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TSAWWASSEN FIRST NATION  
s̓əwaθən məsteyəx<sup>w</sup>

*Community Governance Act*

**TREE REGULATION**

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# Tree Protection Regulation

WHEREAS the Tsawwassen First Nation Final Agreement authorizes the Tsawwassen Government to make laws in respect of assets located on Tsawwassen Lands, public safety, the management of forest resources and to protect, preserve and conserve the environment; and

the *Community Governance Act* authorizes the Executive Council of the Tsawwassen First Nation to make community regulations in respect of the management of all trees;

The Executive Council of the Tsawwassen First Nation enacts as follows:

## Citation and Short Title

1.1 This regulation may be cited as the Tsawwassen First Nation Tree Protection Regulation, 2009.

## Interpretation and Application

2.1 Unless specifically defined herein, words and phrases used in this regulation shall be construed in accordance with the meanings assigned to them in the *Tsawwassen First Nation Final Agreement* or the *Community Governance Act*, as the context and circumstances require.

2.2 In this regulation:

“**arborist**” means a person certified by the International Society of Arboriculture (IBA) as an arborist;

“**certified tree risk assessor**” means an arborist designated by the IBA as a certified tree risk assessor;

“**cutting or removal or cut or remove**” means to kill, remove or substantially destroy a tree by any means, including without limitation, knocking down or cutting into the tree, the topping of a tree, and the cutting of any main stem or other leader or trunk;

“**DBH (diameter breast height)**” means the diameter of the trunk of a tree measured at a point 1.4 metres above the natural grade, provided that the diameter of a tree having multiple trunks 1.4 metres above the natural grade shall be the sum of 100% of the diameter of the largest trunk and 60 % of the diameter of each additional trunk;

“**drip line**” means a circle on the ground around the trunk of a tree, the radius of which is the distance between the outermost twigs of the tree and the centre point of the trunk, or its vertical extension;

“**English Bluffs Management Zone**” means that part of the Tsawwassen Lands shown outlined in black on Schedule A to this regulation;

“**hedge**” means a row of three or more trees that through growth and pruning form a continuous dense screen of vegetation from ground level that provides privacy, separation, or a windbreak;

“**Manager of Lands or Manager**” means the person appointed to act as the manager of lands for the Tsawwassen Government in respect of the Tsawwassen Lands;

“**permit**” means a permit issued by the Manager of Lands under this regulation or a directive of the Executive Council pursuant to section 10;

“**private land**” means land that is privately occupied;

“**protected species**” means a tree that belongs to any of the following species:

- (a) western red cedar (*thuja plicata*)

- (b) sitka spruce (*picea sitchensis*)
- (c) garry oak (*quercus garryana*);

“**pruning**” means the selective removal of branches to improve timber quality, to remove dead or diseased wood, or for another purpose consistent with promoting the health or growth of a tree or hedge; and

“**tree**” means a woody perennial plant with one or more substantially erect main trunks or stems, including its root system, that is capable of reaching a mature height of 4.5 metres or greater within its natural range.

- 2.3 This regulation applies to the English Bluffs Management Zone.
- 2.4 This regulation does not apply to tree cutting or removal:
  - (a) carried out by or on behalf of the Tsawwassen Government;
  - (b) directed, permitted or licensed by the Federal or Provincial government as contemplated in the Tsawwassen Final Agreement, and in accordance with any restrictions, requirements, terms and conditions established by the Federal or Provincial government, as applicable;
  - (c) associated with the improvement or development of land approved by the Executive Council whereby conditions for approval address potential or actual damage to, cutting or removal of a tree or trees on that land;
  - (d) necessary for the installation of roads, utilities or other services shown on an engineering drawing and approved by the Executive Council.

