



TSAWWASSEN FIRST NATION
s'cəwaθən məsteyəx^w

Land Use Planning and Development Act

SUBDIVISION AND DEVELOPMENT REGULATION

Date Enacted: 3 April 2009

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Last Amended: 11 December 2013

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Table of Regulation Changes

Section(s) Amended	Date	Order number
s.15.1 – 15.3 repealed and replaced s.16 added renumbering	08/05/2013	O.043-2013 (part 7)
s.8 amended s.9.1 and 9.2 repealed and replaced sch. C repealed	11/12/2013	O.114-2013

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Whereas the Tsawwassen First Nation may make laws in respect of creating a Tsawwassen fee simple interest and for establishing conditions and restrictions on such interests, and in respect of the provision of services; and

The Tsawwassen First Nation Land Act and Land Use Planning and Development Act authorizes the Executive Council to enact regulations that require the provision of Works and Services in respect of the Subdivision and development of land;

Now therefore the Executive Council of the Tsawwassen First Nation enacts as follows:

Title

- 1 This regulation may be cited as the “Tsawwassen First Nations Subdivision and Development Regulation, 2009”.

Interpretation

- 2.1 Unless otherwise defined herein, any word or expression in this regulation shall have the meanings assigned to it in the *Tsawwassen First Nation Final Agreement* or the *Land Act* or *Land Use, Planning and Development Act*, as the context and circumstances require.
- 2.2 The equivalent Imperial units of measure shown in parenthesis after metric units are for information purposes only and do not form part of this regulation.
- 2.3 If any part, section, subsection or phrase of this regulation is held to be invalid by a court of competent jurisdiction, the invalid portion shall be severed and the remainder of the regulation will be deemed to have been enacted without the invalid portion.

Definitions

- 3.1 In this regulation:

“**ACCEPTANCE CERTIFICATE**” shall mean the certificate issued by the Approving Officer for final acceptance of the Works and Services when the maintenance period has been completed to the satisfaction of the Approving Officer, the Director of Land or other designated individual;

“**APPLICANT**” means a person who has applied for approval of a Subdivision or Development of land, whether as the Parcel Holder or as the agent for a Parcel Holder of the land in respect of which the application was made;

“**APPROVING OFFICER**” means the Director of Land, the Consulting Engineer, or other person appointed by the Executive Council to administer this regulation and to approve applications for subdivision pursuant to the *Land Use, Planning and Development Act*;

“**ARTERIAL ROAD**” means a highway whose primary function is to carry through traffic from one area to another with as little interference as possible from adjacent land uses, but which may provide direct access to property as a secondary function;

“**CERTIFICATE OF SUBSTANTIAL COMPLETION**” shall mean the certificate issued by the Approving Officer for acceptance of the Works and Services for the start of the maintenance period and will be issued when the Works and Services are completed to the satisfaction of the Approving Officer, the Director of Land or other designated individual;

“**COLLECTOR ROAD**” means any Road directly connecting to an arterial Highway at one end and connecting to a Rural or Residential Road on the other end;

“**CONTRACTOR**” means any person or corporation undertaking the installation of Tsawwassen First Nation services on behalf of an Applicant;

“CUL-DE-SAC” means a Road that terminates in a vehicular turning area, an area that is closed to vehicular traffic, or a natural feature such as inaccessible terrain;

“DEVELOPMENT” includes a subdivision and any construction, alteration, excavation or improvement of land, building or other structure that requires a building permit or the installation of a work or service under this regulation;

“FINAL APPROVAL” means the approval of a subdivision by the Approving Officer when all conditions of preliminary approval have been met and the Approving Officer is satisfied that all of the applicable requirements of this regulation, the *Land Act*, and the *Land Use, Planning and Development Act*, and that the application complies with any other relevant laws or legislation;

“FRONTAGE” means the length of the front lot line of a Parcel;

“FRONTAGE ROAD” means a Road which is parallel and adjacent to a Major Road and which provides access to abutting parcels;

