and any proposed amendments to that plan for approval by the Executive;
- (c) maintain a current copy of the emergency plan at Toquaht administrative offices at all times, and inform the ɥaʔwił and the director of operations of the location of that copy;
- (d) provide information and recommendations to Council, the ɥaʔwił, the director of operations and the Director of Finance regarding any components of the annual budget and the multi-year financial plan relating to the Toquaht emergency program;
- (e) where necessary or advisable and subject to any direction from the Executive, negotiate and recommend arrangements or agreements to the Executive to facilitate implementation of the Toquaht emergency program;
- (f) where necessary or advisable, recommend actions, regulations or policies to the Executive to facilitate implementation of the Toquaht emergency program;
- (g) coordinate implementation of any prevention or preparedness measures contemplated in the emergency plan or otherwise directed by the Executive, including
 - (i) training and exercises,
 - (ii) volunteer programs or planning,
 - (iii) information programs or sessions for the public or Toquaht citizens, and
 - (iv) research regarding, and measures to eliminate or minimize, actual or potential hazards on Toquaht lands;
- (h) in the event of an emergency or disaster on Toquaht lands, or with present or imminent effects on Toquaht lands, regardless of whether a Toquaht emergency declaration has been made,

- (i) coordinate implementation of any response or recovery measures contemplated in the emergency plan or otherwise directed by the Executive, the ɥaʔwił under section 2.4 or the director of operations, and
- (ii) coordinate Toquaht Nation response and recovery measures with those of other governments, non-government agencies and the private sector;
- (i) at any time upon request, report the status of the Toquaht emergency program to Council, the Executive or the director of operations;
- (j) at any time upon request, report the status of the Toquaht emergency program to Canada or British Columbia; and
- (k) any other duties given, delegated or assigned under this Act or by the Executive.

PART 3 - PREPAREDNESS, RESPONSE AND RECOVERY

Emergency plan

- 3.1 (a) Within one year of the coming into force of this Act, the Executive must approve a plan respecting the preparation for, response to and recovery from an emergency or disaster on Toquaht lands, or with present or imminent effects on Toquaht lands.
- (b) The Executive must annually review the emergency plan and may, from time to time, amend the emergency plan.

Toquaht emergency declaration

- 3.2 (a) A Toquaht emergency declaration must
- (i) be made by the Һa?wił, by Order,
 - (ii) identify the nature of the emergency, and
 - (iii) specify the Toquaht lands on which the emergency exists or is imminent.
- (b) If the Һa?wił makes a Toquaht emergency declaration, the Һa?wił must as soon as practicable after making the declaration convene an Executive meeting to assist in directing the response to the emergency.
- (c) Immediately after a Toquaht emergency declaration is made, the Һa?wił must ensure
- (i) a copy of the declaration is provided to Canada, British Columbia, the Alberni-Clayoquot and the District of Ucluelet, and
 - (ii) the details of the declaration are posted, published or otherwise communicated by a means of communication that the Һa?wił considers most likely to make the contents of the declaration known to the population of the affected area.
- (d) A Toquaht emergency declaration expires 14 days from the date it is made unless
- (i) it is earlier cancelled by the Һa?wił in accordance with this Act,
 - (ii) it is earlier cancelled by Canada or British Columbia in accordance with federal or provincial law,
 - (iii) it earlier ceases to have force or effect under federal or provincial law, or

- (iv) it is extended by the Һа?wił in accordance with this Act or federal or provincial law.
- (e) Subsections (a) and (c) apply to each extension or cancellation of a Toquaht emergency declaration, with necessary changes in the details.

Emergency operations centre

- 3.3** If a Toquaht emergency declaration has been made or if otherwise directed by the Executive, the director of operations must
- (a) establish and maintain an emergency operations centre at a location specified in the declaration or direction or, if no location is specified, at a location approved by the Һа?wił, and
 - (b) serve as director of that emergency operations centre.