### **Restrictions**

- 3.1 A person must not cut or remove any tree, or cause, suffer or permit any tree to be cut or removed, except in accordance with this regulation or the terms and conditions of a valid permit issued under this regulation.
- 3.2 A person must comply with the terms and conditions of any permit or notice issued under this regulation.
- 3.3 A person must not damage a tree, or cause, suffer or allow damage to a tree, by carrying out, causing, suffering or allowing any of the following activities except in accordance with this regulation or as expressly allowed in a permit issued under this regulation:
  - (a) cutting or undermining the roots of a tree growing within the drip line;
  - (b) operating trucks, backhoes, excavators or other heavy equipment over the roots of a tree growing inside the drip line;
  - (c) placing fill, building materials, asphalt or a building or structure on land inside the drip line of a tree;
  - (d) depositing concrete washout or other liquid or chemical substances harmful to the health of a tree on land inside the drip line of a tree;
  - (e) blasting, excavating or removing soil from inside the drip line of a tree;
  - (f) cutting back the top portion of a tree’s branches so as to significantly alter its normal canopy, unless the tree forms part of a hedge; or
  - (g) denting, gouging, or damaging the trunk of a tree, or removing its bark.

### **Permit Application**

- 4.1 Every application for a permit to cut or remove a tree must be made in writing to the Manager of Lands and must include:
  - (a) a statement of purpose and rationale for the proposed tree cutting or removal;
  - (b) the civic address and legal description, if any;

### **Tree Regulation**

- (c) a tree cutting or removal plan drawn to approximate scale identifying:
  - (i) the boundaries of the subject parcel;
  - (ii) any abutting roads, sidewalks, lanes, or rights of way;
  - (iii) the location of existing buildings and structures;
  - (iv) the species, location and DBH of those trees proposed to be cut or removed, and any trees proposed to be retained and protected;
  - (v) the location of significant topographic and hydrographic features and other relevant site information;
- (d) the proposed methods for:
  - (i) noise and dust control during the tree cutting or removal operation;
  - (ii) control of drainage and erosion impacts during and after the tree cutting or removal; and
  - (iii) disposal of woodwaste and other debris;
- (e) the proposed completion dates for tree cutting or removal; and
- (f) if required by the Manager of Lands:
  - (i) a report prepared by a certified tree risk assessor, assessing the viability of the tree and advising as to conditions that would promote its growth or health or avoid failure;
  - (ii) a report prepared by a professional engineer or other person certified in British Columbia as being qualified to provide advice, as the circumstances require, on geological, hydrological, or biological conditions and appropriate methods and practices for safety and compliance with applicable enactments;
  - (iii) the consent in writing of the owner of the parcel, if different from the applicant, to the proposed cutting or removal;
  - (iv) the consent in writing of the owners of adjacent parcels; and
  - (v) other information that the Manager of Lands determines is necessary to adequately describe the nature and extent of the proposed tree cutting or removal operation.

## **Exemption & Reporting**

5.1 A permit is not required:

- (a) to cut or remove a tree on an emergency basis because it has been severely damaged by natural causes and poses an imminent danger of falling and injuring persons or property; or
- (b) for normal pruning of a tree or hedge in accordance with sound horticultural and arboricultural practice or by a public utility as required for the safe operation of utility transmission lines; or

5.2 The owner or occupant of the land on which tree cutting or removal occurs in relation to paragraphs (a) of subsection 5.1, or person acting on behalf of the owner or occupant, must:

- (a) as soon as possible after the tree cutting or removal, report the action to the Manager of Lands; and
- (b) within 30 days of the occurrence, provide a written description of the tree cutting or removal to the Manager of Land, which must include information as to the location, circumstances, and species of affected trees, and which may include any information the person providing the information considers relevant to the tree cutting or removal.