“HIGHWAY” means a road, street, lane, walkway, trail, path, thoroughfare, bridge, viaduct and any other way open to public use, other than a private right of way on private property;

“LOCAL ROAD” and “RESIDENTIAL ROAD” means a Highway used or intended to be used primarily for access to abutting parcels rather than for through or commercial traffic;

“LOT WIDTH” has the meaning prescribed by the Zoning Bylaw;

“MAJOR ROAD” means a Road designated as a Major Road in the Land Use Plan;

“MEDICAL HEALTH OFFICER” means the duly appointed senior health official of the Fraser Health Authority;

“PARCEL” means any lot, block, or other area in which real property is held or into which real property is subdivided but does not include a Road or portion thereof;

“PARCEL HOLDER” means, in respect of real property, the registered owner of a parcel or a person holding a lease or certificate of possession;

“PRELIMINARY APPROVAL” means the written, conditional approval of a subdivision plan by the Approving Officer;

“PRELIMINARY LAYOUT APPROVAL (PLA)” means a document issued by the Approving Officer which sets out the terms and conditions for final subdivision plans approval;

“PROFESSIONAL ENGINEER OR CONSULTING ENGINEER” means a person who is registered under the provisions of the Engineers and Geoscientists Act of the Province of British Columbia;

“PUBLIC UTILITY” means any system having facilities installed in a Right-Of-Way for the purpose of providing a service to property including systems for water, gas, electricity, steam, or any other agent for the production or distribution of light, energy, sewage and drainage collection and disposal, emission, transmission or reception of information, messages or communications by cable, microwave, telephone, optical fibre or radio communications systems;

“RIGHT-OF-WAY” means land or any interest in land acquired for the purpose of:

- (a) public rights of passage with or without vehicles;
- (b) erecting and maintaining any pole-line;
- (c) laying, placing, and maintaining drains, ditches, rainwater detention, pipes, transmission lines, or wires for the conveyance, transmission, or transportation of water, electric power, forest products, oil, or gas, or both oil and gas, or solids as defined in the *Pipelines Act* of British Columbia;.
- (d) the disposal or detention of sanitary sewage, storm water or drainage; or
- (e) the operation and maintenance of any other undertaking of Tsawwassen First Nation.

And shall include a Statutory Right-Of-Way as defined in the *Lands Act*.

“ROADWAY” means the portion of a Road that is improved, designed and used for vehicular traffic, but does not include the shoulder;

“ROAD” means a Highway that affords the principal means of vehicular access to abutting Parcels, and includes a Road or Road allowance;

“SECURITY” means an irrevocable letter of credit, cash deposit, certified cheque, or other form of security satisfactory to the Executive Council or the Approving Officer;

“SERVICE LEVEL” means that the standard of service required by this regulation for the development of land;

“SIDEWALK” means a walkway constructed of concrete or asphalt that is intended for pedestrian traffic only;

“SUBDIVISION” means the division of land into two or more Parcels or the consolidation of two or more parcels, whether by Survey Plan or by metes and bounds description or otherwise;

“SURVEYOR” means a land Surveyor licensed and registered as a land Surveyor in the Province of British Columbia;

“SURVEY PLAN” means a fully dimensioned legal plan prepared by a Surveyor;

“TRAIL or PATH” multi use, means a Highway for the use of the walking public and bicycle traffic, that may be designed to afford emergency or maintenance vehicle use;

“WATER COURSE” means any drainage course or source of water, whether usually containing water or not, and includes any lake, river, stream, creek, spring, ravine, swamp, gulch, or source of ground water whether open or enclosed;

“WORKS AND SERVICES” means any or all works, services, facilities and utilities that are required by this regulation to be designed, constructed and installed as a condition of subdivision or other development approval and without limitation, includes highways, sidewalks, trails, paths, landscaping, curbs, gutters, ductworks, boulevards, boulevard crossings, transit bays, street lighting, water distribution systems, fire hydrant systems, sewage or drainage collection and disposal systems, hydro, electrical, gas, cable vision, and telephone supply, and other things required to be done under this regulation or otherwise in relation to the subdivision or other development whether on a parcel being subdivided or elsewhere;

“WORKS INSPECTOR” means an employee of the Tsawwassen First Nation or a Consulting Engineer either or both of whom have been appointed by the Chief Administrative Officer to coordinate, inspect and test any or all works and services provided, constructed or installed pursuant to this regulation; and

“ZONING REGULATION” means the current regulation of the Tsawwassen First Nation adopted under the *Land Use Planning and Development Act*.

