TOQUAHT NATION GOVERNMENT

PLANNING AND LAND USE MANAGEMENT ACT

TNS 13/2011

OFFICIAL CONSOLIDATION – CURRENT TO MARCH 26, 2024

This is a certified true copy of the consolidated Planning and Land Use Management Act TNS 13/2011, Current to March 26, 2024

Signed: Kirsten Johnsen
Law Clerk

TABLE OF CONTENTS

PART 1 - INTRODUCTORY PROVISIONS 7

Short title 7
Executive oversight 7
Application 7
Definitions 7
Interpretation 8

PART 2 - OFFICIAL COMMUNITY PLANS 9

Purpose of official community plans 9
Authority to adopt official community plans 10
Required content 10
Policy statements in community plans 11
Consultation 11
Planning of school facilities 12
Adoption procedures 12
Effect of official community plans 13

PART 3 - PUBLIC HEARINGS 15

Public hearings 15
Delegation authority 16
Notice of public hearing 16
Notice if public hearing waived 17
Procedure after a public hearing 18

PART 4 - ZONING AND OTHER DEVELOPMENT REGULATIONS 21

Authority to adopt zoning laws 21
Farm zoning laws 22
Zoning for amenities and affordable housing 23
Housing agreements for affordable and special needs housing 23
Phased development agreements 24
Term and assignment of phased development agreement 26
Process for phased development agreement regulation 26
Amendments to phased development agreement 27
Information that must be available for public inspection 28
Off-street parking and loading space requirements 28
Runoff control requirement 30
Regulation of signs 31
Screening and landscaping 31
Construction requirements in relation to flood plain areas 32
Non-conforming uses and siting 33
Effect of expropriation in relation to non-conforming use and subdivision 35
No compensation in relation to adoption of zoning law or issuance of permit 36

PART 5 - PERMITS AND FEES 37

Designation of development permit areas 37
Development permits 38
Designation of development approval information areas or circumstances 41
Development approval information 41
Designation of temporary commercial and industrial use permit areas 42
Temporary commercial and industrial permits 42

Tree cutting restrictions and permits ... 44
Requirement for security ... 45
Lapse of permit ... 46
Notice of permit ... 46
General matters ... 47
Withholding of permits and licences that conflict with zoning laws in preparation ... 47
Fees related to applications and inspections ... 48

PART 6 - DEVELOPMENT REQUIREMENTS ... 49

Subdivision servicing requirements ... 49
Excess or extended services and latecomer payments ... 50
Completion of works and services ... 52
Provision of park land ... 52
Zoning laws adopted after application for subdivision submitted ... 54
Parcel frontage on roadway ... 54
Roadway provision and widening ... 54

PART 7 - BOARD OF VARIANCE ... 57

Establishment of board of variance ... 57
Chair and procedures ... 57
Variance or exemption to relieve hardship ... 58
Extent of damage preventing reconstruction as non-conforming use ... 59

PART 8 - DEVELOPMENT COSTS RECOVERY ... 61

Definitions ... 61
Development cost charges generally ... 61
Development for which charges may be waived or reduced ... 63
Amount of development cost charges ... 64
Use of development cost charges ... 65
Acquisition and development of park land ... 66
Annual development cost charges report ... 67

PART 9 - PUBLIC INFORMATION AND ADVISORY COMMISSION ... 69

Information that must be available to the public ... 69
Advisory planning commission ... 69

PART 10 - GENERAL PROVISIONS ... 71

Development approval procedures ... 71
Environmental Protection Act requirements must be met ... 71
Amendment of certain Parts and sections ... 72
Amendments generally ... 72
Commencement ... 72

PREAMBLE

The Toquaht Nation asserts that we have occupied, benefited from and governed our traditional territory, lands, waters and resources since time immemorial.

The traditional territory of the Toquaht Nation has in the past provided the resources necessary to sustain the Toquaht Nation and we honour its connection to the lands, waters and resources of its traditional territory which provide for our physical and spiritual needs.

Through our inherent right to self-government, the Toquaht Nation has preserved and protected our traditional territory and we accept the obligations and responsibilities inherent in governing Toquaht lands and pledge to protect Toquaht lands for future generations of our citizens.

We promote a healthy and prosperous future that ensures the continued existence of the Toquaht Nation as a strong political, social and cultural community that aspires to grow as an organized, determined, successful and self-reliant people.

The Toquaht Nation values the need to respect, protect and promote our heritage, culture and traditions which form the basis of our success and destiny while understanding that these practices may change and require contemporary expression.

It is the desire of the Toquaht Nation that our Toquaht lands continue to provide the resources necessary to sustain us, preserve our traditional ways and culture, encourage self-sufficiency and security through economic development and growth and to provide a home for the Toquaht people forever.

It is also the desire of the Toquaht Nation that economic development and growth on our Toquaht lands will be conducted in a way that is transparent and accountable and that will foster a safer, stronger, healthier, more financially secure and more sustainable community. To this end, the Toquaht Nation encourages our citizens to participate in the planning process for development and growth in order to create the type of community we want to live in and be a part of and that meets our needs.

Economic development and growth on Toquaht lands will be carried out in a way that ensures our economic development and growth is socially, economically and environmentally sustainable.

The Toquaht Nation adopts this Act based on these values.

PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Planning and Land Use Management Act.

Executive oversight

1.2 The member of the Executive holding the lands and environmental protection portfolio is responsible for the Executive oversight of this Act.

Application

1.3 This Act applies to all Toquaht lands and Toquaht foreshore.

Definitions

1.4 In this Act,

"adjudicator" means an individual appointed to the Review Board under the Administrative Decisions Review Act;

"adopt" includes, in relation to a zoning law or an official community plan, an amendment or repeal;

"chairperson" means the chairperson of the Review Board appointed under the Administrative Decisions Review Act;

"density" means, in relation to Toquaht lands, a parcel of land or an area,

(a) the density of use of the Toquaht lands, parcel or area, or

(b) the density of use of any buildings and other structures located on the Toquaht lands, parcel or in the area;

"owner**"** means, in relation to Toquaht lands, a person who holds a registered

(a) Toquaht residential interest,

(b) estate in fee simple, or

(c) lease;

"panel" means a panel of the Review Board established by the chairperson in accordance with this Act to consider an application made under Part 7;

"public" means

(a) Toquaht citizens,

(b) individuals ordinarily resident on Toquaht lands, and

(c) any person who reasonably believes that their interest in Toquaht lands may be affected by a proposal to adopt an official community plan, a zoning law or an amendment to this Act;

"public hearing" means a hearing held under Part 3;

"Review Board" means the Administrative Decisions Review Board;

"subdivision" means the division of an interest in Toquaht lands into two or more parcels, whether by plan, descriptive words or otherwise.

Interpretation

1.5 In this Act, words or expressions defined in the Land Act that are also used in this Act will, except where the context requires otherwise or is otherwise indicated, have the same meaning as those words or expressions defined in the Land Act, with necessary changes in the details.

PART 2 - OFFICIAL COMMUNITY PLANS

Purpose of official community plans

2.1 (a) An official community plan is a statement of objectives and policies to guide decisions on planning and land use management within the area covered by the official community plan respecting the economic development and growth objectives and goals of the Toquaht Nation.

(b) To the extent that it deals with these matters, an official community plan must work towards the following purposes:

(i) to promote human settlement that is socially, economically and environmentally healthy and that makes efficient use of community facilities and services, Toquaht lands and other resources;

(ii) to ensure that development takes place where adequate facilities exist or can be provided in a timely, economic and efficient manner;

(iii) to promote the efficient movement of goods and people while making effective use of transportation and utility corridors;

(iv) to protect environmentally sensitive areas;

(v) to maintain the integrity of a secure and productive resource base, including farming areas;

(vi) to promote economic development that supports the culture and traditions of the Toquaht Nation;

(vii) to reduce and prevent air, land and water pollution;

(viii) to provide adequate, affordable and appropriate housing for Toquaht citizens;

(ix) to ensure adequate inventories of suitable Toquaht lands and resources for future settlement;

(x) to protect the quality and quantity of ground water and surface water;

(xi) to develop settlement patterns that minimize the risks associated with natural hazards;

(xii) to create and preserve links between residential communities and rural open spaces, including parks and recreation areas;

(xiii) to plan for an adequate energy supply and promoting efficient use, conservation and alternative forms of energy; and

(xiv) to promote good stewardship of Toquaht lands, Toquaht foreshore, sites and structures with cultural heritage value.

Authority to adopt official community plans

2.2 (a) Council must adopt, by an Act, one or more official community plans.

(b) An official community plan

(i) must be included in the adopting Act as a schedule, and

(ii) must designate the area covered by the plan.

(c) Only Council may adopt an official community plan and it must do so in accordance with this Part.

Required content

2.3 (a) An official community plan must include statements and map designations for the area covered by the plan respecting the following:

(i) the approximate location, amount, type and density of residential development required to meet anticipated housing needs over a period of at least five years;

(ii) the approximate location, amount and type of present and proposed commercial, industrial, institutional, agricultural, recreational and utility land uses;

(iii) the approximate location and area of sand and gravel deposits that are suitable for future sand and gravel extraction;

(iv) restrictions on the use of Toquaht lands that are subject to hazardous conditions or that is environmentally sensitive to development;

(v) the approximate location and phasing of any major road, sewer and water systems;

(vi) the approximate location and type of present and proposed community facilities, including schools, parks and waste treatment and disposal sites; and

(vii) other matters that, in relation to the plan, Council considers relevant.

(b) An official community plan must include housing policies respecting affordable housing, rental housing and special needs housing.

(c) An official community plan must include targets for the reduction of greenhouse gas emissions in the area covered by the plan and policies and actions proposed in relation to achieving those targets.

Policy statements in community plans

2.4 (a) An official community plan may include the following:

(i) policies relating to social needs, social well-being and social development;

(ii) a regional context statement, consistent with the rest of the plan, of how matters dealt with in the plan apply in a regional context;

(iii) policies respecting the maintenance and enhancement of farming on Toquaht lands in a farming area or in an area designated for agricultural use in the plan; and

(iv) policies relating to the preservation, protection, restoration and enhancement of the natural environment, its ecosystems and biological diversity.

(b) If Council proposes to include a matter in an official community plan, the regulation of which is not within the jurisdiction of Council, the plan may only state the broad objective of Council in relation to that matter.

Consultation

2.5 (a) During the development of an official community plan, or the repeal or amendment of an official community plan, Council must provide one or more opportunities it considers appropriate for consultation with persons and authorities it considers will be affected.

(b) For the purposes of subsection (a), Council must

(i) consider whether the opportunities for consultation with one or more of the persons and authorities should be early and ongoing, and

(ii) specifically consider whether consultation is required with

(A) the board of the Alberni-Clayoquot Regional District,

(B) the council of any municipality that is adjacent to the area covered by the plan,

(C) neighbouring first nations,

(D) the board of education for the school district, and

(E) the government of Canada, the government of British Columbia and their agencies.