## **Permit**

6.1 On receiving an application that complies with section 4, the Manager of Lands may issue a permit to cut or remove one or more trees in an identified location if:

- (a) a report prepared by a certified tree risk assessor indicates that there is a substantial risk that the tree or trees will fail to survive;
- (b) it appears that the tree or trees present a substantial or imminent risk or threat to:
  - (i) human life or safety;
  - (ii) the safety of an existing dwelling, building or other structure;
  - (iii) a permitted utility or water supply;
  - (iv) other trees;
  - (v) slope stability or the integrity of a geological or hydrological system; or
  - (vi) the health or integrity of a watercourse, fish or wildlife habitat or other ecological system or condition; or
- (c) if the tree
  - (i) has a DBH of 20 centimetres or less;
  - (ii) is not a protected species; andthe applicant has paid a permit fee of \$100.00 per tree that is proposed to be cut or removed.

- 6.1 In issuing a permit, the Manager of Lands may impose terms and conditions for the safe and effective cutting or removal of the tree or trees, to avoid or mitigate disruption, disturbance or nuisance or any of the risks described in paragraph (b) of subsection 6.1.
- 6.2 A permit is not transferable unless the permit identifies a person to whom it may be transferred.
- 6.3 A permit shall expire 12 months from the date it is issued or upon such earlier date as may be specified by the Manager of Lands, except that if the tree cutting or removal operations are not completed before that time, or it becomes necessary to alter or deviate from the particulars of a permit application or a tree cutting or removal plan, the Manager may renew, extend or modify the permit upon written request of the permit holder, subject to the following:
- (a) the Director may require additional information authorized by this regulation as a pre-condition to considering a renewal, extension or modification;
  - (b) all terms and conditions set out in the original permit except as amended or modified by the renewal, extension or modification;
  - (c) the permit holder shall pay a non-refundable fee of \$200.00; and
  - (d) a permit holder has no vested right to receive an extension, renewal or modification.

### **Entry and Inspection**

- 7.1 The Manager of Lands, a person acting under the direction of the Manager, or any person appointed by the Executive Council to enforce this regulation, is authorized, at all reasonable times and in a reasonable manner, to enter upon and inspect any lands to determine whether the provisions of this regulation or a permit issued under this regulation are being observed.
- 7.2 A person must not prevent, obstruct or interfere with an inspection carried out pursuant to this regulation.

### **Notice and Remedial Action**

- 8.1 The Manager of Land may give notice, in the form established in Schedule B, to any person of a breach of, or non-compliance with, any of the provisions of this regulation or a permit issued under this regulation, and such person must immediately cease any and all tree cutting or removal, activities described in subsection 3.3 or other activities noted in the notice until such breach or non-compliance is remedied to the satisfaction of the Manager, and every owner or occupier of land or premises shall refuse to allow, suffer or permit further tree cutting, removal, or damage until such time as the breach or non-compliance is remedied to the satisfaction of the Manager.

- 8.2 If a person who has received a notice under this section fails within the time specified to remedy the breach or non-compliance, the Tsawwassen Government or its appointed agents or servants may enter upon the land or any part of it and carry out the work required to remedy the breach, and the expense of doing so may be recovered as a debt from the person or persons responsible for the breach or non-compliance, or an owner or occupier who has allowed, suffered or permitted the breach or non-compliance.

### **Suspension or Cancellation of Permit**

- 9.1 Without limiting any other provision of this regulation, if:
- (a) a permit was issued on the basis of statements made in the application or a report, declaration or record required under this regulation that were false or misleading with respect to a material fact or that omitted to state a material fact, the omission of which made the statement false or misleading; or
  - (b) there is a contravention of any term, condition, requirement or restriction of this regulation or a permit issued under this regulation,
  - (c) the Manager of Lands may suspend in whole or in part the rights of the permit holder under the permit, cancel the permit; or amend or attach new conditions to a permit with the consent of the permit holder.