Subdivision and development of land

- 4.1 A person shall not subdivide or otherwise develop land within the Tsawwassen Lands except in compliance with this regulation.
- 4.2 As a condition of subdivision approval or the issuance of a building permit for development, every Applicant shall:
- (a) comply with all applicable requirements of this regulation and all other legislation, regulations, bylaws, rules and policies that apply to the Tsawwassen Lands; and
 - (b) obtain any and all necessary approvals and permissions from the Tsawwassen First Nation Government and the ministries, agencies and authorities of any other government body having jurisdiction;

and compliance with this regulation shall not relieve the applicant from compliance with all other applicable enactments.

Application for subdivision

- 5.1 Every application for subdivision shall be made in writing to the Approving Officer on the form prescribed from time to time by the Executive Council for that purpose, and shall include but may not be limited to the following information and documentation:
- (a) a dimensioned sketch or survey plan of the parcel to be subdivided, showing clearly and accurately the proposed method of subdivision and the location and dimensions of all structures located on the parcel;
 - (b) a statement or other indication as to the intended use of the subdivided lands; and
 - (c) a topographical survey including any spot and break point elevations, existing structures on the subject property and on adjoining properties at common property lines.
- 5.2 If the Approving Officer considers that the land is, or could reasonably be expected to be, subject to flooding, erosion, land slip, or subsidence, the applicant shall:
- (a) provide, at the expense of the Applicant, a report certified by a professional engineer that the land may be used safely for the use intended; and
 - (b) provide a covenant in favour of the Tsawwassen First Nation, entered into by the Parcel Holder as covenantor, in respect of any of the Parcels to be created by the subdivision, which covenant may be of a kind described in Section 219 of the *Land Title Act* of British Columbia, and that contains a promise by the covenantor that the land will not be subdivided, built on, or used except in accordance with the covenant.
- 5.3 All drawings, sketches, and plans submitted in respect of an application for subdivision shall comply with the standards established in the Schedules to this regulation. The Approving Officer may adopt or revise, from time to time, criteria, standards and specifications for municipal services and highways where the adoption, revision and implementation of those criteria, standards and specifications support the policies endorsed by the Executive Council and are acceptable to the operating authorities of the proposed services affected by the criteria, standards and specifications.
- 5.4 The Approving Officer may consider the use and implementation of alternate standards for municipal services and highways where those alternates are demonstrated by the Parcel Holder to support policy endorsed by Executive Council, and where the implementation of the alternate standard is acceptable to the operating authorities of the proposed services affected by the alternate standards.
- 5.5 The acceptance of an application for review by the Approving Officer shall not be construed as either preliminary approval or final approval of the proposed subdivision.

Preliminary and final approval

- 6.1 Preliminary approval is effective for a period of one hundred eighty (180) days, following which time the applicant must resubmit the application for preliminary approval with payment of any applicable fees, except that the Approving Officer may grant an extension where he or she is satisfied that there has been unavoidable delay or other special circumstances exist that would justify an extension of time.
- 6.2 Preliminary approval of a proposed subdivision shall not be construed as final approval; and the Approving Officer acting reasonably may revoke preliminary approval at any time.
- 6.3 No application for a subdivision shall be approved by the Approving Officer unless such proposed subdivision:
- (a) is suited to the configuration of the land being subdivided;
 - (b) is suited to the use to which it is intended;
 - (c) does not make impractical the future subdivision of land within the proposed subdivision or of any adjacent lands;

- (d) meets all requirements of the Zoning Regulation and the Land Use Plan; and
- (e) is not contrary to the public interest.