(c) Consultation under this section is in addition to consultation under Part 7 of the Government Act or the Constitution and the public hearing required under section 2.7(a).

Planning of school facilities

2.6 (a) If Council proposes to adopt an official community plan, Council must consult with the board of education for the school district at the time of adopting the plan.

(b) For consultation under subsection (a), Council must seek the input of the board of education as to the following:

(i) the actual and anticipated needs for school facilities and support services in the school district;

(ii) the size, number and location of the sites anticipated to be required for the school facilities referred to in paragraph (i);

(iii) the type of school anticipated to be required on the sites referred to in paragraph (ii);

(iv) when the school facilities and support services referred to in paragraph (i) are anticipated to be required; and

(v) how the existing and proposed school facilities relate to existing or proposed community facilities in the area.

Adoption procedures

2.7 (a) After first reading of an Act under section 2.2, Council must, in sequence, do the following:

(i) consider the official community plan in conjunction with

(A) its multi-year financial plan, and

(B) any waste management plan that is applicable; and

(ii) hold a public hearing on the proposed plan in accordance with Part 3.

(b) In addition to the requirements under subsection (a), Council may consider a proposed official community plan in conjunction with any other land use planning and with any social, economic, environmental or other community planning and policies that Council considers relevant.

Effect of official community plans

2.8 (a) An official community plan does not commit or authorize the Toquaht government or any person to proceed with any project that is specified in the plan.

(b) All enactments enacted or works undertaken by the Toquaht government after the adoption of an official community plan must be consistent with the relevant plan.

PART 3 - PUBLIC HEARINGS

Public hearings

3.1 (a) Subject to subsection (e), Council must not adopt an official community plan, a zoning law or an amendment to this Act under section 10.3 without holding a public hearing on the proposed plan, zoning law or amendment for the purpose of allowing the public to make representations to Council respecting matters contained in the proposed plan, zoning law or amendment.

(b) The public hearing must be held after first reading and before third reading of the proposed Act to adopt the official community plan, zoning law or amendment.

(c) At the public hearing all members of the public must be afforded a reasonable opportunity to be heard or to present written submissions respecting matters contained in the proposed official community plan, zoning law or amendment that is the subject of the hearing.

(d) Subject to subsection (c), the chair of the public hearing may establish procedural rules for the conduct of the hearing.

(e) Council may waive the holding of a public hearing on a proposed zoning law if

(i) an official community plan is in effect for the area that is subject to the proposed zoning law, and

(ii) the proposed zoning law is consistent with the plan.

(f) More than one proposed official community plan or zoning law may be included in one notice of public hearing and more than one proposed plan or zoning law may be considered at a public hearing.

(g) A proposed amendment to this Act under section 10.3 may be included in a notice of the public hearing relating to one or more proposed official community plans or zoning laws and may be considered at a public hearing where one or more proposed plans or zoning laws are considered.

(h) A written report of each public hearing containing a summary of the nature of the representations respecting the proposed official community plan, zoning law or amendment that were made at the public hearing must be prepared and maintained by Council as a public record.

(i) A report under subsection (h) must be certified as being fair and accurate by the person preparing the report and, if applicable, by the person to whom the hearing was delegated under section 3.2.

(j) A public hearing may be adjourned and no further notice of the hearing is necessary if the time and place for the resumption of the hearing is stated to those present at the time the hearing is adjourned.

Delegation authority

3.2 (a) Council may delegate, by resolution, the holding of a public hearing under section 3.1(a) to any person in accordance with this section.

(b) If Council makes a delegation under subsection (a),

(i) that delegation does not apply to a public hearing unless the notice under section 3.3 includes notice that the public hearing is to be held by a delegate, and

(ii) the resolution making the delegation must be posted in accordance with Toquaht law.

(c) If the holding of a public hearing is delegated, Council must not adopt the official community plan or zoning law that is the subject of the public hearing until the delegate reports to Council, either orally or in writing, the views expressed at the public hearing.

(d) Despite the delegation of the holding of a public hearing under subsection (a), Council remains responsible for ensuring that the duties are carried out properly and the powers are exercised appropriately by the delegate under this Part.

Notice of public hearing

3.3 (a) If a public hearing is to be held under section 3.1(a), Council must

(i) post in accordance Toquaht law a notice of the public hearing, and

(ii) publish in accordance with Toquaht law a notice of the public hearing in at least two consecutive issues of a newspaper, the last publication to appear not less than three and not more than 10 days before the public hearing.

(b) The notice must state the following:

(i) the time and date of the public hearing;

(ii) the place of the public hearing;

(iii) in general terms, the purpose of the proposed official community plan, zoning law or amendment to this Act under section 10.3;

(iv) the Toquaht lands or Toquaht foreshore that are the subject of the proposed official community plan or zoning law; and

(v) the place where and the times and dates when copies of the proposed official community plan, zoning law or amendment to this Act under section 10.3 may be inspected.

(c) If the proposed official community plan or zoning law in relation to which the notice is given alters the permitted use or density of any area, the notice must

(i) subject to subsection (d), include a sketch that shows the area that is the subject of the plan or zoning law alteration, including the name of adjoining roads if applicable, and

(ii) be delivered at least 10 days before the public hearing

(A) to the owners as shown on the assessment roll as at the date of the first reading of the official community plan or zoning law, and

(B) to any occupiers as at the date of the delivery of the notice,

of all parcels, any part of which is the subject of the plan or zoning law alteration or is within a prescribed distance from that area.

(d) If the location of the Toquaht lands or Toquaht foreshore can be clearly identified in the notice in a manner other than a sketch, it may be identified in that manner.

(e) Subsection (c) does not apply if 10 or more parcels owned by 10 or more persons are the subject of the proposed official community plan or zoning law alteration.

(f) In relation to public hearings being held under section 3.1(a) or waived under section 3.1(e), the Executive may, by regulation,

(i) require the posting of a notice on Toquaht lands or Toquaht foreshore that is the subject of a proposed official community plan or zoning law, and

(ii) specify the size, form and content of the notice and the manner in which and the locations where it must be posted.

(g) Specifications under subsection (f)(ii) may be different for different areas, zones, uses within a zone and parcel sizes.

Notice if public hearing waived

3.4 (a) If Council waives the holding of a public hearing under section 3.1(e), it must

(i) post in accordance with Toquaht law a notice of the waiver, and

(A) publish in accordance with Toquaht law a notice of the waiver in at least two consecutive issues of a newspaper, the last publication to appear not less than three and not more than 10 days before the proposed zoning law is given third reading.

(b) The notice must state

(i) in general terms, the purpose of the proposed zoning law,

(ii) the Toquaht lands or Toquaht foreshore that are the subject of the proposed zoning law, and

(iii) the place where and the times and dates when copies of the proposed zoning law may be inspected.

(c) Sections 3.3(c) to 3.3(e) apply to the notice except that the delivery under section 3.3(c)(ii) is to be at least 10 days before the proposed zoning law is given third reading.

Procedure after a public hearing

3.5 (a) After a public hearing, Council may, without further notice or public hearing,

(i) adopt or defeat the proposed Act to adopt the amendment to this Act under section 10.3, or

(ii) adopt or defeat the proposed Act to adopt the official community plan or zoning law, or

(iii) alter and then adopt the proposed Act to adopt the official community plan or zoning law, provided that the alteration does not

(A) alter the use,

(B) increase the density, or

(C) without the owner of the Toquaht lands' consent, decrease the density

of any area from that originally specified in the proposed official community plan or zoning law.

(b) A member of Council who

(i) is entitled to vote on the proposed Act to adopt a proposed official community plan, zoning law or amendment to this Act under section 10.3 that was the subject of a public hearing, and

(ii) was not present at the public hearing

may vote on the adoption of the proposed Act to adopt the official community plan, zoning law or the amendment to this Act under section 10.3 if an oral or written report of the public hearing has been given to the member of Council by

(iii) a Toquaht government employee, or

(iv) if applicable, the delegate who conducted the public hearing.

(c) After a public hearing under section 3.1(a) or third reading following notice under section 3.4, a court must not quash or declare invalid the proposed official community plan or zoning law on the grounds that an owner or occupier of the Toquaht lands

(i) did not see or receive the notice under section 3.3 or 3.4 if the court is satisfied that there was a reasonable effort to deliver the notice, or

(ii) who attended the public hearing or who can otherwise be shown to have been aware of the public hearing, did not see or receive the notice, and was not prejudiced by not seeing or receiving it.

PART 4 - ZONING AND OTHER DEVELOPMENT REGULATIONS

Authority to adopt zoning laws

4.1 (a) Council may adopt, by an Act, one or more zoning laws.

(b) Council may, by adopting a zoning law, do one or more of the following:

(i) divide the whole or part of Toquaht lands or Toquaht foreshore into zones, name each zone and establish the boundaries of the zones;

(ii) limit the vertical extent of a zone and provide other zones above or below it;

(iii) regulate within a zone

(A) the use of Toquaht lands, Toquaht foreshore, buildings and other structures,

(B) the density of the use of Toquaht lands, Toquaht foreshore, buildings and other structures,

(C) the siting, size and dimensions of

(I) buildings and other structures, and

(II) uses that are permitted on the Toquaht lands or the Toquaht foreshore, and

(D) the location of uses on the Toquaht lands or Toquaht foreshore and within buildings and other structures; or

(iv) regulate the shape, dimensions and area, including the establishment of minimum and maximum sizes, of all parcels of Toquaht lands that may be created by subdivision, in which case

(A) the regulations may be different for different areas, and

(B) the boundaries of those areas need not be the same as the boundaries of zones created under paragraph (i).

(c) The authority under subsection (a) may be exercised by incorporating in the zoning law maps, plans, tables or other graphic material.

(d) The zoning laws under subsection (a) may be different for one or more of the following, as specified in the zoning law:

(i) different zones;

(ii) different uses within a zone;

(iii) different locations within a zone;

(iv) different standards of works and services provided;

(v) different siting circumstances; or

(vi) different protected heritage properties.

(e) The power to enact zoning laws under subsection (a) includes the power to prohibit any use in a zone.

Farm zoning laws

4.2 (a) Council may make zoning laws in relation to farming areas

(i) concerning the conduct of farm operations as part of a farm business,

(ii) concerning types of buildings, structures, facilities, machinery and equipment that are prerequisite to conducting farm operations specified by Council and that must be utilized by farmers conducting the specified farm operations,

(iii) concerning the siting of stored materials, waste facilities and stationary equipment, and

(iv) prohibiting specified farm operations.

(b) A zoning law under subsection (a) may be different for one or more of the following:

(i) different sizes or types of farms;

(ii) different types of farm operations;

(iii) different site conditions;

(iv) different uses of adjoining land or foreshore; or

(v) different areas.

