

**TLOWITSIS TRIBE
BYLAW NUMBER 2004-003**

A Bylaw Dividing the Reserve into Zones and Regulating the Use of Land,
within the boundaries of the Indian Reserves of the Tlowitsis Tribe

PREAMBLE

WHEREAS it is deemed to be in the best interests, health, safety and welfare of the Tlowitsis Tribe:

- A. to preserve the amenities on its Indian Reserve lands,
- B. to divide the reserves into zones and to regulate the use of lands within its Indian Reserve lands and any and all matters ancillary thereto as set out in this Bylaw, and
- C. to impose a penalty for any breach, infraction or violation of matters for prohibited purposes in this Bylaw.

AND WHEREAS it is deemed to be in the best interests, comfort, health, safety and welfare of the Tlowitsis Tribe to establish a bylaw to provide for the division of the reserve lands into zones;

AND WHEREAS it is considered necessary for the development of the reserve lands of the Tlowitsis Tribe to regulate the use of reserve lands;

AND WHEREAS the *Indian Act*, R.S.C. Chapter I-5, sections 81 (1)(b), (e), (f), (g), (h), (j), (l), (m), (n), (q) and (r) provide that the Council of an Indian Band is empowered to make such bylaws, and any matter ancillary thereto;

NOW THEREFORE the Council of the Tlowitsis Tribe at a duly convened meeting enacts as a bylaw the following:

PART I - GENERAL

1.0 SHORT TITLE

1.1 This Bylaw may be cited for all purposes as the "Tlowitsis Zoning Bylaw No. 2004-003."

2.0 INTERPRETATION

2.1 All definitions in this Bylaw shall bear the same meaning as those set out in the *Indian Act*, R.S.C. 1985, Chapter I-5, unless otherwise expressly provided herein.

3.0 DEFINITION

3.1 The following terms, whenever used in this Bylaw or in any resolution of the Council dealing with this Bylaw, shall have the meanings respectively ascribed to them in this section unless the context otherwise requires:

- “Accessory Use” means a use customarily incidental and subordinate to the principal use.
- “Agriculture” means a use of land, buildings or structures for the purpose of field crops or fruit, market gardening, dairying, animal husbandry, poultry raising, bee keeping and such uses as are customarily and normally related to agriculture.
- “Apartment” means any building divided into not less than three (3) dwelling units each of which is occupied or intended to be occupied as a permanent home or residence of one family as distinct from a hotel, motel, auto-court or similar accommodation for tourists or transients.
- “Assembly Hall” means a building or part of a building in which facilities are provided for such purposes as meetings for civic, education, political, religious or social purposes, and includes a banquet hall.
- “Attached” means a building otherwise complete in itself, which depends for structural support, or complete enclosure, upon a division wall or walls shared in common with adjacent building or buildings.
- “Authorized Persons” means and includes:
- (i) a Band Bylaw Enforcement Officer,
 - (ii) any person expressly appointed by the Council to exercise authority in relation to this Bylaw (such as the Band Manager or Band Administrator, or the Zoning Administrator as defined in Zoning Bylaw #2004-003), or
 - (iii) a Peace Officer as defined herein.
- “Auto-Court or Motel” means a building or group of buildings providing separate sleeping or dwelling units occupied or equipped to be occupied as a temporary abode for tourists or transients.
- “Band” means the Tlowitsis Tribe, being a “band” as defined by section 2(1) of the *Indian Act*.
- “Band Bylaw Enforcement Officer” means that person appointed by the Council:
- (i) to administer and enforce the civil provisions of the Bylaws of the Band as enacted by Council from time to time, and
 - (ii) to advise and report to Council on matters relating to the administration and enforcement of the civil provisions of the Bylaws.

- “Band List” means a list of members of the Tlowitsis Tribe pursuant to section 9(1) of the *Indian Act*.
- “Band Member” means a person whose name appears on the list of members of the Tlowitsis Tribe or is entitled to have her/his name appear on that list pursuant to section 2(1) of the *Indian Act*.
- “Big House” means a building or structure that is the traditional spiritual, ceremonial and governance house of the Tlowitsis people which may from time to time also serve as an interpretative centre.
- “Boulevard” means that part of a highway or street that is:
- (i) not a roadway,
 - (ii) part of the sidewalk not especially adapted to the use of or ordinarily used by pedestrians, or
 - (iii) that portion of the right-of-way between the property or Lot line and the curb lines or lateral lines of a roadway.
- “Breaches” means any act or omission contrary to, infraction or violation of, the provisions of this Bylaw.
- “Breakwater” means any floating or fixed structure used or intended to be used to reduce or dampen waves or swells created by wind, tides, marine traffic or other causes.
- “Building” means any structure used or designed to be used for shelter, accommodation or enclosure of persons, animals, or chattels.
- “Building Accessory” means
- (i) a building, the use or intended use of which is ancillary to that of the principal building on the same lot, or
 - (ii) a building which is ancillary to the principal use being made of the lot upon which such building is located.
- “Business and Professional Office” means an office in which any business is carried on or any profession is practised.
- “Campgrounds” means a site maintained and occupied for the accommodation of travellers in motor-homes, trailers or tents in accordance with regulations pursuant to the *Health Act*, but does not include a mobile park, motel, hotel or auto-court.
- “Catering” means the preparation of food and the delivery and serving of such food at a site other than the site on which the food is prepared.
- “Civil Breaches” means any act or omission contrary to, infraction or violation of, the civil provisions of this Bylaw in respect of:
- (i) the protection of health of residents or occupiers on the reserve and the prevention of the spreading of contagious and infectious disease pursuant to section 81(a) of the *Indian Act*;

- (ii) the dividing of the reserve or portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any zone pursuant to section 81(g) of the *Indian Act*;
- (iii) the regulation of the construction, repair and use of buildings whether owned by the band or by individual members of the band pursuant to section 81(h) of the *Indian Act*;
- (iv) the establishment of pounds, the appointment of pound keepers, the regulation of their duties and the provision for fees and charges for their services pursuant to section 81(e) of the *Indian Act*;
- (v) the construction and maintenance of watercourses, roads, bridges, ditches, fences and other local works pursuant to section 81(f) of the *Indian Act*;
- (vi) the destruction and control of noxious weeds pursuant to section 81(j) of the *Indian Act*;
- (vii) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies pursuant to section 81(l) of the *Indian Act*;
- (viii) the regulation of public games, sports, races, athletic contests and other amusements pursuant to section 81(m) of the *Indian Act*; or
- (ix) any matter arising out of or ancillary to the exercise of powers under sections 81 (a), (e), (f), (g), (h), (j), (l) and (m) of the *Indian Act*.

- “Civil Provisions” means and includes civil matters arising in relation to sections 81 (a), (e), (f), (g), (h), (j), (l), (m) and (r) of the *Indian Act*.
- “Combustible Liquids” means any liquid having a ‘flashpoint’ at or about 100° Fahrenheit (37.78°Celcius) and below 200° Fahrenheit (93.33°Celcius).
- “Commercial Display” means an area where automobiles, trucks, recreational vehicles, mobile homes, boats and similar large items are displayed for sale.
- “Commercial Purposes” means any activity or conduct connected with commerce or trade, made, done or operating primarily for profit.
- “Community Care Facility” means a facility that is duly licenced as a community care facility or like establishments that exceed five (5) persons in capacity.
- “Community Centre” means any tract of land or buildings or any part of any buildings used for community activities, whether used for commercial purposes or not, and the control of which is vested in the Band or its servants, agents or employees.
- “Complaints” means a complaint made in writing to the Council which is based on reasonable grounds and:

- (i) is not frivolous or vexatious,
- (ii) is not contrary to the rules of fairness or natural justice, or
- (iii) does not constitute an abuse of process.