6.4 Final approval of a subdivision is effective upon the signing of the subdivision plan by the Approving Officer.

Design & installation of works & services

- 7.1 Except as otherwise provided in this Regulation, the Parcel Holder shall provide paved vehicular and pedestrian highway systems; a municipal water distribution system; a municipal sanitary sewer system; drainage works including surface and underground collection, conveyance and treatment systems; underground wiring; and street lighting systems such that each system:
- (a) serves and is connected to all parcels created by the subdivision or the development;
 - (b) extends along all highways within the subdivision;
 - (c) extends along all highways adjacent to the development, up to the centerline of the highway allowance;
 - (d) connects to the appropriate public utility; and
 - (e) shall be constructed to allow for connection to lands and systems beyond the proposed development.
- 7.2 The Parcel Holder whose Parcel is the subject of a subdivision or other development application shall provide, locate and construct at the Parcel Holder's own expense, such works and services within the Subdivision, and to the center line of the Highway or Highways immediately adjacent to the land being subdivided, as are required by Schedules A and B of this regulation.
- 7.3 The Parcel Holder shall retain, at the Parcel Holder's own expense, a professional engineer to design the works and services in accordance with Schedules A and B of this regulation.
- 7.4 The servicing provisions of this Regulation may be waived by the Approving Officer where the land is being subdivided for the purpose of creating parcels of land required for the installation of public facilities, utilities, structures or associated equipment.
- 7.5 Every Parcel Holder of lands to be developed shall, at the Parcel Holder's sole cost and expense:
- (a) provide works and services for that development in accordance with the applicable provisions of this regulation; and
 - (b) ensure that the works and services are constructed and installed to the applicable minimum standards and specifications prescribed in this regulation.
- 7.6 All works and services required to be provided, designed, constructed and installed shall be provided, designed, constructed and installed at the expense of the Parcel Holder to the standards prescribed under this regulation and to the satisfaction of the Approving Officer after consultation with a professional or consulting engineer employed or retained by the Tsawwassen First Nation Government; prior to final approval of the Subdivision by the Approving Officer or the issuance of the building permit, as the case may be.
- 7.7 The Tsawwassen First Nation recognizes that site conditions may necessitate minor variations to servicing requirements and the requirements, standards and specifications for works and services established in this regulation, and the Approving Officer, having consulted with a professional or consulting engineer employed or retained by the Tsawwassen First Nation, may approve such minor variations.

Security & agreement

- 8.1 Despite subsection 7.6, at the request of the Parcel Holder, final approval of a subdivision may be granted or a building permit issued in respect of a development prior to completion of the required works and services if the Parcel Holder :
- (a) deposits in the Tsawwassen First Nation security, in a form compliant with this regulation, in the amount of 125% of the estimated costs of the works and services, or such other amount as directed by Executive Council; and
 - (b) enters into a Works and Services Agreement with the Tsawwassen First Nation in a form satisfactory to Tsawwassen First Nation.

[Amended by Order number O.114-2013]

- 8.2 In any case where the works and services, or any part of the works and services, have been installed prior to final approval of subdivision or issuance of a building permit, the Parcel Holder shall:
- (a) enter into a written agreement with the Tsawwassen First Nation, to rectify any deficiencies in design, materials, workmanship, construction or installation that may arise in connection with the works and services during the twelve months next following the date that the Tsawwassen First Nation takes ownership of or responsibility for the works and services, or, in the case of rain water management systems, for the three years following that date; and
 - (b) as a guarantee of performance under the agreement, deposit with the Tsawwassen First Nation security in the amount of 5% of the annual cost of the works and services, or \$500, whichever is the greater, plus the estimated cost of maintaining any rain water management systems for three years.

[Amended by Order number O.114-2013]

Processing Fees

- 9.1 For works and services that are required to be provided under this regulation, the Parcel Holder shall pay Tsawwassen First Nation a processing fee of 5%, or such other amount as directed by Executive Council, based upon the estimated costs of the works and services, to cover Tsawwassen First Nation, consultant, and legal costs incurred in reviewing design drawings, carrying out site inspections of works and services during construction, processing reductions in security, and any legal costs in preparing or reviewing any related agreements or rights of ways, or other encumbrances associated with the works and services.