Zoning for amenities and affordable housing

4.3 (a) A zoning law may

(i) establish different density regulations for a zone, one generally applicable for the zone and the other to apply if the applicable conditions under paragraph (ii) are met, and

(ii) establish conditions in accordance with subsection (b) that will entitle the owner to a higher density under paragraph (i).

(b) The following are conditions that may be included under subsection (a)(ii):

(i) conditions relating to the conservation or provision of amenities, including the number, kind and extent of amenities;

(ii) conditions relating to the provision of affordable and special needs housing, as such housing is defined in the zoning law, including the number, kind and extent of the housing; or

(iii) a condition that an owner enter into a housing agreement under section 4.4 before a building permit is issued in relation to property to which the condition applies.

(c) A zoning law may designate an area within a zone for affordable or special needs housing, as such housing is defined in the zoning law, if the owner of the Toquaht lands covered by the designation consents to the designation.

Housing agreements for affordable and special needs housing

4.4 (a) The Executive may, by resolution, enter into a housing agreement under this section.

(b) A housing agreement may include terms and conditions agreed to by the Executive and the owner regarding the occupancy of the housing units on the Toquaht lands identified in the agreement, including terms and conditions respecting one or more of the following:

(i) the form of tenure of the housing units;

(ii) the availability of the housing units to classes of persons identified in the agreement or the resolution under subsection (a);

(iii) the administration and management of the housing units, including the manner in which the housing units will be made available to persons within a class referred to in paragraph (ii); or

(iv) rents and lease, sale or share prices that may be charged, and the rates at which these may be increased over time, as specified in the agreement or as determined in accordance with a formula specified in the agreement.

(c) A housing agreement may not vary the use or density from that permitted in the applicable zoning law.

(d) A housing agreement may only be amended by resolution approved by the Executive with the consent of the owner.

(e) If a housing agreement is entered into or amended, the Executive must file in the lands registry office a notice that the Toquaht lands described in the notice is subject to the housing agreement.

(f) Once a notice is filed under subsection (e), the housing agreement and, if applicable, the amendment to it, is binding on all persons who acquire an interest in the Toquaht lands affected by the agreement, as amended if applicable.

(g) Once a notice is filed under subsection (e), the registrar must make a note of the filing against the Toquaht lands affected but, in the event of any omission, mistake or misfeasance by the registrar or the staff of the registrar in relation to the making of a note of the filing, neither the registrar nor the Toquaht government is liable vicariously.

(h) The Executive may prescribe fees for the filing of notices under subsection (e).

Phased development agreements

4.5 (a) In this section and in sections 4.6 to 4.9,

"developer" means an owner of Toquaht lands who enters into, or who by assignment becomes a party to, a phased development agreement;

"development" means a development on Toquaht lands or Toquaht foreshore owned by a developer and described in a phased development agreement;

"phased development agreement" means an agreement under this section;

"specified zoning law provision" means a provision of a zoning law that is specified under subsection (c) for a phased development agreement.

(b) The Executive may, by regulation, enter into a phased development agreement with a developer.

(c) A phased development agreement must identify the Toquaht lands or Toquaht foreshore that is being developed and specify the provisions of a zoning law to which subsection (e) applies while the agreement is in effect.

(d) A phased development agreement may include additional terms and conditions agreed to by the Executive and the developer, including terms and conditions respecting one or more of the following:

(i) the inclusion of specific features in the development;

(ii) the provision of amenities;

(iii) the phasing and timing of the development and other matters covered by the agreement;

(iv) the registration of covenants under section 7.12 of the Land Act;

(v) subject to section 4.8(c), minor amendments to the agreement, including a definition of "minor amendment" for the purpose of the agreement;

(vi) dispute resolution between the parties; or

(vii) early termination of the agreement, either automatically in the event that terms and conditions are not met or by mutual agreement.

(e) Subject to subsection (f), if the specified zoning law provisions are amended or repealed while the agreement is in effect, those changes do not apply to the development unless the developer agrees in writing that the changes apply.

(f) The following changes to the specified zoning law provisions apply to the development without the written agreement of the developer:

(i) changes to enable the Toquaht government to comply with an enactment of Canada or of British Columbia in relation to which the Toquaht government has a legal requirement to comply with;

(ii) changes to comply with the order of a court or arbitrator or another direction in relation to which the Toquaht government has a legal requirement to comply with; and

(iii) changes that, in the opinion of the Executive, are necessary to address a hazardous condition of which the Executive was unaware at the time it entered into the phased development agreement.

(g) If a specified zoning law provision is a provision under section 4.1(b)(iii)(C), a development permit under section 5.2 that

(i) varies the siting, size or dimensions of buildings and other structures, or

(ii) varies the siting, size or dimensions of uses that are permitted on the Toquaht lands

does not apply to the development unless the developer agrees in writing that the development permit will apply.

(h) For certainty, if a matter included in a phased development agreement is specifically authorized under another section of this Act, the requirements that would apply in relation to that matter under those sections continue to apply.

Term and assignment of phased development agreement

4.6 (a) Subject to subsection (b), the maximum term for a phased development agreement is 10 years.

(b) With the approval of Council, the Executive may enter into a phased development agreement for a term not exceeding 20 years.

(c) Subject to subsection (b), a phased development agreement may be renewed or extended, as long as the renewal or extension will not make the agreement effective for a period that could exceed 20 years.

(d) A phased development agreement may not require the Executive to renew or extend a phased development agreement or enter into a subsequent phased development agreement for the same development.

(e) The developer may assign a phased development agreement to a subsequent owner only if

(i) the subsequent owner is identified in the agreement,

(ii) the subsequent owner is a member of a class of persons identified in the agreement, or

(iii) the Executive approves the assignment, by resolution.

Process for phased development agreement regulation

4.7 (a) Subject to subsections (b) and (c), the Executive must hold a public hearing in accordance with Part 3 before adopting a regulation under section 4.5.

(b) In addition to the notice requirements of section 3.3(b), the notice of the public hearing must include the following:

(i) the name of the developer;

(ii) a general description of the specified zoning law provisions for the phased development agreement;

(iii) the term of the phased development agreement;

(iv) a general description of the nature of the development that will be the subject of the phased development agreement;

(v) if the phased development agreement provides for the assignment of the agreement to a subsequent owner , the conditions under which the assignment may occur; and

(vi) any other information required by regulation.

(c) Section 3.1(e) does not apply to a public hearing under subsection (a) of this section.

Amendments to phased development agreement

4.8 (a) Subject to subsections (b) to (d), if the Executive and the developer agree, a phased development agreement may be amended in accordance with this section.

(b) If the phased development agreement provides for minor amendments, the Executive may approve a minor amendment by resolution.

(c) The following matters may not be dealt with as minor amendments to a phased development agreement:

(i) the specified zoning law provisions;

(ii) provisions regarding the assignment of the agreement to a subsequent owner;

(iii) the term of the agreement, unless the amendment will reduce the length of the term;

(iv) renewal or extension of the agreement;

(v) the Toquaht lands that are the subject of the agreement; and

(vi) the definition of "minor amendment" for the purpose of the agreement.

(d) An amendment to a phased development agreement, other than a minor amendment, must be adopted by regulation and sections 4.5 to 4.7 apply to that regulation.

Information that must be available for public inspection

4.9 The following must be made available for public inspection at the Toquaht administrative office during regular business hours:

(a) any phased development agreement;

(b) any amendments to a phased development agreement; and

(c) any agreements, permits, plans or other documents that are incorporated into a phased development agreement, whether directly or by reference.

Off-street parking and loading space requirements

4.10 (a) Council may, by zoning law,

(i) require owners or occupiers of any Toquaht lands or building or other structure to provide off-street parking and loading spaces for the building or other structure, or the use of the land, building or other structure, including spaces for use by disabled individuals,

(ii) establish design standards for the spaces required under paragraph (i), including standards respecting the size, surfacing, lighting and number of the spaces,

(iii) permit off-street parking spaces required under paragraph (i) to be provided, other than on the site of the building or other structure or use, under conditions that are specified in the zoning law, and

(iv) as an alternative to complying with a requirement to provide off-street parking spaces under paragraph (i), permit, at the option of the owner or occupier of the Toquaht lands or building or other structure, the payment to the Toquaht government of an amount of money specified in the zoning law.

(b) Money referred to in subsection (a)(iv) is payable

(i) at the time the building permit is issued for the applicable building or other structure, or

(ii) if no building permit is required, at the time the use that requires the parking space specified in the zoning law begins.

(c) A zoning law under this section may make different provisions for one or more of the following:

(i) different classes of uses or of buildings or other structures as established by the zoning law;

(ii) subject to subsection (d), different activities and circumstances relevant to transportation needs that are related to

(A) a use,

(B) a building or other structure, or

(C) a class of use or of buildings or other structures

as established by the zoning law;

(iii) different areas;

(iv) different zones; or

(v) different uses within a zone.

(d) A provision under subsection (c)(ii) must not increase the number of off-street parking spaces required under subsection (a)(i).

(e) A provision under subsection (c) that establishes requirements in relation to the amount of space for different classes does not apply in relation to

(i) Toquaht lands, or

(ii) a building or other structure existing at the time the zoning law came into force,

so long as the land, or building or other structure, continues to be put to a use that does not require more off-street parking or loading spaces than were required for the use existing at the time the zoning law came into force.

(f) A zoning law under this section may exempt one or more of the following from any provisions of the zoning law:

(i) a class of use, or of buildings or other structures, as established by the zoning law;

(ii) an activity or circumstance relevant to transportation needs that is related to

(A) a use,

(B) a building or other structure, or

(C) a class of use or of buildings or other structures

as established by the zoning law; or

(iii) a use, or building or other structure, existing at the time of the adoption of a zoning law under this section.

(g) If money is received by the Toquaht government under subsection (b), the Executive must

(i) establish a reserve fund for the purpose of providing

(A) new and existing off-street parking spaces, or

(B) transportation infrastructure that supports walking, bicycling, community transit or other alternative forms of transportation, and

(ii) place the money to the credit of the reserve fund.

(h) If reserve funds are established for both the purpose of subsection (g)(i)(A) and the purpose of subsection (g)(i)(B), the reserve funds must be separate.

(i) Before July 31 in each year, the Executive must prepare and consider a report respecting the previous year in relation to the reserve funds required under this section, including the following information separately for each of the purposes established under subsection (g):

(i) the amounts received under subsection (b) in the applicable year;

(ii) the expenditures from the reserve funds in the applicable year;

(iii) the balance of the reserve funds at the start and at the end of the applicable year; and

(iv) the projected timeline for future projects to be funded from the reserve funds.

(j) The Executive must make a report under subsection (i) available to the public at the Toquaht administrative office from the time it considers the report until July 31 in the following year.

Runoff control requirement

4.11 (a) Council may, by zoning law, require that an owner who carries out construction of a paved area or roof area manage and provide for the ongoing disposal of surface runoff and storm water in accordance with the requirements of the zoning law.