“Conservation Area” means the maintenance of the natural environment for the purpose of preservation, research, observation and outdoor uses such as hiking, hunting and fishing and includes the construction and use of trail shelters and other similar structures ancillary to those uses but does not include the use of a dwelling house, a mobile home, a tourist vehicle or a tourist trailer.

“Convenience Store” means a store dealing in the sale of groceries, meat, fish, bakery goods or sundry household items.

“Cottage Industry” means a use accessory to a single family dwelling, and includes a carpentry shop, a craft shop, a plumbing shop, a metal working shop, an electrical shop, a welding shop, a storage building for school buses, boats or snowmobiles, a repair shop for farm equipment, or any similar use.

“Council” means the “council” of the Band, being chosen according to the custom of the Tlowitsis Tribe pursuant to section 2(1) of the *Indian Act*.

“District” means the District of Campbell River.

“Dwelling” means a building intended to be used exclusively as a home or residence but shall not include motels, hotels, boarding houses, lodging houses, or similar transient accommodation.

“Dwelling - Apartment” means the whole of a building, which contains four or more dwelling units served by a common entrance in which the occupants have the right to use in common any corridors, stairs or elevators contained therein, and the land appurtenant thereto.

“Dwelling - Duplex” means a building that is divided horizontally into two dwelling units, each of which has an independent entrance.

“Dwelling - Single Family” means a separate building containing only one dwelling unit.

“Dwelling - Two Family Duplex” means a separate building containing only two dwelling units.

“Dwelling - Triplex” means the whole of a building that is divided horizontally into three separate dwelling units, each of which has an independent entrance, either directly from the outside, or through a common vestibule.

“Dwelling - Semi-Detached” means a building that is divided vertically into two dwelling units.

“Dwelling Unit” means one or more habitable rooms designed for use by and occupied by not more than one family and in which separate kitchen and sanitary facilities are provided for the exclusive use

- of such a family, with a private entrance from outside the building or from a common hallway or stairway inside the building.
- “Dwelling Unit Area”** means the floor area of a dwelling unit measured between the exterior faces of the exterior walls of the dwelling unit.
- “Eating Establishment”** means a building or part of a building where food is offered for sale or sold to the public for immediate consumption therein and includes a restaurant, cafe, tea or lunch room, dairy bar, and refreshment room or stand but does not include a boarding or lodging house.
- “Economic Development Officer and Project Manager of the Band (EDO-PM)”** means a person expressly appointed by the Council to exercise authority in relation to and/or perform the activities or tasks in connection with this Bylaw.
- “Employee Housing”** means a building or part of a building that employees occupy for sleeping or living accommodations with sanitary facilities but without a kitchen or food preparation facilities.
- “Entertainment Centres”** means unlicensed discotheques, recreational vending machine operations, bowling alleys, billiard halls and similar establishments.
- “Erect”** means build, construct, reconstruct, or relocate, and includes any preliminary physical operations such as cutting, grading, excavating, filling or draining, and any altering of an existing building by an addition, extension or other structural change.
- “Family”** means one or more individuals living as a household and in the case of persons unrelated by blood, marriage or adoption shall not exceed four (4) in number but shall not include boarders, lodgers, or foster or day-care children, or groups of persons comprising a monastery, seminary, convent, or similar religious group.
- “Family Aid Facility”** means a facility that is operated by the Band or a non-profit society established by the Band whose purpose is limited to the provision of shelter, personal care and counselling services to individuals or families that are housed on site.
- “Farm”** means land used for the tillage of soil and the growing of vegetables, fruits, grains and other staple crops, and includes land used for livestock raising, dairying or woodlots.
- “Fence”** means a physical separation by means of the independent wall (not required to support a building or structure), row of trees, shrubs, or hedge.
- “Fish”** means fish, shellfish, crustaceans and marine animals.

- “Flammable Liquids”** means any liquid having a ‘flashpoint’ below 100° F (37.78° C) and having a ‘vapour pressure’ not exceeding 40 p.s.i. (275.79 kPa) (absolute) at 100° F (37.78° C).
- “Floor Area”** means the total area of all the floors, measured to the extreme outer limits of the buildings, excluding:
- (i) Machinery rooms,
 - (ii) Elevator shafts,
 - (iii) Stairwells,
 - (iv) Main floor public corridors,
 - (v) Main floor public lobbies and landscaped areas, and
 - (vi) Landscaping.
- “Forestry”** means the management, development and cultivation of timber resources for the production of wood or wood products, including provision of proper environmental conditions for wildlife, protection against floods and erosion, protection and production of water supplies and preservation of the recreation resource.
- “Garage, Commercial”** means a building, structure or lot where commercial vehicles are stored or where vehicles are repaired or maintained.
- “Grade”** means the average level of natural ground adjoining a building at all exterior walls.
- “Gravel Pit”** means any open excavation made for the removal of any soil, earth, clay, marble, sand, gravel or unconsolidated rock or mineral to supply material for construction, manufacturing or industrial purposes.
- “Hazard Land”** means land which is not suitable to be used for the erection of any building on a flood plain, is subject to erosion, has steep slopes, has organic soil or has a high water table.
- “Hedge”** means a row of low bushes, trees or shrubs planted closely together to form a border.
- “Height of Building”** Means the vertical distance between the average elevation of the finished surface of the ground at the front of the building and
- (i) in the case of a flat roof, the highest point of the roof surface or the parapet, whichever is the greater,
 - (ii) in the case of a mansard roof, the deck roofline, and
 - (iii) in the case of a gable, hip or gambrel roof, the mean height between the eaves and ridge.
- “Highway”** means any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, tunnel, causeway, trestleway or other place, whether publicly or privately owned, used for the passage or parking of vehicles and includes any sidewalk, boulevard or ditch adjacent or parallel thereto.

- “Home Occupation” means an occupation, trade, business, profession or craft which is clearly incidental, or an accessory use, to the residential use of the dwelling or dwelling unit.
- “Housing” means:
- (i) Band owned housing, including rental housing units and social housing units, on or within Tlowitsis Reserve Lands; and/or
 - (ii) Band member housing, including member owned housing or housing subject to a CMHC mortgage for which the Band is a guarantor on or within Tlowitsis Reserve Lands.
- “Hunting, Fishing and Trapping Clubs” means a structure of light frame construction, without a basement, without an interior finish on its walls and ceiling, and without any source of heat which is intended to provide basic shelter and accommodation on an occasional basis for a person or a group of persons engaged in hunting or fishing activities.
- “Indian Act” means the *Indian Act*, R.S.C. 1985, Chapter I-5, consolidations and amendments thereto.
- “Kitchen” means an assigned location within a dwelling wired, plumbed and equipped for use in the preparation of food for consumption within the dwelling and may include such appliances as fridges, stoves, stove tops, microwave, convection or toaster ovens and garbeurators.
- “Landscaping” means an area of introduced vegetation and may include ornamental materials and recontouring of the land to enhance and embellish the appearance of property.
- “Lawful Land Use” means any use of land that is in strict compliance with all provisions of this Bylaw for the zone in which such use is located.
- “Licenced Facilities” means an establishment through which the retailing and/or consumption of alcoholic beverages may be permitted under licence issued in accordance with the laws of Canada and of the Province of British Columbia.
- “Lot” means an area of land designated as a separate and distinct parcel on a legally recorded plan or description filed in the Ottawa Indian Lands Registry.
- “Lot Area” means the total horizontal area within the lot line of a Lot or site and includes both land and water surfaces but excludes any dedicated rights-of-way. For the purposes of calculating maximum unit density, the lot area shall be determined by the zoning boundaries.
- “Lot Line” means the boundaries of a Lot or parcel of land (front, rear, side, exterior side) which designates lot lines and boundaries and, in particular:

- (i) Lot Line, Front is the narrowest boundary between a lot and a street on which the lot or side abuts,
- (ii) Lot Line, Rear is the lot line furthest from and opposite to the front lot line,
- (iii) Lot Line, Side is a lot line marking the boundary between two (2) lots, and
- (iv) Lot Line, Exterior Side is a lot line marking the boundary between a lot and a public street; which also intersects a front lot line. (see Diagram 1).