[Amended by Order number O.114-2013]

Rights of way

- 10.1 Where water, drainage, or sewage systems required for the subdivision or other development are not within a highway, the Parcel Holder of the land in respect of which the application was made shall grant to the Tsawwassen First Nation or obtain from third parties, at the Parcel holder's cost, a Right-Of-Way acceptable to the Approving Officer in accordance with the Tsawwassen First Nation's standard Right-Of-Way Agreement, and shall prepare and submit the Right of Way for registration in the appropriate land registry office.

Nuisance and damage

- 11.1 During construction or installation of works and services, the Parcel Holder, and the Applicant if someone other than the Parcel Holder, shall be jointly responsible for:
- (a) ensuring the safety of employees and contractors carrying out the work, and in particular, in accordance with applicable Provincial or Federal legislation addressing the safety of workers;
 - (b) maintaining control over dust, dirt, and harmful or annoying emissions;
 - (c) preventing escape of water or harmful substances, and other sources of nuisance; and

- (d) ensuring the site is free of inappropriate accumulations of construction materials and any accumulations of toxic substances, waste material, garbage and debris, and that such substances, materials, garbage and debris are collected, stored, transported and disposed of in accordance with standards established by the Greater Vancouver Regional District and in accordance with the *Environmental Management Act* of British Columbia.

- 11.2 If the Parcel Holder fails to effectively control the risks or occurrences of matters listed in this section, the Tsawwassen First Nation may notify and direct the Parcel Holder to do so, including by taking steps and measures, within a time period it considers to be reasonable in the circumstances. If the Parcel Holder fails to comply with such notice within the time period specified, the Tsawwassen First Nation may enter on the property, and carry out control and remedial measures at the cost of the Parcel Holder or Applicant or both of them.
- 11.3 If in the course of construction or installation of works and services, any land, water course, building, structure, or personal property on Tsawwassen Land is damaged or destroyed as a result of such works, the Parcel Holder shall restore such property, or ensure that such property is restored, to the current standards established in this regulation or other applicable law or enactment and to the satisfaction of an engineer employed or retained by the Tsawwassen First Nation and designated to act for that purpose.

Insurance

- 12.1 The Parcel Holder must obtain and maintain, at the Parcel Holder's expense, at all times until a certificate of final acceptance is issued in respect of the works and services, comprehensive general liability insurance coverage covering premises and operations, contingencies with respect to the operations of contractors and sub-contractors, completed operations liability, contractual liability and automobile liability for owned, non-owned, and hired units. Each insurance policy must:

- (a) provide for liability not less than \$5,000,000 for each occurrence for bodily injury, death and damage to property;
- (b) name the Tsawwassen First Nation Government as an additional insured;

provide that the policy cannot be cancelled, lapsed, or materially altered without providing at least thirty (30) days' notice in writing to the Tsawwassen First Nation Government by registered mail; and contain a cross-liability clause.

- 12.2 The Parcel Holder must deliver a copy of each insurance policy to the offices of the Tsawwassen First Nation, to the attention of the Approving Officer, prior to commencement of any of the works and services carried out in connection with an approval for development.
- 12.3 If the Parcel Holder fails to obtain and maintain insurance in accordance with this Section, the Tsawwassen First Nation may, but is not obliged to, obtain and maintain such insurance at the expense of the Parcel Holder.

Warranty and maintenance

- 13.1 The Parcel Holder shall be solely responsible for the costs of operation, maintenance, repairs and if necessary, replacement of works and services constructed and installed pursuant to this regulation for a period of twelve (12) months from the date that a certificate of substantial completion is issued, except that in the case of rain water management systems, which shall be for a period of three (3) years, and shall provide the Tsawwassen First Nation with security in an amount of at least ten percent (10 %) of the cost of all works and services associated with the development.