(b) Council may, by zoning law, establish the maximum percentage of the area of Toquaht lands that can be covered by impermeable material.

(c) A zoning law under subsection (a) or (b) may be different for one or more of the following:

(i) different zones;

(ii) different uses in zones;

(iii) different areas in zones;

(iv) different sizes of paved or roof areas; or

(v) different terrain and surface water or groundwater conditions.

Regulation of signs

4.12 (a) Council may, by zoning law, regulate the number, size, type, form, appearance and location of any signs.

(b) A zoning law under subsection (a) may contain different provisions for one or more of the following:

(i) different zones;

(ii) different uses within a zone; or

(iii) different classes of roadways.

(c) The power in subsection (a) to regulate includes the power to prohibit, except that a sign that is located on a parcel of Toquaht lands and relates to or identifies a permitted use on that parcel of land must not be prohibited.

Screening and landscaping

4.13 (a) Council may, by zoning law, require, set standards for and regulate the provision of screening or landscaping for one or more of the following purposes:

(i) masking or separating uses;

(ii) preserving, protecting, restoring and enhancing the natural environment; or

(iii) preventing hazardous conditions.

(b) A zoning law under subsection (a) may set different requirements, standards and regulations for one or more of the following:

(i) different zones;

(ii) different uses within a zone; or

(iii) different locations within a zone.

Construction requirements in relation to flood plain areas

4.14 (a) If Council considers that flooding may occur on Toquaht lands, Council may, by zoning law, designate the land as a flood plain.

(b) If Toquaht lands are designated as a flood plain under subsection (a), Council may, by zoning law, specify

(i) the flood level for the flood plain, and

(ii) the setback from a watercourse, body of water or dike of any landfill or structural support required to elevate a floor system or pad above the flood level.

(c) A zoning law under subsection (b) may make different provisions in relation to one or more of the following:

(i) different areas of a flood plain;

(ii) different zones;

(iii) different uses within a zone or an area of a flood plain;

(iv) different types of geological or hydrological features;

(v) different standards of works and services;

(vi) different siting circumstances;

(vii) different types of buildings or other structures and different types of machinery, equipment or goods within them; or

(viii) different uses within a building or other structure.

(d) If a zoning law under subsection (b) applies,

(i) the underside of any floor system or the top of any pad supporting any space or room, including a manufactured home, that is used for

(A) dwelling purposes,

(B) business, or

(C) the storage of goods which are susceptible to damage by floodwater

must be above the applicable flood level specified by the zoning law, and

(ii) any landfill required to support a floor system or pad must not extend within any applicable setback specified by the zoning law.

(e) The Executive may, by regulation, exempt a person from the application of subsection (d) or a zoning law under subsection (b) in relation to a specific parcel of Toquaht lands or a use, building or other structure on the parcel of land if the Executive considers it advisable and has received a report that the land may be used safely for the use intended and that report is certified by a person who is a professional engineer or geoscientist and experienced in geotechnical engineering.

(f) The granting of an exemption and the exemption under subsection (e) may be made subject to the terms and conditions the Executive considers necessary or advisable including,

(i) imposing any term or condition the Executive considers reasonably necessary in the circumstances,

(ii) requiring that a person submit a report referred to in subsection (e), or

(iii) requiring that a person enter into a covenant under section 7.12 of the Land Act.

Non-conforming uses and siting

4.15 (a) If, at the time a zoning law under this Part is adopted,

(i) Toquaht lands, a building or other structure is lawfully used, and

(ii) the use does not conform to the zoning law,

the use may be continued as a non-conforming use, but if the non-conforming use is discontinued for a continuous period of six months, any subsequent use of the land, building or other structure becomes subject to the zoning law.

(b) The use of Toquaht lands, 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

(i) seasonal, market or production cycles,

(ii) the control of disease or pests, or

(iii) the repair, replacement or installation of equipment to meet standards for the health or safety of people or animals.

(c) A building or other structure that is lawfully under construction at the time of the adoption of a zoning law under this Part is deemed, for the purpose of this section,

(i) to be a building or other structure existing at that time, and

(ii) to be then in use for its intended purpose as determined from the building permit authorizing its construction.

(d) If subsections (a) and (b) 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.

(e) A structural alteration or addition, except one that is required by an enactment or permitted by a board of variance under section 7.3(b), 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.

(f) In relation to Toquaht lands, subsection (a) or (d) does 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 adoption of the zoning law under this Part.

(g) For the purposes of this section, a change of the owner or occupier of any Toquaht lands, building or other structure does not, by reason only of the change, affect the use of the land, building or other structure.

(h) If a building or other structure, the use of which does not conform to the provisions of a zoning law under this Part, is damaged or destroyed to the extent of 66% or more of its value above its foundations as determined by a building inspector, it must not be repaired or reconstructed except for a conforming use in accordance with the zoning law.

(i) If the use of a building or structure that is on Toquaht lands identified in a phased development agreement under section 4.5 complies with a zoning law provision specified under section 4.5(c) for the phased development agreement, subsection (h) does not apply to the building or other structure while the phased development agreement is in effect, unless

(i) the provision has been repealed or amended, and

(ii) either

(A) the developer has agreed in writing under section 4.5(e) that the changes to the zoning law apply, or

(B) the changes to the zoning law apply under section 4.5(f) without the written agreement of the developer.

(j) If the use and density of buildings and other structures conform to a zoning law under this Part but

(i) the siting, size or dimensions of a building or other structure constructed before the zoning law was adopted does not conform with the zoning law, or

(ii) the siting, size, dimensions or number of off-street parking or loading spaces constructed or provided before the zoning law was adopted does not conform with the zoning law,

the building or other structure or spaces may be maintained, extended or altered to the extent authorized by subsection (k).

(k) A building or other structure or spaces to which subsection (j) applies may be maintained, extended or altered only to the extent that the repair, extension or alteration would, when completed, involve no further contravention of the zoning law than that existing at the time the repair, extension or alteration was started.

Effect of expropriation in relation to non-conforming use and subdivision

4.16 (a) If the use of Toquaht lands, Toquaht foreshore or the siting of existing buildings and other structures ceases as a result of expropriation to conform to a zoning law under this Part, the remainder of the property is deemed to conform.

(b) Subsection (a) does not apply if compensation was paid to the owner or occupier of the Toquaht lands or Toquaht foreshore in an amount that is directly attributable to the loss, if any, suffered by the owner in occupant of the land as a result of the non-conformity.

(c) If, as a result of an expropriation,

(i) a parcel of Toquaht lands could have been subdivided into two or more parcels under the applicable zoning law in effect when the land expropriated was vested in the expropriating authority, and

(ii) the parcel can no longer be subdivided into the same number of parcels,

the parcel is deemed to conform to the applicable zoning law for the purposes of the subdivision as though the expropriation had not occurred, but only to the extent that none of the parcels that would be created by the subdivision would be less than 90% of the area that would otherwise be permitted by the applicable zoning law.

(d) Subsection (c) does not apply if the owner has received compensation that is directly attributable to the reduction in the market value of the parcel that results from the inability to subdivide the parcel in the manner that would have been permitted under the applicable zoning law.

No compensation in relation to adoption of zoning law or issuance of permit

4.17 (a) Compensation is not payable to any person for any reduction in the value of that person's interest in Toquaht lands or Toquaht foreshore or for any loss or damages that result from the adoption of an official community plan or a zoning law under this Act or the issuance of a permit under this Act.

(b) Subsection (a) does not apply where the zoning law under this Part restricts the use of Toquaht lands or Toquaht foreshore to a community use.

PART 5 - PERMITS AND FEES

Designation of development permit areas

5.1 (a) An official community plan may designate development permit areas for one or more of the following purposes:

(i) protection of the natural environment, its ecosystems and biological diversity;

(ii) protection of development from hazardous conditions;

(iii) protection of farming;

(iv) revitalization of an area in which a commercial use is permitted;

(v) establishment of objectives for the form and character of intensive residential development;

(vi) establishment of objectives for the form and character of commercial, industrial or multi-family residential development;

(vii) establishment of objectives to promote energy conservation;

(viii) establishment of objectives to promote water conservation; or

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

(b) In relation to areas designated under subsection (a), the official community plan must

(i) describe the special conditions or objectives that justify the designation, and

(ii) specify guidelines respecting the manner by which the special conditions or objectives will be addressed.

(c) As an exception to subsection (b)(ii), the guidelines referred to in that subsection may be specified by zoning law but, in this case, the designation is not effective until the zoning law has been adopted.

(d) If an official community plan designates areas under subsection (a), the official community plan or a zoning law may, in relation to those areas, specify conditions under which a development permit under section 5.2 would not be required.

Development permits

5.2 (a) If an official community plan designates areas under section 5.1(a), the following prohibitions apply unless an exemption under section 5.1(d) applies or an owner first obtains a development permit under this section:

(i) Toquaht lands within the area must not be subdivided;

(ii) construction of, addition to or alteration of a building or other structure must not be started;

(iii) Toquaht lands within an area designated under section 5.1(a)(i) or 5.1(a)(ii) must not be altered; and

(iv) Toquaht lands or Toquaht foreshore within an area designated under section 5.1(a)(iv), 5.1(a)(vii), 5.1(a)(viii) or 5.1(a)(ix), or a building or other structure on that land or foreshore, must not be altered.

(b) Subject to subsections (c) to (f), the Executive may, by resolution, issue a development permit that

(i) varies or supplements a zoning law under Part 4 or Part 6 of this Act,

(ii) includes requirements and conditions or sets standards under subsections (g) to (m),

(iii) includes requirements for security under section 5.8, or

(iv) imposes conditions respecting the sequence and timing of construction.

(c) The authority under subsection (b) must be exercised only in accordance with the applicable guidelines specified under section 5.1(b)(ii) in an official community plan or zoning law.

(d) A development permit must not vary the use or density of the Toquaht lands from that permitted in the zoning law except as authorized by subsection (e).

(e) If the Toquaht lands were designated as requiring protection from hazardous conditions under section 5.1(a)(ii), the conditions and requirements referred to in subsection (h) may vary that use or density, but only as they relate to health, safety or protection of property from damage.

(f) A development permit must not vary a flood plain specification under section 4.14(b).

(g) For Toquaht lands or Toquaht foreshore designated as requiring protection of the natural environment, its ecosystems and biological diversity under section 5.1(a)(i), a development permit may do one or more of the following:

(i) specify areas that must remain free of development, except in accordance with any conditions contained in the permit;

(ii) require specified natural features or areas to be preserved, protected, restored or enhanced in accordance with the permit;

(iii) require natural water courses to be dedicated;

(iv) require works to be constructed to preserve, protect, restore or enhance natural water courses or other specified natural features of the environment; or

(v) require protection measures, including that vegetation or trees be planted or retained in order to

(A) preserve, protect, restore or enhance fish habitat or riparian areas,

(B) control drainage, or

(C) control erosion or protect embankments.