Response measures

- 3.4** (a) While a Toquaht emergency declaration is in effect, the Executive may do all acts and implement all procedures that it considers necessary or advisable to prevent, respond to or alleviate the effects of an emergency, health hazard or disaster, including any or all of the following:
- (i) provide directions to the director of operations or the director of Community Services regarding implementation of the emergency plan;
 - (ii) authorize or require any person to render assistance of a type that the person is qualified to provide or that otherwise is or may be required to prevent, respond to or alleviate the effects of an emergency or disaster;
 - (iii) control or prohibit travel to or from any area of Toquaht lands;
 - (iv) cause the evacuation of persons and the removal of livestock, animals and personal property from any area of Toquaht lands that is or may be affected by an emergency or a disaster and make arrangements for the adequate care and protection of those persons, livestock, animals and personal property;
 - (v) designate a place as a quarantine facility if the Executive reasonably believes that the temporary use of the place for the purposes of isolating or detaining individuals is necessary to protect public health and, if so designated, a person who has control of a place designated as a quarantine facility must provide the place to the Toquaht government;
 - (vi) detain and quarantine an individual in a quarantine facility;

- (vii) acquire or use any land or personal property considered necessary to prevent, respond to or alleviate the effects of an emergency or disaster;
 - (viii) provide for the restoration of essential facilities and the distribution of essential supplies and provide, maintain and coordinate emergency medical, welfare and other essential services on Toquaht lands;
 - (ix) authorize the entry into any building or on any land, without warrant, by any person in the course of implementing the emergency plan or if otherwise considered by the Executive to be necessary to prevent, respond to or alleviate the effects of an emergency or disaster;
 - (x) cause the demolition or removal of any trees, structures or crops if the demolition or removal is considered by the Executive to be necessary or appropriate in order to prevent, respond to or alleviate the effects of an emergency or disaster;
 - (xi) construct works considered by the Executive to be necessary or appropriate to prevent, respond to or alleviate the effects of an emergency or disaster;
 - (xii) procure, fix prices for or ration food, clothing, fuel, equipment, medical supplies or other essential supplies and the use of any property, services, resources or equipment on Toquaht lands for the duration of the state of emergency; and
 - (xiii) enforce on Toquaht lands or Toquaht foreshore an order made under the Public Health Act (British Columbia) or the Emergency Program Act (British Columbia).
- (b) Despite subsection (a), if in accordance with federal or provincial law, Canada or British Columbia order the Toquaht Nation to refrain or desist from implementing a response measure,
- (i) the Executive must not authorize or direct implementation of that response measure, or
 - (ii) if the Toquaht Nation has already commenced implementation of that response measure, the Executive must ensure implementation of the response measure is halted.

Mandatory assistance

- 3.5** If the Executive under section 3.4 or the *ḥaʔwıl* under section 2.4 makes an Order requiring a person to provide assistance, the person named in the Order must provide the assistance required in the Order.

Compensation for loss

- 3.6** If a person suffers a loss as a result of any action taken by or under direction of the Executive, the ɥaʔwił, the director of operations or the director of Community Services under this Act, the Toquaht Nation must compensate that person for the loss in accordance with applicable federal or provincial law.

Recovery of costs

- 3.7** (a) If an emergency, health hazard or a disaster is threatened or caused in whole or in part by the acts or omissions of a person and expenditures are made by the Toquaht Nation to prevent, respond to or alleviate the effects of the emergency, health hazard or disaster,
- (i) the director of operations may deliver in accordance with Toquaht law a demand to that person requiring him or her to pay the Toquaht Nation the portion of the Toquaht Nation's expenditures attributable to his or her acts or omissions, and
 - (ii) that person must pay the Toquaht Nation's the amount specified in the demand within the time period specified in the demand.
- (b) A demand under subsection (a) must
- (i) describe the named person's acts or omissions,
 - (ii) provide a breakdown of the portion of the Toquaht Nation's expenditures attributable to the named person's acts or omissions, including supporting receipts or invoices, and
 - (iii) specify the time period in which the amount demanded must be paid.
- (c) No later than 14 days after receipt of a demand under subsection (a), the named person may request a review of the demand by the Administrative Decisions Review Board.
- (d) An amount demanded under subsection (a) is a debt owing by the named person to the Toquaht Nation and may be collected by the Toquaht Nation in accordance with sections 5.6 to 5.11 of the Financial Administration Act.
- (e) Nothing in subsection (a) relieves a person from any other liability.

PART 4 - GENERAL PROVISIONS

Regulations

- 4.1** (a) The Executive may make regulations which it considers necessary or advisable for the purposes of this Act.
- (b) Without limiting subsection (a), the Executive may make regulations respecting
- (i) implementation of the emergency plan,
 - (ii) the establishment or operation of any Toquaht emergency operations centre, or
 - (iii) the establishment or implementation of a disaster financial assistance fund for Toquaht citizens.

Offence

- 4.2** A person who
- (a) contravenes this Act or the regulations, or
 - (b) interferes with or obstructs any person in the exercise of any power or the performance of any duty conferred or imposed under this Act
- commits an offence and is liable, on summary conviction, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding six months.

Commencement

- 4.3** This Act comes into force on the date it is enacted.