"Maximum Unit Density" means the number of dwelling units per hectare of lot area. For the purposes of calculating maximum unit density, fractions of 0.50 or greater shall be rounded off to the next highest whole number.

"Minister" means the Minister of Indian Affairs and Northern Development, Government of Canada.

"Minor" means a person under the age of majority (19) in the Province of British Columbia.

"Mobile Home" means a structure manufactured as a unit designed to be transported on its own wheels or by other means, and arriving at the site ready for occupancy apart from incidental operations and connections but shall exclude recreational vehicles, which is governed by or required to be certified under CSA standard CSA-Z240.

"Modular or Factory Built Home" means a dwelling unit that is governed by or required to be certified under CSA standard CAN/CSA-A277.

"Motel" See "Auto-Court".

"Natural Boundary" means the visible high-water mark of any lake, river, stream or other body of water where the presence and action of the water are so common and usual and so long continued in all ordinary years as to mark upon the soil of the bed of the lake, river, stream, or other body of water a character distinct from that of the banks thereof in respect to vegetation as well as in respect to the nature of the soil itself.

"Non-Conforming" means that which does not conform, comply or agree with the provisions of this Bylaw as of the date it was made.

"Non-Conforming Building Use" means any prior lawful use of any building which, or because of the passage of this Bylaw, will not conform with all the regulations of use of this Bylaw, or any amendments thereto, for the zoning district in which such building or use is located.

"Non-Member" means a person who is not a Band Member.

- "Noxious Matter or Substance" means and includes that matter or substance which is physically harmful, toxic or destructive to living beings or is otherwise generally distasteful, offensive or unwholesome.
- "Noxious Use" means any use which is offensive or dangerous by reason of the emission of odour, smoke, dust, noise, gas, fumes, vibration or refuse matter.
- "Noxious Weeds" means those weeds listed in the regulations to the *Weed Control Act*, R.S.B.C. 1979, Chapter 432. Any referential incorporation of that list into this Bylaw does not imply expressly or otherwise the extension or general application of such regulations or provincial legislation, in whole or in part, beyond that list of such weeds.
- "Nursery" means land used for the growing of sod, flowers, bushes, trees or other gardening, landscaping or orchard stock for wholesale or retail trade.
- "Occupancy" means the use or intended use or part thereof for the shelter or support of persons, animals or property.
- "Occupier" means a person occupying premises owned either by the Band or a Band Member whether by lease, permit or other lawful disposition by resolution of the Council in accordance with the *Indian Act* or Bylaws of the Band.
- "Official Development Plan" means a document that sets out proposals for future development on the reserve and is accompanied by maps and charts.
- "Owner" means:
- (i) the Band for whom the Tlowitsis Reserve Lands are set apart for the use and benefit in common of its membership,
 - (ii) the Band as the owner of private housing, commercial premises or commercial enterprises on or within Tlowitsis Reserve Lands, or
 - (iii) a Band Member who holds a Certificate of Possession as defined by section 20(2) of the *Indian Act*, R.S.C. 1985, Chapter I-5, to a certain Lot or Parcel on or within Tlowitsis Reserve Lands.
- "Parcel" see "Lot".
- "Parking Area" means an open area of land, other than a street or driveway or display area used for parking vehicles of clients, customers or employees excluding driveways, ramps, columns, office, display and work areas.
- "Parking Space" means a space within a building or a parking area, for the parking of one vehicle excluding driveways, ramps, columns, office, display and work areas.

"Peace Officer"

means and includes:

- (i) a band constable who is a peace officer pursuant to an agreement with a provincial or federal policing authority as the case may be;
- (ii) a police officer employed or authorized by a local or municipal policing authority in accordance with the *Police Act*, R.S.B.C. 1996, chapter 367 acting pursuant to an agreement with or the express written authority of the Council;
- (iii) an officer employed or authorized by the Royal Canadian Mounted Police (RCMP);
- (iv) a peace officer as defined by the Criminal Code of Canada, R.S.C. 1985, chapter C-34; or
- (v) any other person charged with the duty to preserve and maintain the public peace in accordance with the laws of Canada and the Province of British Columbia.

"Person"

means any corporation, partnership or party, and the heirs, executors, administrators or other legal representatives of such person to whom the context applies and includes:

- (i) the owner, the owner's agent or the purchaser of a Band member's interest in an Agreement for Sale of any real or personal property, buildings or building accessories, or
- (ii) the occupier of property or premises on or within Tlowitsis Reserve Lands.

"Personal Service Establishment"

means a commercial establishment which provides direct personal goods or services such as barbershops, hairdressers, drug stores, doctors' and dentists' offices, and laundromats.

"Premises"

means a site on or within Tlowitsis Reserve Lands which is separate and distinct from all others as identified by its unique use and/or occupancy, and may include:

- (i) a Lot or parcel of land with or without buildings or structures,
- (ii) a building or structure located on a Lot or parcel of land, or
- (iii) 2 or more buildings or structures located on the same Lot or parcel of land.

"Principal Use"

means and includes the main purpose, function and/or use for land and/or buildings on any parcel as permitted in this Bylaw.

"Property"

means real property, being a Lot or parcel of land, including any and all Buildings, Building Accessory or Premises situate on or within Tlowitsis Reserve Lands.

"Quasi-criminal Breaches"

means any act or omission contrary to, infraction or violation of, the quasi-criminal provisions of this Bylaw which are of a quasi-criminal nature in respect of:

- (i) the observance and regulation of traffic pursuant to section 81(b) of the *Indian Act*;
- (ii) the observance and regulation of law and order pursuant

- to section 81(c) of the *Indian Act*;
- (iii) the prevention of disorderly conduct and nuisances pursuant to section 81(d) of the *Indian Act*;
- (iv) the prevention of trespass by cattle or other domestic animals pursuant to section 81(e) of the *Indian Act*;
- (v) the prohibition of public games, sports, races, athletic contests and other amusements pursuant to section 81(m) of the *Indian Act*;
- (vi) the observance and regulation of conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise pursuant to section 81(n) of the *Indian Act*;
- (vii) the preservation, protection and management of fur-bearing animals, fish and other game on reserve pursuant to section 81(o) of the *Indian Act*;
- (viii) the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes pursuant to section 81(p) of the *Indian Act*; and
- (x) any matter arising out of or ancillary to the exercise of powers under sections 81(b),(c),(d), (m), (n), (o) and (p) of the *Indian Act*.