(h) For Toquaht lands or Toquaht foreshore designated as requiring protection from hazardous conditions under section 5.1(a)(ii), a development permit may do one or more of the following:

(i) specify areas that may be subject to flooding, mud flows, torrents of debris, erosion, land slip, rock falls, subsidence, tsunami, avalanche or wildfire, or to another hazard if this other hazard is specified under section 5.1(a)(ii), as areas that must remain free of development, except in accordance with any conditions contained in the permit;

(ii) require, in an area that the permit designates as containing unstable soil or water which is subject to degradation, that no septic tank, drainage and deposit fields or irrigation or water systems be constructed;

(iii) in relation to wildfire hazard, include requirements respecting the character of the development, including landscaping, and the siting, form, exterior design and finish of buildings and other structures; or

(iv) in relation to wildfire hazard, establish restrictions on the type and placement of trees and other vegetation in proximity to the development.

(i) If Toquaht lands have been designated under section 5.1(a)(iv), 5.1(a)(v) or 5.1(a)(vi), a development permit may include requirements respecting the character of the development, including landscaping, and the siting, form, exterior design and finish of buildings and other structures.

(j) If Toquaht lands have been designated for commercial, industrial or multi-family residential development under section 5.1(a)(vi), a development permit may include requirements respecting the character of the development, as referred to in subsection (i), but only in relation to the general character of the development and not to particulars of the landscaping or of the exterior design and finish of buildings and other structures.

(k) A development permit that has been designated under section 5.1(a)(iii) may include requirements for screening, landscaping, fencing and siting of buildings or other structures in order to provide for the buffering or separation of development from farming on adjoining or reasonably adjacent areas.

(l) A development permit designated under section 5.1(a)(vii), 5.1(a)(viii) or 5.1(a)(ix) may include requirements respecting

(i) landscaping,

(ii) siting of buildings and other structures,

(iii) form and exterior design of buildings and other structures,

(iv) specific features in the development, or

(v) machinery, equipment and systems external to buildings and other structures

in order to provide for energy and water conservation and the reduction of greenhouse gas emissions.

(m) A development permit designated under section 5.1(a)(vii), 5.1(a)(viii) or 5.1(a)(ix) may establish restrictions on the type and placement of trees and other vegetation in proximity to the buildings and other structures in order to provide for energy and water conservation and the reduction of greenhouse gas emissions.

(n) Before issuing a development permit under this section, the Executive may require the applicant to provide, at the applicant's expense, a report, certified by a professional engineer or geoscientist with experience relevant to the applicable matter, to assist the Executive in determining what conditions or requirements under subsection (b) it will impose in the permit.

(o) If the Executive delegates the power to issue a development permit under this section, the owner that is subject to the decision of the delegate is entitled to have the Executive reconsider the matter.

Designation of development approval information areas or circumstances

5.3 (a) For the purposes of section 5.4, an official community plan may do one or more of the following:

(i) specify circumstances in which development approval information may be required under that section;

(ii) designate areas for which development approval information may be required under that section; or

(iii) designate areas for which, in specified circumstances, development approval information may be required under that section.

(b) An official community plan that specifies circumstances or designates areas under subsection (a) must describe the special conditions or objectives that justify the specification or designation.

Development approval information

5.4 (a) For the purposes of this section, "development approval information" means information on the anticipated impact of the proposed activity or development on the Toquaht Nation including information regarding impact on such matters as

(i) transportation patterns including traffic flow,

(ii) local infrastructure,

(iii) community facilities including schools and parks,

(iv) community services, and

(v) the natural environment of the area affected.

(b) If an official community plan includes a provision under section 5.3(a), the Executive must, by regulation, establish procedures and policies on the process for requiring development approval information under this section and the substance of the information that may be required.

(c) If a regulation is made under subsection (b),

(i) Council, if the application is for an amendment to a zoning law under section 4.1,

(ii) the Executive, if the application is for a development permit under section 5.2 or a temporary commercial or industrial use permit under section 5.6, or

(iii) a Toquaht government employee authorized under subsection (d),

may require an applicant to provide, at the applicant's expense, development approval information in accordance with the procedures and policies established under subsection (b).

(d) A regulation under subsection (b) may authorize a Toquaht government employee to require development approval information under this section.

(e) An applicant subject to a decision of a Toquaht government employee under subsection (d) is entitled to have the Executive reconsider the matter without charge.

(f) A regulation under subsection (b) that authorizes a Toquaht government employee to require development approval information under this section must establish procedures regarding applying for and dealing with a reconsideration under subsection (e).

Designation of temporary commercial and industrial use permit areas

5.5 For the purposes of section 5.6,

(a) an official community plan, or

(b) a zoning law

may designate areas where temporary commercial and industrial uses may be allowed and may specify general conditions regarding the issue of temporary commercial and industrial use permits in those areas.

Temporary commercial and industrial permits

5.6 (a) On application by an owner, the Executive may, by resolution, issue a temporary commercial or industrial use permit within an area designated under section 5.5.

(b) Despite a zoning law, a temporary commercial or industrial use permit may do one or more of the following:

(i) allow any commercial or industrial use, including

(A) in the case of a commercial use, the provision of temporary tourist accommodation, and

(B) in the case of an industrial use, the processing of natural materials,

as specified in the permit;

(ii) permit the construction or use of buildings or structures to accommodate persons who work at the commercial or industrial enterprise in relation to which the permit is issued; or

(iii) specify conditions under which the temporary commercial or industrial use may be carried on.

(c) If the Executive proposes to pass a resolution allowing a temporary commercial or industrial use permit to be issued, it must give notice in accordance with subsections (d) and (e).

(d) The notice must

(i) state

(A) in general terms, the purpose of the proposed permit,

(B) the Toquaht lands that are the subject of the proposed permit,

(C) the place where and the times and dates when copies of the proposed permit may be inspected, and

(D) the date, time and place when the resolution will be considered, and

(ii) be published in a newspaper at least three and not more than 14 days before the adoption of the resolution to issue the permit.

(e) Sections 3.3(c) to 3.3(e) apply to the notice.

(f) As a condition of the issue of a permit under this section, the Executive may require the owner to give an undertaking to

(i) demolish or remove a building or structure, and

(ii) restore the area described in the permit to a condition specified in the permit by a date specified in the permit.

(g) An undertaking under subsection (f) must be attached to and forms part of the permit.

(h) If the owner fails to comply with all of the undertakings given under subsection (f), the director of lands and resources may enter on the area and carry out the demolition, removal or restoration at the expense of the owner.

(i) The owner has the right to put the area to the use described in the permit until

(i) the date that the permit expires, or

(ii) two years after the permit was issued,

whichever occurs first.

(j) A person to whom a temporary commercial or industrial use permit has been issued may apply to have the permit renewed and subsections (f) to (i) and section 5.8(a) apply.

(k) A permit issued under this section may be renewed only once.

(l) If the Executive delegates the power to issue a temporary commercial or industrial use permit under this section, the owner that is subject to the decision of the delegate is entitled to have the Executive reconsider the matter.

Tree cutting restrictions and permits

5.7 (a) The Executive may, by regulation, designate areas that it considers may be subject to flooding, erosion, land slip or avalanche as tree cutting permit areas.

(b) A regulation under subsection (a) may, in relation to an area designated under subsection (a),

(i) regulate or prohibit the cutting down of trees, and

(ii) require an owner within an area designated under subsection (a) to apply for and obtain from the director of lands and resources, on payment of a prescribed fee, a tree cutting permit before cutting down a tree.

(c) The regulation under subsection (a) may allow the director of lands and resources, at his or her discretion, to require an applicant for a tree cutting permit to provide, at the applicant's expense, a report certified by a qualified person, agreed upon by both the director of lands and resources and the applicant, that the proposed cutting of trees will not create a danger from flooding, erosion, land slip or avalanche.

(d) On application by an owner of Toquaht lands within an area designated under subsection (a), the director of lands and resources may issue a tree cutting permit to the owner provided the proposed cutting of trees will not create a danger from flooding or erosion.

Requirement for security

5.8 (a) The Executive may require, as a condition of issuing a permit under this Part, that the owner give to the Toquaht government security to guarantee the performance of the terms of the permit and the permit may provide for

(i) the form of the security, and

(ii) the means for determining

(A) when there is default under the permit, and

(B) the amount of the security that forfeits to the Toquaht Nation in the event of default.

(b) Security required as a condition of the issuance of a permit under this Part must be provided by the applicant before the permit is issued in an amount stated in the permit and, unless stated otherwise in the permit, by whichever of the following the applicant chooses:

(i) an irrevocable letter of credit; or

(ii) the deposit of securities in a form satisfactory to the director of lands and resources and the director of finance.

(c) In addition to the security required under subsection (a) and as a condition of the issue of a permit under this Part, but for only the purposes set out in subsections (d) and (e), the director of lands and resources may require that the applicant for the permit provide security in the prescribed amount by whichever method the applicant chooses under subsection (b).

(d) Subsection (e) applies if the director of lands and resources considers that

(i) a condition in a permit respecting landscaping has not been satisfied,

(ii) an unsafe condition has resulted as a consequence of a breach of a condition in a permit, or

(iii) damage to the natural environment has resulted as a consequence of a contravention of a condition in a permit.

(e) In the circumstance referred to in subsection (d), the director of lands and resources may

(i) undertake, at the expense of the holder of the permit, the works, construction or other activities required to satisfy the landscaping

condition, correct the unsafe condition or correct the damage to the environment, or

(ii) apply the security under subsection (c) in payment of the cost of the works, construction or other activities, with any excess to be returned to the holder of the permit.

(f) Interest earned on the security provided under subsections (b) and (c) accrues to the holder of the permit and must be paid to the holder of the permit immediately on return of the security or, on default, becomes part of the amount of the security.

(g) If the Executive delegates the power to require security under subsection (a), the delegation must include guidelines for the delegate as to how the amount of security is to be determined.

Lapse of permit

5.9 (a) Subject to the terms of the permit, if the holder of a permit under this Part does not substantially start any construction in relation to which the permit was issued within two years after the date it is issued, the permit lapses.

(b) If a permit lapses, subject to sections 5.8(a) and 5.8(e), the Executive or the director of lands and resources must return any security provided under section 5.8(b) or 5.8(c) to the person who provided it.

Notice of permit

5.10 (a) If the Executive issues a permit under sections 5.2 to 5.6, it must file in the lands registry office a notice that the Toquaht lands described in the notice is subject to the permit, and, on filing, the registrar must make a note of the filing against the land affected.

(b) In the event of any omission, mistake or misfeasance by the registrar or the staff of the registrar in relation to the making of a note of the filing under subsection (a) or (c), neither the registrar nor the Toquaht government is liable vicariously.

(c) If a permit is amended or cancelled, the Executive must file a notice of the amendment or cancellation in the prescribed manner, and on filing, the registrar must make a note of the filing against the Toquaht lands affected.