### **Reconsideration**

- 10.1 A person who has been refused a permit by the Manager of Lands, or who is dissatisfied with a decision or requirement by the Manager, may apply in writing to the Executive Council for reconsideration.
- 10.2 In reconsidering a refusal by the Manager of Lands to issue a permit, the Executive Council may hear from the person requesting reconsideration, any other person interested in the matter who wishes to be heard, and may request and consider any further assessments, submissions or other information that it considers relevant.
- 10.3 Having reconsidered the matter, the Executive Council may confirm the decision of the Manager of Lands, vary the decision, or substitute its own decision, and may impose any restrictions, requirements, terms and conditions it considers relevant and appropriate in the circumstances, and for certainty, may require the applicant to plant or provide funds for a replacement tree or trees.

### **Replacement Trees**

- 11.1 For each tree that is damaged, or that is cut or removed on private land, except in accordance with this regulation or a permit issued under this regulation, the person responsible must plant a replacement tree in a suitable location on the land and the owner or occupier of the land must maintain the replacement tree in accordance with sound horticultural and arboricultural practice.
- 11.2 If replanting on private land is, in the opinion of the Manager of Lands, not feasible or practical, or if unauthorized tree damage, cutting, or removal has occurred other than on private land, the person responsible must provide the Tsawwassen Government with either of the following:
- (a) a replacement tree for each tree that is damage, cut or removed, to be planted in a location determined previously by the Executive Council, or if no such determination has been made, by the Manager of Lands; or
  - (b) in lieu of the replacement tree or trees, an amount of money sufficient to purchase a replacement tree or trees, to be planted in a location or locations to be determined by the Executive Council.
- 11.3 On receiving a notice from the Manager of Lands that the person must plant a replacement tree or trees, or provide funding in lieu thereof, that person must, if requested by the Manager, submit a tree replacement plan, specifying the proposed location, species and approximate size or age of the replacement tree or trees.

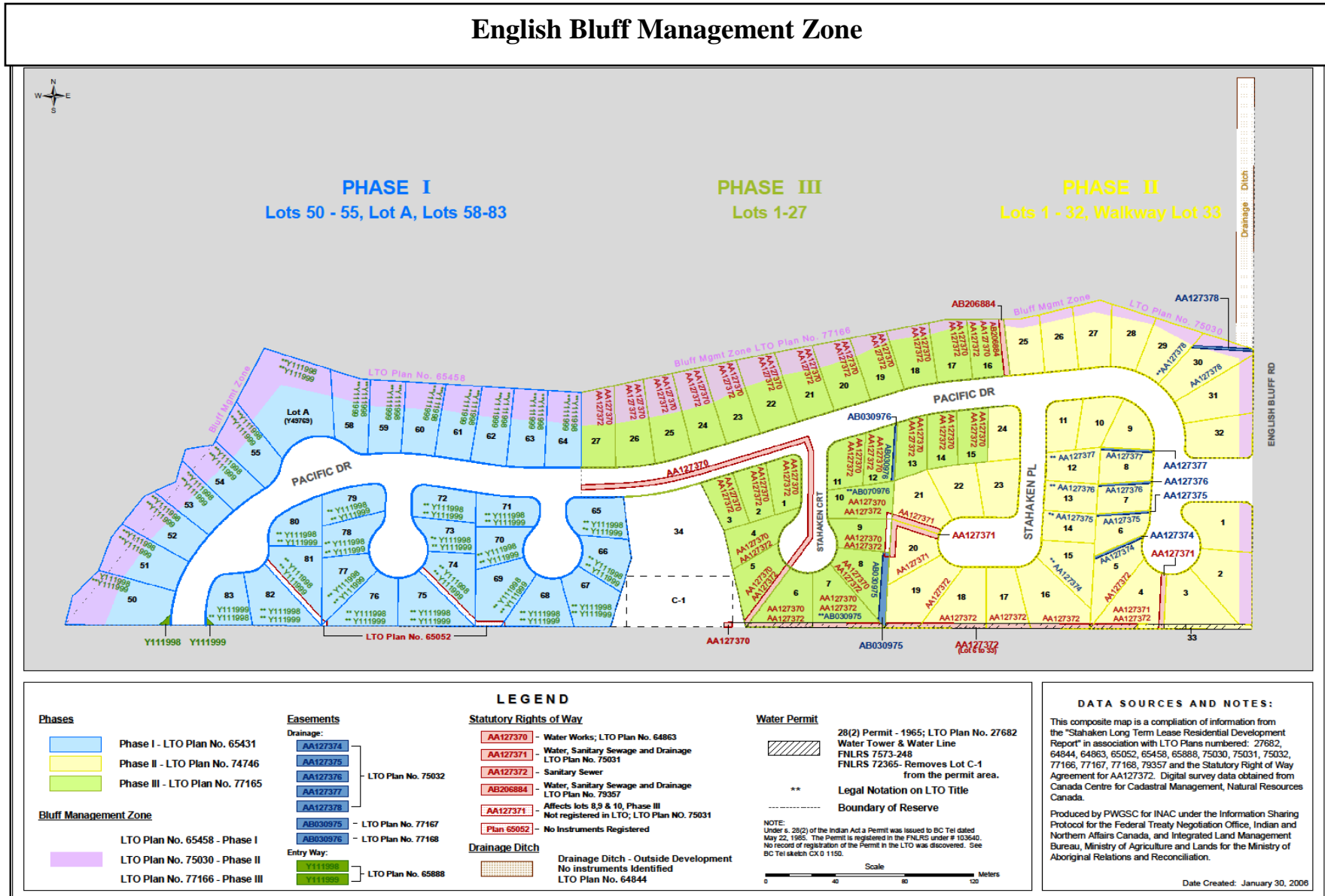
11.4 The requirement to replace a tree or trees under this section is in addition to any fine or other penalty that may be imposed in relation to an offence under this regulation.