- 13.2 If the Parcel Holder fails to maintain, repair or replace the works and services during this period, the Tsawwassen First Nation may draw on the secured amount as necessary to cover the associated costs, and without limiting the foregoing, may, at the expense of the Parcel Holder, undertake such maintenance, repairs or replacement that may be necessary. Any expenses not recovered or recoverable from drawing on the secured amount, together with interest at the current rate established by the Municipal Finance Authority of British Columbia, may be recovered in like manner as for property taxes.

Completion and acceptance

- 14.1 Upon final completion of the works and services, the professional engineer retained by the Parcel Holder must schedule a field inspection with a Works Inspector. Prior to verification by the latter that total performance of the works and services have been achieved, the Parcel Holder must provide to the Approving Officer the following records:
- (a) a certificate of total performance prepared by the professional engineer retained by the Parcel Holder with respect to any and all works and services;
 - (b) a confirmation of professional assurance;
 - (c) confirmation in writing by a Surveyor that all survey pins have been installed on the Parcel;
 - (d) if required by the Approving Officer, one or more statutory declarations of the Parcel Holder that something required to be done has been done;
 - (e) as-built drawings of the works and services in accordance with this regulation; and
 - (f) all reports, manuals, videos, testing and results relating to the development.
- 14.2 Upon expiration of the warranty and maintenance periods, receipt of all required records, and verification by the Approving Officer in consultation with the Works Inspector and any other officials having relevant knowledge or responsibilities, that all documents, agreements, covenants, legal instruments, and other information, the Parcel Holder may be provided with a certificate of final acceptance for all works and services; and the balance of any security not drawn upon by the Tsawwassen First Nation as authorized by this regulation shall be released to the Parcel Holder.

Obstructing Entry

- 15.1 No person shall prevent or obstruct authorized entry by the Approving Officer, Works Inspector, other officials or employees of Tsawwassen First Nation or officials of other regulatory bodies carrying out their duties under this regulation.

[Amended by Order number O.043-2013]

Contravention, Penalty and Enforcement

- 16.1 Any person who contravenes, violates or permits any act or thing to be done in contravention of, or neglects or refrains from doing anything required to be done pursuant to the provisions of this regulation, commits a contravention and shall, in addition to any other provisions of this regulation, be liable:
- (a) to a penalty as set out in the *Tsawwassen First Nation Ticket Regulation, 2013*; or
 - (b) if no penalty is set out for the contravention in the *Tsawwassen First Nation Ticket Regulation, 2013*, then to a fine not exceeding \$2,000.
- 16.2 Every day that a contravention continues under this regulation constitutes a separate and distinct contravention.
- 16.3 Contraventions of this regulation are designated for enforcement under the *Land Use Planning and Development Act* (Tsawwassen) or the *Laws Enforcement Act* (Tsawwassen).
- 16.4 In addition to the designated Enforcement Officer appointed by Executive Council pursuant to section 3 (1) (a) of the *Laws Enforcement Act*, the following individuals are appointed as enforcement officers for the purposes of this regulation:

- (a) the Works Inspector; and
- (b) the Director of Lands.

[Amended by Order number O.043-2013]

Schedules

17.1 The following schedules are attached to and form part of this bylaw:

(a) **SCHEDULE A: DESIGN CRITERIA**

Works provided pursuant to this Regulation shall be designed in accordance with the Master Municipal Construction Document (MMCD) Design Guideline Manual, most recent edition, and with the Supplementary Design Criteria of the Tsawwassen First Nation as issued and amended from time to time. Supplementary Design Criteria shall govern over the MMCD Design Criteria.

(b) **SCHEDULE B: SPECIFICATIONS AND STANDARD DRAWINGS**

Works provided pursuant to this Regulation shall be constructed in accordance with the Master Municipal Construction Document Specifications and Standard Drawings, edition dated 2000, and with the Supplementary Specifications and Standard Drawings of the Tsawwassen First Nation as issued and amended from time to time. Supplementary Specifications and Standard Drawings shall govern over the MMCD.

(c) **SCHEDULE C: WORKS AND SERVICES AGREEMENT** - *[Repealed by Order number O.114-2013]*