(d) If a notice is filed under subsection (a) or (c), the terms of the permit or any amendment to it are binding on all persons who acquire an interest in the Toquaht lands affected by the permit.

(e) The Executive may prescribe fees for the filing of notices under this section.

General matters

5.11 (a) The Executive may issue more than one permit for the same area.

(b) Toquaht lands or Toquaht foreshore must be developed strictly in accordance with the permit issued.

(c) A permit is binding on the Toquaht Nation as well as on the holder of the permit.

(d) The Executive may prescribe the form of permits issued under this Part.

Withholding of permits and licences that conflict with zoning laws in preparation

5.12 (a) The Executive may direct that a permit be withheld for a period of 60 days, beginning on the day the application for the permit was made, if it passes a resolution identifying what it considers to be a conflict between a development proposed in the application for a permit and

(i) an official community plan, or

(ii) a zoning law under sections 4.1 to 4.11 or 4.14

that is under preparation.

(b) Subsection (a) does not apply unless Council has, by resolution at least seven days before the application for the permit, begun the preparation of an official community plan or zoning law that is in conflict with the application.

(c) During the 60 day period referred to in subsection (a), the Executive must consider the application for the permit and may

(i) direct the permit be withheld for a further 60 days, or

(ii) grant the permit, but impose conditions in it that would be in the interest of the Toquaht Nation, having regard to the official community plan or zoning law that is under preparation.

(d) Despite Council not adopting the official community plan or zoning law referred to in subsection (a) within the 60 day period, the owner of the Toquaht lands for which a permit was withheld under this section is not entitled to compensation for damages arising from the withholding of the permit.

(e) If the Executive passes a resolution under subsection (a), the Executive may direct that a business licence in relation to the same area be withheld for a period not longer than 90 days if the Executive considers that the use to which the area would be put and to which the business licence application relates would be

contrary to the use that would be permitted by the official community plan or zoning law that is under preparation.

Fees related to applications and inspections

5.13 (a) The Executive may prescribe one or more of the following types of fees:

(i) application fees for an application to initiate changes to an official community plan enacted under Part 2 or a zoning law enacted under Part 4;

(ii) application fees for the issue of a permit under Part 5;

(iii) application fees for an application to a board of variance under Part 7;

(iv) fees to cover the costs of administering and inspecting works and services under this Act that are costs additional to those related to fees under paragraphs (i) to (iii); and

(v) subdivision application fees, which may vary with the number, size and type of parcels involved in a proposed subdivision.

(b) A fee imposed under subsection (a) must not exceed the estimated average costs of processing, inspection, advertising and administration that are usually related to the type of application or other matter to which the fee relates.

(c) No other fee, charge or tax may be imposed in addition to a fee under subsection (a) as a condition of the matter referred to in that subsection to which the fee relates.

(d) The Executive or an approving officer must not

(i) impose a fee, charge or tax, or

(ii) require a work or service to be provided

unless authorized by this Act, by another Act or by a zoning law made under the authority of this Act or another Act.

PART 6 - DEVELOPMENT REQUIREMENTS

Subdivision servicing requirements

6.1 (a) The Executive may, by regulation, regulate and require the provision of works and services in relation to a subdivision, and for that purpose may, by regulation, do one or more of the following:

(i) regulate and prescribe minimum standards for the dimensions, locations, alignment and gradient of roadways in connection with a subdivision;

(ii) require that, within a subdivision, roadways, sidewalks, boulevards, boulevard crossings, transit bays, street lighting or underground wiring be provided and be located and constructed in accordance with the standards established in the regulation; or

(iii) require 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 in accordance with the standards established in the regulation.

(b) A regulation under subsection (a) may be different in relation to one or more of the following:

(i) different circumstances;

(ii) different areas;

(iii) different land uses;

(iv) different zones; or

(v) different classes of roadways.

(c) If the Toquaht government operates a community water or sewer system, or a drainage collection or disposal system, the Executive may, by regulation, require that a system referred to in subsection (a)(iii) be connected to the Toquaht government system in accordance with standards established in the regulation.

(d) If there is no community water system, the Executive may, by regulation, require that each parcel to be created by the subdivision have a source of potable water having a flow capacity at a rate established in the regulation.

(e) As a condition of

(i) the approval of a subdivision, or

(ii) the issuance of a building permit,

the Executive may require that an owner provide works and services, in accordance with the standards established by regulation, on that portion of a roadway immediately adjacent to the site being subdivided or developed, up to the centre line of the roadway.

(f) As a condition of the issuance of a building permit, the Executive may require that an owner provide on the site being developed works and services in accordance with the standards established by regulation.

(g) Requirements under subsections (e) and (f)

(i) may only be made insofar as they are directly attributable to the subdivision or development, and

(ii) must not include specific services that are included in the calculations used to determine the amount of a development cost charge unless the owner agrees to provide the services.

(h) If the owner agrees to provide the services referred to in subsection (g)(i), the calculation of the development cost charge is subject to section 8.2(i).

Excess or extended services and latecomer payments

6.2 (a) For the purposes of this section, "excess or extended services" means

(i) a portion of a roadway system that will provide access to Toquaht lands other than the land being subdivided or developed, and

(ii) a portion of a water, sewage or drainage system that will serve Toquaht lands other than the land being subdivided or developed.

(b) The Executive may require that an owner of the Toquaht lands or Toquaht foreshore that is to be subdivided or developed provide excess or extended services.

(c) If the owner, in accordance with a regulation under section 6.1, provides a roadway or water, sewage or drainage facilities that serve an area other than the area being subdivided or developed, this section applies.

(d) If the Executive makes a requirement under subsection (b), the cost of providing the excess or extended services must be paid for by

(i) the Toquaht government, or

(ii) if the Executive considers the costs to provide all or part of these services to be excessive, by the owner.

(e) If the owner is required under subsection (d)(ii) to pay all or part of the costs of excess or extended services, the Executive must

(i) determine the proportion of the cost of providing the roadway or water, sewage or drainage facilities that it considers constitutes the excess or extended service,

(ii) determine which part of the excess or extended service that it considers will benefit each of the parcels of Toquaht lands that will be served by the excess or extended service, and

(iii) impose, as a condition of the owner described in paragraph (ii) connecting to or using the excess or extended service, a charge related to the benefit determined under paragraph (ii).

(f) If the Toquaht government pays all or part of the costs of excess or extended services, it may recover costs

(i) by a charge under subsection (e)(iii), or

(ii) by a tax imposed in accordance with a Toquaht enactment.

(g) If the owner pays all or part of the costs of excess or extended services under subsection (d)(ii), the Toquaht government must pay the owner

(i) all the charges collected under subsection (e)(iii), if the owner pays all the costs, or

(ii) a corresponding proportion of all charges collected, if the owner pays a portion of the costs.

(h) A charge payable under subsection (e)(iii) must include interest calculated annually at the prescribed rate payable for the period beginning when the excess or extended services were completed up to the date that the connection is made or the use begins.

(i) Charges payable for latecomer connections or use under subsection (e)(iii) must be collected during the period beginning when the excess or extended services are completed up to a date to be agreed on by the owner and the Executive and, failing agreement, to a date determined by the director of lands and resources, but no charges are payable beyond 15 years from the date the service is completed.

(j) The owner or the Executive, by resolution, may request a review of the decision of the director of lands and resources under subsection (i) under the Administrative Decisions Review Act.

Completion of works and services

6.3 (a) All works and services required to be constructed and installed at the expense of the owner under section 6.1 or 6.2 must be constructed and installed to the standards established in a regulation made under section 6.1 before the approving officer approves a subdivision or a building inspector issues a building permit.

(b) As an exception, the approval may be given or the permit issued if the owner

(i) deposits with the Toquaht government security

(A) in the form and amount established in a regulation made under section 6.1, or

(B) if no amount and form is established by regulation, in a form and amount satisfactory to the approving officer or building inspector having regard to the cost of installing and paying for all works and services required in a regulation made under section 6.1, and

(ii) enters into an agreement with the Executive to construct and install the required works and services by a specified date or forfeit to the Toquaht government the amount secured under paragraph (i).

Provision of park land

6.4 (a) An owner of the Toquaht lands being subdivided must, at the option of the owner,

(i) provide, without compensation, park land of an amount and in a location agreed to by the Executive, or

(ii) pay to the Toquaht government an amount that equals the market value of the land that may be required for park land purposes under this section as determined under subsection (f).

(b) Despite subsection (a), if an official community plan contains policies and designations respecting the location and type of future parks, the Executive may determine whether the owner of the Toquaht lands being subdivided must provide land under subsection (a)(i) or money under subsection (a)(ii).

(c) The amount of park land that may be required under subsection (a)(i) or amount of Toquaht lands used for establishing the amount that may be paid under subsection (a)(ii) must not exceed 5% of the land being proposed for subdivision.

(d) Subsection (a) does not apply to

(i) a subdivision by which fewer than three additional lots would be created, except as provided in subsection (e),

(ii) a subdivision by which the smallest lot being created is larger than two hectares, or

(iii) a consolidation of existing parcels.

(e) Subsection (a) does apply to a subdivision by which fewer than three additional lots would be created if the parcel proposed to be subdivided was itself created by subdivision within the past five years.

(f) If the owner is to pay money under subsection (a)(ii), the value of the Toquaht lands is whichever of the following is applicable:

(i) the average market value of all the land in the proposed subdivision calculated as that value would be on either

(A) the date of preliminary approval of the subdivision, or

(B) if no preliminary approval is given, a date within 90 days before the final approval of the subdivision,

as though

(C) the land is zoned to permit the proposed use, and

(D) any works and services necessary to the subdivision have not been installed; or

(ii) if the Executive and the owner agree on a value for the land, the value on which they have agreed.

(g) If an owner and the Executive do not agree on the market value for the purpose of subsection (f), the value of the Toquaht lands must be determined by the director of lands and resources.

(h) The owner or the Executive, by resolution, may request a review of the decision of the director of lands and resources under subsection (g) under the Administrative Decisions Review Act.

(i) If an area of Toquaht lands has been used to calculate the amount of land or money provided or paid under this section, that area must not be taken into account for a subsequent entitlement under subsection (a) in relation to any future subdivision of the land.

(j) The park land or payment referred to in subsection (a) must be provided or paid to the Toquaht government before final approval of the subdivision is given, or the owner and the Executive may enter into an agreement that the park land or payment be provided or paid by a date specified in the agreement after final approval has been given.

(k) Notice of an agreement under subsection (j) must be filed with the registrar in the same manner as a permit may be filed under section 5.10.

(l) If an owner pays money for park land under this section, the Executive must deposit the money in a reserve fund established for the purpose of acquiring park lands.

(m) If park land is provided under this section, the Toquaht lands must be shown as park on the plan of subdivision and the interest in such land vests in the Toquaht Nation.