- “Quasi-criminal Provisions” means and includes quasi-criminal matters arising in relation to sections 81(b), (c), (d), (m), (n), (o), (p) and (r) of the *Indian Act*.
- “Recreational Vehicle” means a vehicle or trailer that is designed for temporary recreational living and/or sleeping purposes.
- “Regional District” means the Mount Waddington Regional District.
- “Resident” means a person living or residing in premises owned by the Band or a Band Member in accordance with the Bylaws of the Band and/or the provisions of the *Indian Act*.
- “Residential Suites” means one or more dwelling units located only above the first floor of a commercial building. The gross square foot area of such dwelling unit(s) shall not exceed the commercial square footage of the building.
- “Residential Use Building” means a building used principally for the permanent residential accommodation of individuals.
- “Restaurant” means a building or part of a building where food is offered for sale or sold to the public for immediate consumption therein, but does not include a boarding or lodging home.
- “Reserve” means a “reserve” as defined by section 2(1) of the *Indian Act*.
- “Retail Convenience Store” See “Convenience Store”.
- “Retail Store” means a building or part of a building in which goods, wares, merchandise, substance, articles or things are being offered, kept

or made available for sale at retail.

- “Roadside Stand”** means a retail store not exceeding nineteen square metres in floor area in which the goods displayed or offered for sale are produced on the same land from agricultural uses.
- “Screening”** means a buffer of landscaping and/or fencing that has the effect of blocking the view of the Lot or site which it encloses.
- “Secondary Suite”** means a dwelling unit located within a single family dwelling in accordance with the Residential Zone (Zone R1) of this Bylaw.
- “Secondary Use”** means and includes a use that is subordinate to the principal use of the land and/or buildings and that is disassociated in custom and normal usage from such principal use and is a use that is allowed for any zone in addition to a principal use permitted by this Bylaw for such zone.
- “Self-Serve Service Station”** means a service station where customers are regularly required to pump gasoline and service their vehicles without the direct assistance of a qualified attendant.
- “Service Station”** means any building or land the use of which is the retail sale of motor fuels and lubricants and may include diagnostic centres, the servicing and minor repairing of motor vehicles, the sale of accessories and seasonal convenience items provided such items are displayed primarily within a building.
- “Setback”** means the required minimum distance between buildings or use and each of the respective property lines.
- “Shopping Centre”** means a group of stores or shops whether within one building or more, purposefully designed to provide collective parking areas on site.
- “Sidewalk”** means the area improved for use of pedestrians between the curb lines or lateral lines of a highway and the adjacent property or Lot lines.
- “Silviculture”** means the growing and harvesting of trees and the transportation and storage thereof.
- “Site”** means an area of land consisting of one or more Lots intended for or devoted to a single use, the extent of which shall be determined by the zoning boundaries.
- “Site, Double Fronting”** means a site abutting two parallel or approximately parallel streets. There shall be an option as to the abutting lot line which is determined to be the front lot line. The definition of lot line, front does not apply. (see Diagram 2).
- “Staff Quarters / Lodging”** see “Employee Housing”.

- “Storey” means a habitable space between two floors or between any floor and the upper surface of the floor next above except that the top-most storey shall be that portion of a building included between the upper surface of the top-most floor and the ceiling above.
- “Strata Lot” means a strata lot as defined by the *Strata Titles Act*, S.B.C. 1974, Chapter 89. Any referential incorporation of that definition into this Bylaw does not imply expressly or otherwise the extension or general application of such provincial legislation, in whole or in part, beyond the definition of the term “strata lot”.
- “Street” means any road or right-of-way designed or intended to be used by the general public, excluding a lane.
- “Structure” means an erection or construction of any kind whether fixed to, supported by or sunk into land or water but excluding fences and retaining walls that do not exceed the maximum permitted height.
- “Tlowitsis Forestry Management Plan” means the document entitled the “Tlowitsis First Nation Forest Planning – Reserve Lands” completed on March 31, 2004, which is attached hereto as Schedule “C”.
- “Tlowitsis Reserve Lands” means the “reserves” set apart for the exclusive use and benefit of the Band as listed in Schedule “B” which is attached hereto.
- “Townhouse or Row House” means a dwelling unit in a building containing three (3) or more dwelling units, having a common or party wall and having its principal access at ground level.
- “Underground Parking” means those areas used for parking enclosed on all sides within the outermost walls of a building or those parking structures, the roof of which is below the average elevation of adjoining streets, lanes, or adjacent sites and shall exclude carports.
- “Use” means the purpose of which any lot, site, building or structure is designed, arranged or intended.
- “Veterinarian Clinic” means a facility for the overnight medical care of large or small animals.
- “Vessel” means all types of boats, ships and similarly named objects and structures used or intended for the shelter of vessels but specifically excludes houseboats, barges, aircraft and aircraft shelters.
- “Village” means Kalugwis, the traditional village of the Tlowitsis Tribe on Turnour Island in British Columbia.
- “Village of Sayward” means the Village of Sayward as defined by the *Local Government Act*, R.S.B.C. 1996, Chapter 323, being a “Village”

- separate and distinct from the Tlowitsis traditional village of Kalugwis.
- “Water Setback”** means the straight-line horizontal distance from the high water mark of a watercourse, bay or lake to the nearest part of any excavation, building, structure or open storage use on the land.
- “Wharf”** means any floating or fixed structure used or intended to be used for the moorage of vessels and float planes.
- “Wholesale”** means the selling of goods to establishments for sale of such goods.
- “Yard”** means as follows:
- (i) Yard, Front is that portion of the Lot, extending from one side of a lot line to the other, between the front line of the Lot and a line drawn parallel thereto. The depth of such yard shall mean the perpendicular distance between the front line of the Lot and the parallel line. See Diagram 3.
 - (ii) Yard, Rear is that portion of the Lot, extending from one side of a lot line to the other, between the rear line of the Lot and a line drawn parallel thereto. The depth of such yard means the perpendicular distance between the rear line of the Lot and the parallel line. See Diagram 4.
 - (iii) Yard, Side is that portion of the Lot, extending from the front yard to the rear yard, between the side lot line of the Lot and a line drawn parallel thereto. The distance between the side lot line of the Lot and the parallel line. See Diagram 5.
- “Zone”** means any area in which specific uses or combinations of uses are permitted.
- “Zoning Administrator”** means the person appointed or designated by the Council:
- (i) to ensure the Zoning Bylaws of the Band are being obeyed and complied with;
 - (ii) to investigate, monitor and report any and all breaches, infractions or violations of such Zoning Bylaws; and
 - (iii) to enforce any and all provisions of such Zoning Bylaws; and
 - (iv) to advise Council on matters relating to any of the above described activities.
- “Zoning Areas”** means the area application of a zone on or within Tlowitsis Reserve Lands.
- “Zoning Map”** means the map showing Zoning Areas as shown on Schedule “A” hereto.

4.0 APPLICATION OF THE BYLAW

- 4.1 The provisions of this Bylaw shall apply to the whole of the area or property within, on or under the lands, waters and boundaries of Tlowitsis Reserve Lands as described in Schedule "B" hereto which Schedule is a part of this Bylaw as fully and to all intents and purposes as though recited in full herein.
- 4.2 The zones to which this Bylaw shall apply are as described herein and on the Zoning Map which is attached hereto as Schedule "A" and which Schedule is a part of this Bylaw as fully and to all intents and purposes as though recited in full herein.
- 4.3 The Council may, by resolution, appoint or designate:
- 4.3.1 A person as the Zoning Administrator or other Authorized Person (such as the Band Manager, Band Administrator or Band Bylaw Enforcement Officer) as defined herein to administer and enforce the civil provisions of this Bylaw; and/or
- 4.3.2 A band constable, who is a Peace Officer as defined herein, to administer and enforce provisions of this Bylaw as defined herein.