### **Offence, Penalties and Enforcement**

- 12.1 Any person who contravenes or violates any provision of this regulation or of any permit or notice issued under this regulation, or who allows, suffers or permits any act or thing to be done in contravention of this regulation, or who fails or neglects to do anything required to be done by any provision of this regulation, commits an offence, and each day that the offence continues shall constitute a separate offence.
- 12.2 This regulation may be enforced by the Manager of Lands or by another person or persons appointed by resolution of the Executive Council, and may be enforced in accordance with Part 3 of the *Community Governance Act* or as a proceeding in Provincial Court under the *Offence Act* of British Columbia.
- 12.3 A person convicted of an offence under this regulation is liable:
- (a) to pay a fine not exceeding \$10,000 if a proceeding is brought in Provincial Court;
  - (b) to complete community service in lieu of or in combination with a fine, as ordered by the court; and
  - (c) to pay compensation to the Tsawwassen Government for any damages or loss resulting from the offence.
- 12.4 Schedules A and B are attached to and form part of this regulation.
- 12.5 This regulation comes into force on the Effective Date of the Tsawwassen First Nation Final Agreement.

# Schedule A

## English Bluff Management Zone



**Schedule B**

**NOTICE OF NON-COMPLIANCE**

**and**

**STOP WORK ORDER**

**YOU ARE HEREBY NOTIFIED** that the Manager of Lands for the Tsawwassen First Nation considers activity on this property to be in breach of the *Tsawwassen First Nation Tree Protection Regulation, No. 2009*:

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ADDRESS or LOCATION of PROPERTY

**AND ALL PERSONS MUST IMMEDIATELY CEASE the following activity on this property:**

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**EVERY PERSON WHO FAILS TO COMPLY WITH THIS ORDER MAY, UPON CONVICTION FOR AN OFFENCE AGAINST THE SAID REGULATION, BE LIABLE TO A PENALTY STIPULATED IN THE REGULATION.**

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**DATE**

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**DIRECTOR OF LANDS**

Persons affected by this Order may seek further information at the office of the Tsawwassen First Nation Government, 1926 Tsawwassen Drive, Tsawwassen, B.C. V4M 4G2