Zoning laws adopted after application for subdivision submitted

6.5 If, after an application for subdivision has been submitted to an approving officer and the applicable subdivision fee has been paid, Council adopts a zoning law under this Act that would otherwise be applicable to that subdivision, the zoning law has no effect in relation to that subdivision for a period of 12 months after it was adopted, unless the applicant agrees in writing that it should have effect.

Parcel frontage on roadway

6.6 (a) If a parcel being created by a subdivision fronts on a roadway, the minimum frontage on the roadway must be the greater of

(i) 10% of the perimeter of the lot that fronts on the roadway, and

(ii) the minimum frontage that Council may, by zoning law, provide.

(b) The Executive may, by Order, exempt a parcel from the statutory or zoning law minimum frontage provided for in subsection (a).

(c) The Executive may delegate its powers under subsection (b) only to an approving officer.

Roadway provision and widening

6.7 (a) An approving officer may require that the owner of Toquaht lands being subdivided provide, out of the land that is being subdivided and without compensation, land not greater than

(i) 20 metres in depth, for a roadway within the subdivision, or

(ii) the lesser of

(A) 10 metres in depth, and

(B) the difference between the current width of a local roadway and 20 metres,

for widening an existing local roadway that borders or is within the subdivision.

(b) If the approving officer believes that, due to terrain and soil conditions, a roadway of a width of 8 metres cannot, within the 20 metre limit referred to in subsection (a), be adequately supported, protected or drained, the approving officer may determine that the owner provide, without compensation, Toquaht lands of a greater width than that referred to in subsection (a)(i) or (a)(ii) that, in the approving officer's opinion, would permit the local roadway to be supported, protected or drained.

PART 7 - BOARD OF VARIANCE

Establishment of board of variance

7.1 (a) A panel of the Review Board appointed in accordance with subsection (b) is the board of variance under this Act.

(b) If an application is made under section 7.3 or section 7.4, the chairperson must establish a board of variance consisting of the chairperson and two other adjudicators to consider the application.

(c) In addition to the restrictions on the eligibility of adjudicators under section 2.1(c) of the Administrative Decisions Review Act, an adjudicator who is

(i) a member of the advisory planning commission created under section 9.2,

(ii) a member of the Executive,

(iii) a member of Council, or

(iv) a Toquaht government employee

is not eligible to be appointed to a board of variance under this section.

(d) If a member of a board of variance ceases to hold office, the individual's successor is to be appointed in the same manner as the member who ceased to hold office and, until the appointment of the successor, the remaining members constitute the board of variance.

(e) Members of a board of variance must not receive compensation for their services as members other than as an adjudicator under the Administrative Decisions Review Act, but must be paid reasonable and necessary expenses that arise directly out of the performance of their duties under this Act.

(f) Council must provide in its annual budget for the necessary funds to pay for the costs of the board of variance.

Chair and procedures

7.2 (a) The chairperson may appoint a member of the board of variance as acting chair to preside in the absence of the chairperson.

(b) The Executive may, by regulation, set out the procedures to be followed by the board of variance, including the manner by which appeals are to be brought and notices under section 7.3(d) are to be given.

(c) A board of variance must maintain a record of all its decisions and must ensure that the record is available for public inspection during normal business hours at the Toquaht administrative offices.

Variance or exemption to relieve hardship

7.3 (a) A person may apply to a board of variance for a directive under subsection (b) if the person alleges that compliance with any of the following would cause the person hardship:

(i) a zoning law respecting the siting, dimensions or size of a building or structure;

(ii) the prohibition of a structural alteration or addition under section 4.15(e); or

(iii) a subdivision servicing requirement under section 6.1(a)(iii) in an area zoned for agricultural or industrial use.

(b) On an application under subsection (a), the board of variance may direct that a minor variance be permitted from the requirements of the zoning law, or that the applicant be exempted from section 4.15(e), if the board of variance

(i) has heard the applicant and any person notified under subsection (d),

(ii) finds that undue hardship would be caused to the applicant if the zoning law or section 4.15(e) is complied with, and

(iii) is of the opinion that the variance or exemption does not

(A) result in inappropriate development of the site,

(B) adversely affect the natural environment,

(C) substantially affect the use and enjoyment of adjacent areas,

(D) vary permitted uses and densities under the applicable zoning law, or

(E) defeat the intent of the zoning law.

(c) The board of variance must not make a directive under subsection (b) that would do any of the following:

(i) be in conflict with a covenant registered under section 7.12 of the Land Act;

(ii) deal with a matter that is covered in a permit under Part 5 of this Act;

(iii) deal with a matter that is covered by a phased development agreement under section 4.5; or

(iv) deal with a flood plain specification under section 4.14(b).

(d) If a person makes an application under subsection (a), the board of variance must notify all the owners and occupiers of

(i) the Toquaht lands that are the subject of the application, and

(ii) Toquaht lands that are adjacent to the land that is the subject of the application.

(e) A notice under subsection (d) must state the subject matter of the application and the time and place where the application will be heard.

(f) In relation to a directive under subsection (b),

(i) if the directive sets a time within which the construction of the building or structure must be completed and the construction is not completed within that time, or

(ii) if that construction is not substantially started within one year after the directive was made, or within a longer or shorter time period established by the directive,

the permission or exemption terminates and the zoning law or section 4.15(e), as the case may be, applies.

(g) A decision of the board of variance under subsection (b) is final.

Extent of damage preventing reconstruction as non-conforming use

7.4 (a) A person may apply to a board of variance for a directive under subsection (b) if the person alleges that the determination by a building inspector of the amount of damage under section 4.15(h) is in error.

(b) On an application under subsection (a), the board of variance may, by directive, set aside the determination of the building inspector and make the determination under section 4.15(h) in its place.

(c) The applicant or the Executive by resolution may, in accordance with the Administrative Decisions Review Act, request a review of the decision of the board of variance under subsection (b) by the Administrative Decisions Review Board.

PART 8 - DEVELOPMENT COSTS RECOVERY

Definitions

8.1 In this Part:

"capital costs" includes

(a) planning, engineering and legal costs directly related to the work for which a capital cost may be incurred under this Part, and

(b) interest costs directly related to the work that are approved by the inspector to be included as capital costs; and

"development" means those items referred to in sections 8.2(a)(i) and 8.2(a)(ii) for which a development cost charge may be imposed.

Development cost charges generally

8.2 (a) The Executive may, by regulation, for the purpose described in subsection (b), impose development cost charges on every person who obtains

(i) approval of a subdivision, or

(ii) a building permit authorizing the construction, alteration or extension of a building or structure.

(b) Development cost charges may be imposed under subsection (a) for the purpose of providing funds to assist the Toquaht government to pay the capital costs of

(i) providing, constructing, altering or expanding sewage, water, drainage and roadway facilities, other than off-street parking facilities, and

(ii) providing and improving park land

to service, directly or indirectly, the development for which the charge is being imposed.

(c) A development cost charge is not payable if

(i) the development does not impose new capital cost burdens on the Toquaht government, or

(ii) a development cost charge has previously been paid for the same development unless, as a result of further development, new capital cost burdens will be imposed on the Toquaht government.

(d) A charge is not payable under a regulation made under subsection (a) if any of the following applies in relation to a development authorized by a building permit:

(i) the permit authorizes the construction, alteration or extension of a building or part of a building that is, or will be, after the construction, alteration or extension, exempt from taxation because it is a place of worship;

(ii) subject to a regulation under subsection (f)(i), the permit authorizes the construction, alteration or extension of a building that will, after the construction, alteration or extension,

(A) contain fewer than four self-contained dwelling units, and

(B) be put to no other use other than the residential use in those dwelling units; or

(iii) the value of the work authorized by the permit does not exceed the amount prescribed under subsection (f)(ii).

(e) A charge is not payable under a regulation made under subsection (a) in relation to the construction, alteration or extension of self-contained dwelling units in a building authorized under a building permit if

(i) subject to a regulation under subsection (f)(iii), each unit is no larger in area than 29 square metres, and

(ii) each unit is to be put to no other use other than the residential use in those dwelling units.

(f) The Executive may, in a regulation under subsection (a), do one or more of the following:

(i) provide that a charge is payable under the regulation in relation to a building permit referred to in subsection (d)(ii);

(ii) establish an amount for the purposes of subsection (d)(iii); or

(iii) establish an area for the purposes of subsection (e)(i) that is greater than the area otherwise applicable.

(g) A development cost charge that is payable under a regulation made under this section must be paid at the time of the approval of the subdivision or the issue of the building permit.

(h) Despite a regulation under subsection (a), if

(i) the Executive has imposed a fee or charge or made a requirement under Part 6 for park land or for specific services outside the boundaries of the Toquaht lands being subdivided or developed, and

(ii) the park land or services referred to in paragraph (i) are included in the calculations used to determine the amount of a development cost charge,

the amount of the fee or charge imposed or the value of the requirement made, as referred to in paragraph (i), must be deducted from those classes of development cost charges that are applicable to the park land or the types of services for which the fee or charge was imposed or the requirement was made.

(i) Despite a regulation under subsection (a), if the owner of the Toquaht lands being subdivided or developed has, with the approval of the Executive, provided or paid the cost of providing a specific service outside the boundaries of the Toquaht lands being subdivided or developed that is included in the calculations used to determine the amount of a development cost charge, the cost of the service must be deducted from the class of development cost charge that is applicable to the service.

(j) Subject to section 8.3, the Executive must not provide assistance by waiving or reducing a charge under this section.

Development for which charges may be waived or reduced

8.3 (a) In this section, "eligible development" means development that is eligible in accordance with an applicable regulation under this section as being for one or more of the following categories:

(i) not-for-profit rental housing, including supportive living housing;

(ii) for-profit affordable rental housing;

(iii) a subdivision of small lots that is designed to result in low greenhouse gas emissions; or

(iv) a development that is designed to result in a low environmental impact.

(b) Subject to a regulation under subsection (c), the Executive may waive or reduce a charge under section 8.2 for an eligible development.

(c) For the purposes of subsection (b), the Executive, by regulation

(i) must establish what constitutes an eligible development or a class of eligible development for the purposes of one or more categories of eligible development described in subsection (a),

(ii) must establish the amount or rates of reduction for an eligible development, which may be different for different categories of eligible development described in subsection (a) or different classes of eligible development established in the zoning law, and

(iii) may establish the requirements that must be met in order to obtain a waiver or reduction under subsection (b) and the conditions on which such a waiver or reduction may be granted.

(d) If the Executive delegates the power under subsection (b), the person who is subject to the decision of the delegate is entitled to have the Executive reconsider the matter.

Amount of development cost charges

8.4 (a) A regulation that imposes a development cost charge must specify the amount of the charge in a schedule of development cost charges.

(b) Development cost charges may vary as provided in subsection (c) but must be similar for all developments that impose similar capital cost burdens on the Toquaht Nation.

(c) Development cost charges may vary in relation to one or more of the following:

(i) different zones or different defined or specified areas;

(ii) different uses;

(iii) different capital costs as they relate to different classes of development; or

(iv) different sizes or different numbers of lots or units in a development.