PART II – BASIC PROVISIONS

5.0 USES IN ALL ZONES

- 5.1 In any zone the principal use of the land and/or building shall conform to the requirements for such zone. An accessory use or secondary use will only be allowed in circumstances where the principal use of the land and/or buildings conforms to the principal use or uses designated for such zone. No accessory use and/or secondary use shall be permitted in the absence of a principal use conforming to the zone requirements.
- 5.2 The following utilities may be located in any zone in addition to those uses listed in that zone, including but not restricted to any and all necessary and incidental:
- (a) oil, gas or electrical utilities, transmission and/or telecommunication lines,
 - (b) sewer lines, sanitation and waste removal facilities; and
 - (c) fire suppression outlets and accessory facilities.
- 5.3 Any necessary or incidental access routes may be located in any zone in addition to those uses listed in that zone, whether by air, road or water.
- 5.3 Any necessary or incidental well-water and related services may be located in any zone in addition to those uses listed in that zone:
- 5.4 Building and excavation sites in all zones shall comply with applicable health and safety standards of Canada and the Province of British Columbia, including.
- (a) Ensuring the demolition, removal or the bringing up to standard of a building, structure or thing, in whole or in part, is in a safe condition, and
 - (b) Ensuring the filling-in, covering-over or alteration, in whole or in part of an excavation is in a safe condition.

5.5 The Tlowitsis Forest Management Plan shall apply to all zones, which Plan is attached hereto as Schedule "C" and which Schedule is a part of this Bylaw as fully and to all intents and purposes as though recited in full herein.

6.0 PROHIBITIONS IN ALL ZONES

6.1 No building or structure shall hereafter be erected or altered, nor shall the use of any land, building or structure hereafter be changed, in whole or in part, except in conformity with the provisions of this Bylaw.

6.2 No building, structure or use shall be permitted where the proposed building, structure or use would be in violation of any provision of this Bylaw.

7.0 NON-CONFORMING USES

7.1 Nothing in this Bylaw prevents the use of any land, building or structure for any purpose prohibited by the Bylaw if such land, building or structure was lawfully used for such purpose on or before the day this Bylaw was made, so long as it continues to be used for that purpose.

7.2 If a non-conforming use should be damaged or destroyed by causes beyond the control of the owner, nothing in this Bylaw prevents such a use from being restored and strengthened to a safe condition, if the height and bulk are not increased and the use is not a noxious use.

7.3 Where any land, building or structure was used for a non-conforming use on the day this Bylaw was made, the owner of any land, building or structure may apply to the Council for authorization to:

(a) enlarge or extend the building or structure, if the land, building or structure continues to be used in the same manner and for the same purpose as it was used on the day this Bylaw was made; or

(b) to use such land, building or structure for a purpose that is similar to the purpose for which it was used on the day this Bylaw was made or is more compatible with the uses permitted by the Bylaw.

8.0 DWELLING UNITS, MINIMUM FLOOR AREA

8.1 No dwelling unit situate in any residential zone shall contain less than fifty-five (55) square metres for each dwelling unit, except as provided for in section 8.3 hereof.

8.2 Pre-fabricated, modular or factory-made dwelling units that are certified under CSA Z-240 or A-277 are permitted provided that such a dwelling unit is a minimum of 6.5 metres in width, exclusive of carports, verandas, cabanas, porches, stairways or any other extension whatsoever to the original pre-fabricated, modular or factory-made dwelling unit. Provided, however, that individual single-wide dwelling units as described herein are not permitted except in the Rural Recreational Zone.

8.3 In the case of the multiple family residential zones, the minimum dwelling unit floor areas for a bachelor suite or studio, one bedroom suite, two bedroom suite, for a suite with

three or more bedrooms or any secondary suites shall be as prescribed by the *National Building Code* in force and effect at the date of construction of that dwelling unit.

8.4 Notwithstanding the aforementioned requirements, the minimum floor areas per dwelling unit shall not apply to dwelling units providing for the accommodation of elderly persons by a corporation wholly owned by the Province or Municipality, or by an agency of the Province or Municipality or by a person, organization, or corporation under the provisions of the *National Housing Act*.

9.0 EXCEPTIONS TO HEIGHT LIMITATIONS

9.1 The height limitations of this Bylaw do not apply to chimneys, church spires, public buildings, water tanks, elevator enclosures, flag poles, television or radio antennae, electrical transmission facilities, ventilators or skylights.

10.0 ACCESSORY BUILDINGS AND STRUCTURES

10.1 Accessory uses, buildings and structures, including private garages, are permitted in any zone within the reserve, but shall not

- (a) be used for human habitation, except where a dwelling is a permitted accessory use;
- (b) exceed four metres in height in any residential zone;
- (c) be built within two metres of the main building; or
- (d) be considered an accessory building attached to the main building in any way.

11.0 TEMPORARY CONSTRUCTION USES PERMITTED

11.1 Nothing in this Bylaw prevents uses incidental to construction, such as a construction camp or other such temporary work camp, a tool shed, scaffold or other building or structure incidental to the construction, or a sign not more than four and one-half (4.5) square metres in area incidental to the construction, if these uses are permitted only for so long as they are necessary for work in progress which has neither been finished nor abandoned.

12.0 OCCUPANCY OF INCOMPLETE BUILDINGS

12.1 In any zone, no new buildings shall be occupied before the main side walls and roof have been erected and roofing has been completed and, in the case of a dwelling, kitchen, heating and sanitary conveniences have been installed and rendered useful.

13.0 SETBACKS

13.1 Buildings and structures erected in any zone shall conform to the following setback requirements from road centre lines and high water marks of any water course, bay or lake:

- (a) Provincial highway - eighteen (18) metres;
- (b) Road other than a provincial highway - thirteen (13) metres;
- (c) Reserve road - ten (10) metres;
- (d) Other road - eight (8) metres;

- (e) Water setback - a minimum water setback of fifteen (15) metres shall be provided, but accessory boathouses and boat decks are not required to meet the water setback.

14.0 OCCUPATION OF VEHICLES

- 14.1 No car, truck, coach or streetcar body shall be used for permanent human habitation in any zone, whether or not mounted on wheels.

15.0 MOBILE HOMES

- 15.1 Mobile homes are only permitted in the Rural Recreational Zone.

16.0 HOME OCCUPATIONS

- 16.1. A home occupation is permitted in any zone if:

- (a) only members of the family are employed in the home occupation;
- (b) there is no external display or advertising other than a non-illuminated sign, not more than three tenths of a square metre (0.3m²) in area, to indicate to persons outside that any part of the dwelling unit or Lot is being used for a purpose other than residential;
- (c) not more than twenty-five percent (25%) of the dwelling unit area is used for the purpose of the home occupation;
- (d) the home occupation is secondary to the main residential use and does not change the residential character of the dwelling home or dwelling unit;
- (e) there are no goods, wares or merchandise, other than arts and crafts produced on the premises, offered or exposed for sale or rent on the premises;
- (f) the home occupation does not create or become a nuisance, as defined in the Tlowitsis Tribe Law and Order Bylaw No. 2004-001, in particular, in regard to noise, traffic or parking;
- (g) the home occupation does not interfere with television or radio reception; and
- (h) a private garage is not used for the home occupation.

17.0 NOXIOUS USES

- 17.1 No use is permitted which is offensive or dangerous by reason of the emission of odour, smoke, dust, noise, gas, fumes, vibration or refuse matter, or which from its nature or the materials used therein is declared to be a noxious trade, business or manufacturer as prescribed by this Bylaw or the laws of Canada and, if and as required from time to time, the laws of general application of the Province of British Columbia.

18.0 COTTAGE INDUSTRY

- 18.1 A cottage industry is permitted in a residential or rural zone if

- (a) not more than 10% or ten (10) square metres of the dwelling unit area, whichever is the lesser, is used for the purposes of the cottage industry;
- (b) not more than fifty square metres of the gross floor area of all accessory buildings are used for the purposes of the cottage industry; and
- (c) not more than five persons, other than those residing on the premises, are engaged on the premises in the cottage industry.

19.0 RAILWAY CROSSINGS

19.1 Where any road crosses a railway, no building or structure shall be erected closer to the point of intersection of the centreline of both the railway and the road than forty-six (46) metres.

20.0 GRAVEL PITS, STONE QUARRIES

20.1 Gravel pits and stone quarries are prohibited, except in a commercial/light industrial zone.

21.0 MULTIPLE USES

21.1 Where any land or building is used for more than one purpose, all provisions of this Bylaw relating to each use shall be satisfied and, where there is a conflict, the higher or more stringent standard shall prevail.

PART III - SPECIFIC ZONING PROVISIONS

22.0 ZONES

22.1 The reserve is divided into the following zones, as shown on Schedule "A" (Zoning map).

<u>Zones</u>	<u>Zone Symbols</u>
Commercial/Light Industrial	Zone C-LI
Emergency Service	Zone ES
Hazard Land	Zone HL
Marine & Tourist	Zone M-T
Residential	Zone R1
Rural Recreational	Zone RR
Service Commercial	Zone SC
Service Station	Zone SS
Special Development	Zone SD

23.0 COMMERCIAL, LIGHT INDUSTRIAL (C-LI) ZONE

23.1 Permitted Uses

Land may be used and buildings and structures may be erected, altered or used in an Commercial-Light Industrial (C-LI) Zone only for:

- (a) an industry or manufacturing establishment, except one involving the danger of fire or explosion or likely to create a nuisance, as defined in Tlowitsis Tribe Law and Order Bylaw No. 2004-001, by reason of fumes, dust, odour, or excessive noise;
- (b) a warehouse or storage establishment;
- (c) a retail outlet, wholesale outlet or business office accessory to a permitted use;
- (d) a yard for fuel, lumber, building materials, contractor's equipment or similar material;

- (e) a contractor or tradesman's shop;
- (f) a farm implement sales or repair business;
- (g) a parking lot;
- (h) a junkyard or automobile wrecking yard but, where visible from a public road, only if screened from view by a fence not less than seven (7) feet in height on all sides;
- (i) a dwelling for the owner, or for the use of a watchman or other employee whose residence on the premises is essential;
- (j) gravel pits and stone quarries;
- (k) parking; or
- (l) a use accessory to any of the foregoing permitted uses.

23.2 *Zone Specifications*

Land may be used and buildings and structures may be erected, altered or used in a Service Commercial (SC) Zone only in accordance with the specifications set out in a development permit as authorized by the Council from time to time.

24.0 **EMERGENCY SERVICE (ES) ZONE**

24.1 *Permitted Uses*

Land may be used and buildings and structures erected, altered or used in an Emergency Service (ES) Zone only for:

- (a) Ambulance Station,
- (b) Disaster Services Centre,
- (c) Fire Hall,
- (d) Enforcement and policing facilities,
- (e) Search & Rescue Facilities,
- (f) Parking, or
- (g) A use accessory to any of the foregoing permitted uses.

24.2 *Zone Specifications*

- (a) A Lot shall have a minimum area of 740 square metres and a minimum frontage of 30 metres;
- (b) The maximum lot coverage of all buildings and structures shall not exceed 65%;
- (c) The height of buildings and structures shall not exceed 7.7 metres above grade if adjacent to residential use or marine and tourist use and 13.8 metres above grade if adjacent to any other zone; and
- (d) Such other specifications as authorized by the Council pursuant to a development permit as authorized by the Council from time to time.

25.0 **HAZARD LAND (HL) ZONE**

25.1 *Permitted Uses*

Land may be used and buildings and structures may be erected, altered or used in a Hazard Land (HL) Zone only for:

- (a) an existing dwelling at the date this Bylaw was made;

- (b) conservation;
- (c) forestry;
- (d) hunting, fishing or trapping;
- (e) outdoor recreation;
- (f) a structure for the prevention of erosion or for flood control;
- (g) a boathouse or dock; or
- (h) a use accessory to any of the foregoing permitted uses.

25.2 Hazard Land (HL) Zone Specifications

Land may be used and buildings and structures may be erected, altered or used in a Hazard Land (HL) Zone only in accordance with the specifications set out in a development permit as authorized by the Council from time to time.

26.0 MARINE & TOURIST (M-T) ZONE

26.1 Permitted Uses

Land may be used and buildings and structures erected, altered or used in a Marine & Tourist (M-T) Zone only for:

- (a) satellite camps and campgrounds,
- (b) tourism activities and cultural events,
- (c) retail stores and offices,
- (d) restaurants and licenced premises,
- (e) catering,
- (f) marina including boat servicing ancillary sales and repairs,
- (g) retail fuel outlets associated with marinas,
- (h) ice plants, net lofts, retail / wholesale fresh fish sales, and the custom processing of sports caught fish,
- (i) retail / wholesale fish sales and ancillary freezing and filleting of fish,
- (j) water access, dependent industry and allied uses,
- (k) storage and loading facilities oriented to marine use and water traffic,
- (l) parking, or
- (m) a use accessory to any of the foregoing permitted uses.

26.2 Zone Specifications

26.2.1 Specifications for land use, buildings and structures shall be set out in a format as authorized by the Council. In particular, the Council may, by resolution, in accordance with appropriate and applicable governmental and/or industry standards and guidelines:

- (a) regulate the dimensions, siting and design of buildings and structures on land necessary and incidental to marine and tourism activities;
- (b) regulate the dimensions, siting and design of tourism and marine related facilities on water; including moorage of vessels to wharves, the placing or mooring of guide boats, tourist vessels, barges and the placing of breakwaters;
- (c) regulate the dimensions, siting and design of aircraft facilities such as helicopter pads and shelters necessary and incidental to marine and tourism activities;
- (d) require that landscaping or screening be established around and for different marine and tourism uses and activities;

- (b) minimum lot frontage 15 metres
- (c) minimum lot frontage (cul-de-sac) 11 metres
- (d) minimum front yard depth 7.6 metres
- (e) minimum front yard depth (fronting carports or garages) 5.5 metres
- (f) minimum side yard width 1.5 metres or half the height of building, whichever is greater
- (g) minimum side yard width (where side-yard flanks a street) 3.5 metres
- (h) minimum rear yard depth 7.6 metres
- (i) maximum lot coverage (all buildings and structures) not to exceed 35%
- (j) maximum building height (principal buildings) 7.7 metres
- (k) maximum building height (accessory buildings) 4 metres
- (l) combined floor area of accessory buildings not to exceed 74.3 square metres or 10% of the lot area whichever is the less
- (m) location of accessory shall not be located in the required front yard or occupy building more than 1/2 of the width of the rear yard
- (n) minimum number of parking spaces 1 per dwelling unit

and/or such other specifications as authorized by the Council from time to time.

28.0 RURAL RECREATIONAL (RR) ZONE

28.1 Permitted Uses

Rural (RR) Zone only for:

- (a) agricultural use, including a farm, truck, garden, nursery or green house;
- (b) a seasonal fruit or vegetable roadside stand;
- (c) an agricultural industry, including a blacksmith shop, garage, farm machinery repair shop, mobile and permanent sawmills;
- (d) conservation;
- (e) forestry;
- (f) cemeteries;
- (g) recreational campsites, including hunting, fishing and trapping clubs;
- (h) mobile homes;
- (i) parking; or
- (j) a use accessory to any of the foregoing permitted uses.

28.2 Zone Specifications

Land may be used and buildings and structures may be erected, altered or used in Rural Recreational (RR) Zone only in accordance with the specifications as authorized by the Council.

29.0 SERVICE COMMERCIAL (SC) ZONE**29.1 Permitted Uses**

Land may be used and buildings and structures may be erected, altered or used in a Service Commercial (SC) Zone only for:

- (a) a bank or other financial institution;
- (b) a personal service shop;
- (c) a boat, snowmobile, trailer or cycle business, including sales and rentals;
- (d) a business or professional office;
- (e) a convenience store;
- (f) a laundry or drycleaning establishment;
- (g) a restaurant or other eating establishment;
- (h) catering;
- (i) a hotel, motel and ancillary restaurants;
- (j) a parking lot;
- (k) a place of entertainment;
- (l) a post office;
- (m) a recreational use;
- (n) a taxi stand;
- (o) a retail store;
- (p) an assembly hall;
- (q) a community centre or arena;
- (r) a school;
- (s) a church;
- (t) a nursing home;
- (u) a medical clinic or hospital;
- (v) a veterinarian clinic;
- (w) a Band Council office or other administrative office of the Band;
- (x) a park or a fairground;
- (y) parking; or
- (z) a use accessory to any of the foregoing permitted uses.

29.2 Zone Specifications

Land may be used and buildings and structures may be erected, altered or used in a Service Commercial (SC) Zone only in accordance with the specifications set out in a development permit as authorized by the Council from time to time.

30.0 SERVICE STATION (SS) ZONE**30.1 Permitted Uses**

Land may be used and buildings and structures may be erected, altered or used in a Service Station (SS) Zone only for:

- (a) retail sale of gasoline and related petroleum products;
- (b) automobile servicing and ancillary parts sales;
- (c) an automobile service station or commercial garage;
- (d) car washes;
- (e) vehicle rentals;

- (f) fuel storage depots;
- (g) auto wrecking yards;
- (h) parking; or
- (i) a use accessory to any of the foregoing permitted uses.

30.2 *Zone Specifications*

Land may be used and buildings and structures may be erected, altered or used in a Service Station (SS) Zone only in accordance with the specifications set out in a development permit as authorized by the Council from time to time.

31.0 SPECIAL DEVELOPMENT (SD) ZONE

31.1 *Permitted Uses*

Land may be used and buildings and structures erected, altered or used in a special development zone only for:

- (a) Resort purposes and tourism related activities;
- (b) Cottage leases and rentals;
- (c) Artisan and craft workshops, including those associated or incidental to resort purposes;
- (d) Big House ceremonies and cultural events, including those associated or incidental to resort purposes;
- (e) Marine facilities associated or incidental to resort purposes;
- (f) Parking; and
- (g) A use accessory to any of the foregoing permitted purposes.

31.2 *Zone Specifications*

31.2.1 Specifications for land use, buildings and structures shall be set out in a format as authorized by the Council. In particular, the Council may, by resolution, in accordance with appropriate and applicable governmental and/or industry standards and guidelines:

- (a) regulate the dimensions, siting and design of buildings and structures on land necessary and incidental to resort purposes, marine and tourism related activities;
- (b) regulate the dimensions, siting and design of resort, marine and tourism related facilities on water, including moorage of vessels to wharves, the placing or mooring of guide boats, tourist vessels, barges and the placing of breakwaters;
- (c) regulate the dimensions, siting and design of aircraft facilities such as helicopter pads and shelters necessary and incidental to resort, marine and tourism activities;
- (d) require that landscaping or screening be established around and for different resort, marine and tourism uses and activities;
- (e) require the pavement of roads and parking areas for purposes of resort, marine and tourism uses and activities;
- (f) require the preservation or dedication of natural water courses and construction of works for preservation and beautification purposes;

- (g) require that a certain area of land above the natural boundary of streams, rivers, lakes, or the ocean remain free of development; and
- (h) require provision of areas for play and recreation.

31.2.2 Where, in the opinion of Council, special conditions prevail with respect to the physical environment or with respect to building, design or siting considerations, the Council shall require prior to any approval and/or construction thereon:

- (a) A detailed description of the proposed land use, buildings and structures;
- (b) A site plan, showing all existing and proposed uses, siting, size, parking, density, height of buildings and structures, location of amenity areas and services; and
- (c) Any other relevant information that may be required from time to time by the Council.

PART IV – VARIANCES

32.0 VARIANCES

32.1 The owner or occupier of any land, building or structure affected by this Bylaw may apply to the Council for a variance from the provisions of this Bylaw, in respect of the land, building or structure, or use thereof.

33.0 VARIANCE APPLICATION

33.1 An owner or occupier of any land, building or structure affected by this Bylaw who applies for a variance pursuant to section 32.1 must set out in the application the reasons for the variance and submit detailed site plans, where applicable.

34.0 NOTICE OF HEARING, HEARING, RULES OF PROCEDURE AND DECISIONS

34.1 Within ninety (90) days of the filing of a properly completed application under sections 32 or 33, the Council shall hold a hearing with respect to the variance application.

34.2 At least fourteen (14) days prior to the hearing, the Zoning Administrator or other Authorized Person shall:

- (a) give notice to the applicant of the date, time and place of the hearing and informing the applicant that she / he and any other resident of the reserve has the right to appear at the hearing and to be heard in respect of the application; and
- (b) post in the Band Office a copy of the notice.

34.3 At the hearing, the Council shall:

- (a) provide the applicant with an opportunity to present evidence and to make oral or written submissions in support of the application; and
- (b) provide any resident, owner or occupier present at the hearing with an opportunity to be heard.

34.4 The Council may make rules of procedure governing the hearing of applications and shall keep records of its proceedings.

34.5 After it has heard all of the evidence and submissions, the Council shall meet in private to consider the application.

35.0 CRITERIA - MINOR VARIANCE

35.1 In determining whether an application for a minor variance should be granted, the Council shall take into consideration:

- (a) whether the minor variance is desirable for the appropriate development or use of the land, building or structure;
- (b) whether the general intent and purpose of this Bylaw and the official plan, if any, will be maintained; and
- (c) any other relevant information that may be required for these purposes.

36.0 CRITERIA – NON-CONFORMING USE

36.1 In determining whether an application for an extension or modification of a non-conforming use should be granted, the Council shall take into consideration:

- (a) whether the extension or modification is desirable for the appropriate development or use of the land, building or structure;
- (b) whether the general intent and purpose of this Bylaw and the official plan, if any, will be maintained; and
- (c) any other relevant information that may be required for these purposes.

37.0 CRITERIA – MAJOR VARIANCE

37.1 In determining whether an application for a major variance to provisions of this Bylaw should be granted, the Council shall take into consideration:

- (a) whether a major variance is desirable for the appropriate development or use of the land, building or structure;
- (b) whether the general intent and purpose of this Bylaw and the official plan, if any, will be maintained; and
- (c) any other relevant information that may be required for these purposes.

38.0 NOTICE OF DECISION

38.1 Within ten (10) days after the hearing, the Council shall render its decision on the application and shall give a written notice of its decision to the applicant which incorporates written reasons in support of its decision.

39.0 POSTING DECISION

39.1 Within five (5) days after disposing of the application, the Council shall post a notice as to its decision in the Band office.

PART V - ENFORCEMENT

40.0 NOTICE

40.1 All notices referred to herein or required to be given pursuant to this Bylaw shall be made in writing and shall be served either personally or sent by double registered mail, as follows:

TO: Mailing Address:
Economic Development Officer and Project Manager
TLOWITSIS TRIBE
Suite 106 1434 Island Highway
Campbell River, British Columbia, V9W 3C9

Office Address:
Economic Development Officer and Project Manager
TLOWITSIS TRIBE
141 Beech Street
Campbell River, British Columbia, V9W 5G4

AND TO: (THE OFFENDER)

40.2 Notice shall be deemed to have been given on the date of delivery if personally served or on the third day after mailing if sent by double registered mail.

41.0 ENFORCEMENT AND PENALTIES

41.1 Absent evidence to the contrary and subject to the laws of Canada and British Columbia:

- (a) A person who acts in contravention of any provision of this Bylaw or interferes with or obstructs an Authorized Person in the administration and enforcement of this Bylaw commits an offence.
- (b) Where an act or omission in contravention of this Bylaw continues for more than one (1) day, such act or omission shall be deemed to be a separate breach or infraction committed on each day during which it continues, and may be punished as such.

- (c) A person who commits an offence as provided herein is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment not exceeding thirty (30) days, or to both pursuant to section 81(r) of the *Indian Act*.

42.0 ENFORCEMENT AND FAILURE TO COMPLY

- 42.1 If a complaint of a civil nature is brought to the attention or notice of the Zoning Administrator or other Authorized Person, the Zoning Administrator or other Authorized Person is hereby authorized, absent evidence to the contrary and subject to the laws of Canada and British Columbia, to investigate the merits of such complaint.
- 42.2 If an alleged breach or infraction of this Bylaw is of a civil nature and is brought to the attention or notice of the Zoning Administrator or other Authorized Person, the Zoning Administrator or other Authorized Person shall provide written notice to the affected person of such allegation (the "Affected Person") within three (3) working days of receipt thereof, describing in such written notice the alleged breach or infraction to be cured or remedied.
- 42.3 The Affected Party shall have five (5) days following delivery of the written notice described in section 42.2 to provide evidence to the contrary or to take steps to cure or remedy the alleged breach or infraction.
- 42.4 If, after expiry of the five (5) day period described in section 42.3, the Affected Person has not provided evidence to the contrary or taken steps to cure or remedy the alleged breach or infraction, the Zoning Administrator or other Authorized Person shall make a written request to the Affected Person to enter upon and inspect the subject premises in respect of the alleged breach or infraction.
- 42.5 Three (3) days after delivery of the written request described in section 42.4, the Affected Person may provide express written authority for the Zoning Administrator or other Authorized Person to enter on and inspect the subject premises in respect of the alleged breach or infraction.
- 42.6 If, after the expiry of the three (3) day period described in section 42.5, the Affected Person has not provided evidence to the contrary or taken steps to cure or remedy the alleged breach or infraction and has failed to respond, refused or rejected the request to enter and inspect the subject premises in respect of the alleged breach or infraction, the Council may seek legal recourse in a court of competent jurisdiction to grant such right of entry and inspection.
- 42.7 If after a right of entry and inspection has been granted by a court of competent jurisdiction pursuant to section 42.6, the Zoning Administrator or other Authorized Person enters on and inspects the subject premises and determines that a breach or infraction of this Bylaw may have occurred, the Zoning Administrator or other Authorized Person shall provide the Affected Party with seven (7) days written notice of the alleged breach or infraction to be cured or remedied.
- 42.8 If, after the expiry of the seven (7) day notice period described in section 42.7, the Affected Person fails to provide evidence to the contrary or to cure or remedy the alleged breach or infraction, either party may seek alternate dispute resolution or mediation of the matter and, in such event, each party shall bear their own costs in connection with such proceeding and any decision arising therefrom shall be binding upon all parties.

42.9 If, after the expiry of the seven (7) day notice period described in section 42.7, the Affected Party fails to provide evidence to the contrary or to cure or remedy the alleged breach or infraction or to pursue alternate dispute resolution or mediation pursuant to section 42.8, the Council may seek legal recourse in a court of competent jurisdiction pursuant to sections 81(2) and (3) of the *Indian Act*.

42.10 For purposes of civil proceedings under this Bylaw, absent evidence to the contrary and subject to the laws of Canada and British Columbia:

(a) The owner or occupier of a premise may be deemed to be the person responsible for any civil breach or infraction of this Bylaw on such premises; and

(b) Joint owners or occupiers of any premises may be deemed to be jointly and severally liable for any civil breach or infraction of this Bylaw.

43.0 AMENDMENT / REPEAL

43.1 An application to amend or repeal this Bylaw shall be made in writing and in the same manner as the enactment of this Bylaw, including all special actions, approvals or prerequisites necessary for the original Bylaw.

44.0 SEVERABILITY

44.1 If any section, subsection, sentence, clause or phrase of this Bylaw is for any reason held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Bylaw.

45.0 MISCELLANEOUS

45.1 Wherever the singular is used in this Bylaw, the same shall be construed as meaning the plural or vice versa where the context so requires.

45.2 The headings of the sections and subsections of this Bylaw are inserted for convenience of reference only and shall not affect the construction or interpretation of this Bylaw in any way.

45.3 The Schedules attached to this Bylaw shall be construed as forming a fundamental part of this Bylaw.

45.4 This Bylaw shall be construed in accordance with the laws of Canada and British Columbia where the context so requires.

45.5 No section, subsection, sentence, clause or phrase of this Bylaw shall be construed as restricting or limiting the application of the Criminal Code of Canada.

46.0 DATE OF FORCE OF BYLAW

46.1 This Bylaw shall come into force and effect forty (40) days after the original of such Bylaw is forwarded to the Minister of Indian and Northern Affairs Canada unless it is disallowed by the Minister within the said forty (40) day period, but the Minister may

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declare the Bylaw in force at any time before the expiration of the forty (40) day period pursuant to section 82(2) of the *Indian Act*.

Be it known that this Bylaw entitled, "Tlowitsis Zoning Bylaw No. 2004-003" is hereby enacted by the Tlowitsis Tribe Council at a duly convened meeting of the said Council held on the 17th day of January, 2005.

The Bylaw is consented to by the following members of the Council:



JOHN M. SMITH, CHIEF



THOMAS SMITH, COUNCILLOR



GEORGE TAYLOR, COUNCILLOR

being the majority of those members of the Tlowitsis Tribe Band Council present at the aforesaid meeting of the Band Council. A quorum of the Tlowitsis Tribe Council is set at two (2) members.

I, John M. Smith, Chief of the Tlowitsis Tribe, do hereby certify that an original of the foregoing Bylaw was forwarded to the Minister of Indian and Northern Affairs pursuant to subsection 82(1) of the *Indian Act*, this 17th day of January, 2005.



JOHN M. SMITH, CHIEF



KERRI FARRINGTON, WITNESS