(d) In prescribing development cost charges under section 8.2(a), the Executive must take the following into consideration:

(i) future land use patterns and development;

(ii) the phasing of works and services;

(iii) the provision of park land described in an official community plan;

(iv) how development designed to result in a low environmental impact may affect the capital costs of infrastructure referred to in section 8.2(b); or

(v) whether the charges

(A) are excessive in relation to the capital cost of prevailing standards of service,

(B) will deter development,

(C) will discourage the construction of reasonably priced housing or the provision of reasonably priced serviced land, or

(D) will discourage development designed to result in a low environmental impact

on Toquaht lands.

(e) The Executive must make available to the public at the Toquaht administrative office, on request, the considerations, information and calculations used to determine the schedule referred to in subsection (a), but any information respecting the contemplated acquisition costs of specific properties need not be provided.

Use of development cost charges

8.5 (a) A development cost charge paid to the Toquaht government must be deposited by the Executive in a separate special development cost charge reserve fund established for each purpose for which the Executive imposes the development cost charge.

(b) Money in development cost charge reserve funds, together with interest on it, may be used only for the following:

(i) to pay the capital costs of providing, constructing, altering or expanding sewage, water, drainage and roadway facilities, other than off-street parking, that relate directly or indirectly to the development in relation to which the charge was collected;

(ii) to pay the capital costs of

(A) acquiring park land or reclaiming Toquaht lands as park land, or

(B) providing fencing, landscaping, drainage and irrigation, trails, rest-rooms, changing rooms and playground and playing field equipment on park land,

subject to the restriction that the capital costs must relate directly or indirectly to the development in relation to which the charge was collected; or

(iii) to pay principal and interest on a debt incurred by the Toquaht government as a result of an expenditure under paragraph (i) or (ii).

(c) Authority to make payments under subsection (b) must be authorized by the Executive by regulation.

Acquisition and development of park land

8.6 (a) If a development cost charge regulation provides for a charge to acquire or reclaim park land, all or part of the charge may be paid by providing Toquaht lands in accordance with subsection (b).

(b) Park land to be provided for the purposes of subsection (a) must

(i) have a location and character acceptable to the Executive, and

(ii) on the day the charge is payable, have a market value that is at least equal to the amount of the charge.

(c) If the owner of the Toquaht lands which are to be provided as park land and the Executive are not able to agree on the market value for the purposes of subsection (b)(ii), the market value must be determined by the director of lands and resources.

(d) The owner or the Executive, by resolution, may request a review of the decision of the director of lands and resources under subsection (c) under the Administrative Decisions Review Act.

(e) If partial payment of a development cost charge for park land in the form of Toquaht lands is made, the remainder must be paid in accordance with a regulation under section 8.2(a).

(f) If park land is to be provided under subsection (a), either

(i) a registrable transfer of the interest in the Toquaht lands must be provided to the Executive, or

(ii) a plan of subdivision on which the Toquaht lands are shown as park must be deposited in the lands registry office, in which case section 6.4(m) applies.

(g) Despite section 8.5(b), interest earned on money in the park land development cost charge reserve fund may be used by the Executive to provide for fencing, landscaping, drainage and irrigation, trails, restrooms and changing rooms, playground and playing field equipment on park land owned by the Toquaht Nation.

Annual development cost charges report

8.7 (a) Before July 31 in each year, the Executive must prepare and consider a report in accordance with this section respecting the previous year.

(b) The report must include the following, reported for each purpose under section 8.2(b) for which the Executive imposes the development cost charge in the applicable year:

(i) the amount of development cost charges received;

(ii) the expenditures from the development cost charge reserve funds;

(iii) the balance of the development cost charge reserve funds at the start and at the end of the applicable year; and

(iv) any waivers and reductions under section 8.3(b).

(c) The Executive must make the report available to the public at the Toquaht administrative office from the time it considers the report until July 31 in the following year.

PART 9 - PUBLIC INFORMATION AND ADVISORY COMMISSION

Information that must be available to the public

9.1 (a) The law clerk must maintain a current list of the following:

(i) every zoning law in effect under this Act and a general description of the purpose of the zoning law;

(ii) every zoning law under this Act that has been given first reading, a general description of the zoning law and its current status; and

(iii) every permit issued under this Act.

(b) A list under subsection (a) must be available for public inspection at the Toquaht administrative office during regular business hours.

(c) Non-compliance with subsection (a) or (b), or any inaccuracy in a list, does not affect the validity of a zoning law or permit referred to in subsection (a).

Advisory planning commission

9.2 (a) Council may, by an Act, establish an advisory planning commission to advise Council and the Executive on all matters respecting land use, community planning or proposed zoning laws and permits under this Act that are referred to it by Council or Executive.

(b) The Act establishing an advisory planning commission must provide for

(i) the composition of and the manner of appointing members to the commission,

(ii) the procedures governing the conduct of the commission, and

(iii) the referral of matters to the advisory planning commission.

(c) At least two-thirds of the members of an advisory planning commission must be ordinarily resident on Toquaht lands.

(d) A member of Council, member of the Executive, Toquaht government employee, or an approving officer, is ineligible to be a member of an advisory planning commission, but may attend at a meeting of the advisory planning commission in a resource capacity.

(e) The members of an advisory planning commission must serve without remuneration, but may be paid reasonable and necessary expenses that arise directly out of the performance of their duties.

(f) If an advisory planning commission is established, minutes of all of its meetings must be kept and, on request, made available to the public.

(g) If the advisory planning commission is considering an amendment to an official community plan or zoning law or the issue of a permit, the applicant for the amendment or permit is entitled to attend meetings of the advisory planning commission and be heard.

PART 10 - GENERAL PROVISIONS

Development approval procedures

10.1 (a) If Council has adopted an official community plan or a zoning law, the Executive must, by regulation, define procedures under which an owner may apply for an amendment to the official community plan or zoning law or for the issue of a permit under this Act.

(b) Council must consider every application for an amendment to an official community plan or zoning law referred to in subsection (a).

(c) The Executive must consider every application for an amendment to a permit issued under this Act that requires a regulation or a resolution of the Executive.

(d) If a regulation under subsection (a) establishes a time limit for reapplication, the time limit may be varied in relation to a specific reapplication by an affirmative vote of at least two-thirds of the members of the Executive present and voting.

Environmental Protection Act requirements must be met

10.2 (a) This section applies to an application for one or more of the following:

(i) amendments to zoning;

(ii) development permits or development variance permits;

(iii) removal of soil; or

(iv) demolition permits respecting structures that have been used for commercial or industrial purposes.

(b) Council or the Executive, as applicable, must not approve an application referred to in subsection (a) in relation to a site where a site profile is required under section 5.2 of the Environmental Protection Act unless at least one of the following is satisfied:

(i) the director of lands and resources has received a site profile under section 5.2 of the Environmental Protection Act in relation to the site and a site investigation under section 5.3 of that Act will not be required by the director of lands and resources;

(ii) the director of lands and resources has made a final determination under section 5.5 of the Environmental Protection Act that Council or Executive, as applicable, may approve an application under this section because, in the opinion of the director of lands and resources, the site would not present a significant threat or risk if the application were approved; or

(iii) the director of lands and resources has issued a valid and subsisting certificate of compliance under section 5.9 of the Environmental Protection Act in relation to the site.

Amendment of certain Parts and sections

10.3 (a) Part 2, Part 3, sections 4.7 to 4.9 and this section may only be amended

(i) after Council holds a public hearing on the proposed amendment in accordance with Part 3, and

(ii) by an affirmative vote of at least two-thirds of the members of Council present and voting.

(b) Despite section 3.2, Council may not make a delegation in relation to a public hearing where an amendment to Part 2, Part 3, sections 4.7 to 4.9 and this section is considered.

Amendments generally

10.4 Subject to section 10.3, this Act may only be amended by an affirmative vote of at least two-thirds of the members of Council present and voting.

Commencement

10.5 This Act comes into force on the Maa-nulth Treaty effective date.

LEGISLATIVE HISTORY

Planning and Land Use Management Act TNS 13/2011 enacted April 1, 2011

Amendments

Section	Amendment	In Force
1.2	TNS 3/2012, s.6.4(e)	July 10, 2012
6.6(b)	TNS 8/2014, s.4.13(a)	June 10, 2014
7.3	TNS 8/2014, s.4.13(b)	June 10, 2014
7.4	TNS 8/2014, s.4.13(b)	June 10, 2014
7.3(b)	TNS 8/2014, s.4.13(c)	June 10, 2014
7.3	TNS 8/2014, s.4.13(d)	June 10, 2014
7.4	TNS 8/2014, s.4.13(d)	June 10, 2014
7.4(b)	TNS 8/2014, s.4.13(e)	June 10, 2014
4.5(d)(iv)	TNS 3/2023, s. 2.2(c)(i)	September 6, 2023
4.14(f)(iii)	TNS 3/2023, s. 2.2(c)(i)	September 6, 2023
7.3(c)(i)	TNS 3/2023, s. 2.2(c)(iii)	September 6, 2023
5.6(h)	TNS 5/2024, s.3.12(a)	March 26, 2024
5.7(b)(ii)	TNS 5/2024, s.3.12(b)	March 26, 2024
5.7(c)	TNS 5/2024, s.3.12(c)	March 26, 2024
5.7(d)	TNS 5/2024, s.3.12(d)	March 26, 2024
5.8(b)(ii)	TNS 5/2024, s.3.12(e)	March 26, 2024
5.8(c)	TNS 5/2024, s.3.12(f)	March 26, 2024
5.8(d)	TNS 5/2024, s.3.12(g)	March 26, 2024
5.8(e)	TNS 5/2024, s.3.12(h)	March 26, 2024
5.9(b)	TNS 5/2024, s.3.12(i)	March 26, 2024
6.2(i)	TNS 5/2024, s.3.12(j)	March 26, 2024
6.2(j)	TNS 5/2024, s.3.12(k)	March 26, 2024
6.4(g)	TNS 5/2024, s.3.12(l)	March 26, 2024
6.4(h)	TNS 5/2024, s.3.12(m)	March 26, 2024
8.6(c)	TNS 5/2024, s.3.12(n)	March 26, 2024
8.6(d)	TNS 5/2024, s.3.12(o)	March 26, 2024
10.2(b)(i)	TNS 5/2024, s.3.12(p)	March 26, 2024
10.2(b)(ii)	TNS 5/2024, s.3.12(q)	March 26, 2024
10.2(b)(iii)	TNS 5/2024, s.3.12(r)	March 26, 2024

Amending Acts:

TNS 3/2012 Economic Development Act enacted July 10, 2012
TNS 8/2014 Enforcement Framework Amendment Act No. 2 enacted June 10, 2014
TNS 3/2023 Land Act Amendment Act enacted September 6, 2023
TNS 5/2024 Public Works and Services Act Amendment Act enacted March 26, 2024

Regulations: