

TOQUAHT NATION GOVERNMENT

ECONOMIC DEVELOPMENT ACT

TNS 3/2012



OFFICIAL CONSOLIDATION – CURRENT TO SEPTEMBER 16, 2015

This is a certified true copy of the consolidated Economic Development Act TNS 3/2012,
Current to September 16, 2015

Date: October 8th, 2015

Kristen Gilmore

Signed: _____
Law Clerk

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PREAMBLE

The Toquaht Nation believes that a healthy and prosperous future requires the Toquaht Nation and its citizens to pursue economic development opportunities both on and off of Toquaht lands and that such economic development will foster a safer, stronger, healthier, more financially secure, more self-reliant and more sustainable community.

While recognizing that government often is better equipped to initiate economic development on a larger scale, we believe that economic development is best achieved independent of political influence and considerations.

This independence, however, is not absolute. Those who carry out economic development on behalf of the Toquaht Nation or on Toquaht lands must ensure that economic development is conducted in a way that is socially, economically and environmentally sustainable as well as being transparent, accountable and carried out in accordance with applicable law.

The Toquaht Nation adopts this Act based on these values.

TOQUAHT NATION GOVERNMENT
ECONOMIC DEVELOPMENT ACT TNS 3/2012
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PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Economic Development Act.

Executive oversight

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

Application

1.3 This Act is enacted under sections 13.11.1, 13.12.1 and 13.12.2 of Chapter 13 Governance of the Maa-nulth Treaty and applies to all Toquaht corporations and Toquaht businesses.

Interpretation

1.4 In this Act,

“annual plan” has the meaning given to that expression in the governance and fiscal agreement;

“business mandate” means the nature of business the Toquaht business is mandated to engage in under section 3.1;

“business plan” means a business plan prepared in accordance with section 3.4;

“economic development office” and “economic development officer” means the office established under section 2.7 or the individual appointed to hold that office;

“economic development plan” means the plan and any updates to that plan approved by Council in accordance with section 2.1(b);

“feasibility study” means a feasibility study prepared in accordance with section 3.3;

“governance and fiscal agreement” means the agreement entered into by the Executive, the holdings limited partnership and each operating limited partnership in accordance with section 4.1;

“holdings board” means the board of directors of the holdings general partner;

“holdings general partner” means the general partner of the holdings limited partnership;

“holdings limited partnership” means the Toquaht Holdings Limited Partnership registered under the Partnership Act (British Columbia) under registration number 553540-11;

“operating board” means the board of directors of an operating general partner;

“operating general partner” means the general partner of an operating limited partnership;

“operating limited partnership” means a limited partnership registered under the Partnership Act (British Columbia) and

- (a) the interest of which is 51% or more owned legally and beneficially by the holdings limited partnership, and
- (b) is identified in Column 1 of the table in Schedule 1 as a limited partnership, other than the holdings limited partnership;

“Toquaht business” means the holdings limited partnership, the general partner of the holdings limited partnership, each operating limited partnership, the general partner of each operating limited partnership and any other Toquaht corporation which becomes a party to the governance and fiscal agreement and the applicable business mandate for each of them.

Economic development mission

1.5 The mission of Toquaht Nation economic development is to

- (a) develop diverse, sustainable and profitable businesses for Toquaht Nation and Toquaht citizens that respect the history, culture and traditions of the Toquaht Nation and the environment in which we live,
- (b) actively seek, secure and promote economic initiatives that will enhance the quality of life and prosperity of Toquaht Nation and Toquaht citizens, and
- (c) assist in building the capacity of Toquaht citizens to be successful entrepreneurs.

Economic development values

1.6 To fulfil its purpose, this Act is intended to uphold the following values:

- (a) Toquaht businesses will, to the greatest extent possible, be self-sufficient and independent of the financial resources of the Toquaht Nation in its operations;
- (b) Toquaht businesses will, to the greatest extent possible having regard to the values stated in this section, operate profitably and in a manner that provides a reasonable return on the investment the Toquaht Nation has made in the Toquaht business;

- (c) Toquaht businesses will be allowed to operate free from political interference;
- (d) Toquaht businesses will operate transparently and be held accountable to their owners, the Toquaht Nation;
- (e) Toquaht businesses will operate within and comply with the governance and fiscal agreement, the applicable annual plan and all applicable laws;
- (f) Toquaht businesses will engage in economic development that is socially, economically and environmentally sustainable and that respects our history and the heritage, culture and traditions of our people, our Hahoulthee (traditional territory) and the environment within which we live;
- (g) Toquaht businesses will use commercially reasonable efforts to maximize the employment and contracting opportunities of other Toquaht businesses, businesses owned or operated by Toquaht citizens and Toquaht citizens, access training opportunities for Toquaht citizens in order that they be qualified to accept such employment and obtain practical economic benefits for the Toquaht Nation and Toquaht citizens;
- (h) Toquaht businesses will institute and maintain an employment policy governed by the principle of preferential hiring of Toquaht citizens, subject to demonstrable levels of adequate skills and capabilities, to the greatest extent reasonably possible, but consistent with all applicable laws in effect from time to time and with optimum efficiency in the operation of the Toquaht business;
- (i) Without limiting subsections (g) and (h), each Toquaht business will:
 - (i) where the Toquaht business is contracting for work or services, engage other Toquaht businesses or other businesses owned or operated by Toquaht citizens, to provide such work or services, subject to demonstrable levels of adequate skills and capabilities and the provision of that work or service on commercially reasonable terms;
 - (ii) work closely with its clients, contractors and suppliers to maximize employment and economic opportunities for Toquaht businesses, businesses owned or operated by Toquaht citizens and Toquaht citizens who are tradespersons and contractors with demonstrable levels of adequate skills and capabilities; and
 - (iii) to the extent that there are training programs which are sponsored directly or indirectly by a Toquaht business or in which the Toquaht business is participating in some manner and which might be of benefit to other Toquaht businesses, businesses owned or operated by Toquaht citizens or Toquaht citizens, attempt to secure such trainee spaces for suitably qualified Toquaht citizens as may be available.

PART 2 - ECONOMIC DEVELOPMENT ADMINISTRATION

Economic development oversight

- 2.1 (a) Subject to subsection (b), primary oversight responsibility for economic development is vested in the Executive.
- (b) On or before June 30, 2013 and on or before June 30 of every fifth year thereafter, Council must, by resolution, approve an economic development plan recommended by the Executive under section 2.2(d).

Role of the Executive

- 2.2 Without limiting section 2.1 and in accordance with this Act, the Executive's oversight responsibility for economic development includes the following:
- (a) recommending to Council which new business opportunities should be approved in principle and included in the economic development plan, after considering the recommendation of the economic development committee made under section 2.5(d);
- (b) determining which new business opportunities
- (i) should be implemented and owned or operated by an existing or new operating limited partnership on behalf of the Toquaht Nation,
- (ii) should be left to be developed and owned or operated by a Toquaht citizen and, if applicable, which Toquaht citizen should be offered the opportunity, or
- (iii) should not be implemented or pursued
- after considering the recommendation of the economic development committee made under section 2.5(e);
- (c) negotiating rights under the Maa-nulth Treaty that may impact on economic development for the Toquaht Nation or Toquaht citizens;
- (d) reviewing and, if acceptable, recommending for approval by Council the proposed economic development plan prepared in accordance with section 2.5(b);
- (e) reviewing and, if acceptable, approving the annual financial statements of the holdings limited partnership and the operating limited partnerships, after considering the comments of the economic development committee made under section 2.5(h); and

- (f) approving the terms of, and entering into, any agreements on behalf of the Toquaht Nation that are necessary or desirable to establish new business relationships with other persons in order to pursue new business opportunities to be owned or operated by an existing or new operating limited partnership.

Economic development committee established and mandate

- 2.3**
- (a) The economic development committee is established as a standing committee of Council.
 - (b) The mandate of the economic development committee is to provide information to assist the Executive in fulfilling its oversight responsibilities for economic development and reporting to Council on economic development activities of the Toquaht Nation.

Composition and operations

- 2.4**
- (a) The economic development committee is composed of
 - (i) the member of the Executive appointed to hold the lands, public works and environmental protection portfolio,
 - (ii) the director of lands, public works and resources, and
 - (iii) not less than three and not more than five other individuals appointed by Council upon recommendation of the Tyee Ha'wilt who
 - (A) are not members of Council, and
 - (B) bring particular expertise or other considerations to the economic development committee.
 - (b) For certainty, the economic development committee must include a majority of individuals who are not members of Council.
 - (c) The economic development officer is a non-voting member of the economic development committee and must not be counted for the determination of quorum or appointed to the holdings board or an operating board but for all other purposes is considered a full member of the economic development committee.
 - (d) Subject to subsections (e), (f) and (g), the term of office for an individual appointed to the economic development committee under subsection 2.4(a)(iii) is four years or until he or she resigns, is deceased or otherwise ceases to be a member of the economic development committee in accordance with this section.
 - (e) In order to provide for staggered terms of office, Council may appoint up to two of the individuals appointed to the economic development committee under

subsection 2.4(a)(iii) for a term of less than four years but that appointment must not be for less than two years.

- (f) Council may only remove an individual appointed to the economic development committee under subsection 2.4(a)(iii) in one or more of the same circumstances in which an individual may be removed from an operating board.
- (g) A dispute regarding the removal of an individual from the economic development committee under subsection (f) must be dealt with in the same manner as a dispute regarding the removal of an individual from an operating board, with the necessary changes required and so far as applicable.
- (h) The economic development committee must meet at least four times each year.

Duties and powers

2.5 Without limiting section 2.3, the duties and powers of the economic development committee include the following:

- (a) advising the Executive on negotiations involving rights under the Maa-nulth Treaty that may impact on economic development for the Toquaht Nation or Toquaht citizens;
- (b) developing, in conjunction with the holdings board and with the assistance of the economic development officer, a proposed economic development plan in accordance with section 3.2 for review by the Executive and approval by Council;
- (c) providing direction to the economic development officer concerning the researching and development of new business opportunities to be owned or operated by an existing or new operating limited partnership or by a Toquaht citizen;
- (d) reviewing feasibility studies and recommending to the Executive which new business opportunities should be approved in principle by Council and included in the economic development plan;
- (e) reviewing business plans and recommending to the Executive which new business opportunities
 - (i) should be implemented and owned or operated by an existing or new operating limited partnership on behalf of the Toquaht Nation,
 - (ii) should be left to be developed and owned or operated by a Toquaht citizen and, if applicable, which Toquaht citizen should be offered the opportunity, or

- (iii) should not be implemented or pursued.
- (f) providing direction to the economic development officer regarding negotiating new business relationships with other persons as may be necessary or desirable in order to pursue new business opportunities approved by the Executive under section 2.2(b) to be owned or operated by an existing or new operating limited partnership and the terms of any agreements that are necessary or desirable to establish those new business relationships for approval by the Executive under section 2.2(f);
- (g) communicating with and providing appropriate information to Toquaht citizens concerning the economic development of the Toquaht Nation, Toquaht businesses and the economic development plan; and
- (h) reviewing and providing comments to the Executive on the annual financial statements of the holdings limited partnership and the operating limited partnerships.

Accountability

- 2.6**
- (a) The economic development committee must report to Council by oral or written report at meetings of Council when requested by the Tyee Ha'wilt.
 - (b) The economic development committee must report to the Executive by oral or written report at meetings of the Executive when requested by the member of the Executive holding the lands, public works and environmental protection portfolio.

Economic development office established

- 2.7**
- (a) The office of economic development is established as a division of the Toquaht administration.
 - (b) The director of operations may appoint an individual to hold the office of economic development.
 - (c) If appointed, the economic development officer reports to the director of operations.
 - (d) If the director of operations has not appointed an individual to hold the office of economic development or if the office of economic development is vacant, the director of lands, public works and resources must perform the duties and may exercise the powers of the economic development officer.

Duties of the economic development officer

- 2.8** The economic development officer must perform the following duties and may exercise the following powers:

- (a) manage the economic development office;
- (b) at the request of the chair of the economic development committee, report on the activities of the economic development office by oral or written report at meetings of the
 - (i) People's Assembly,
 - (ii) Council, and
 - (iii) Executive;
- (c) provide the economic development committee with information and technical or logistical support that may be necessary or desirable in order for the economic development committee to advise the Executive on negotiations involving rights under the Maa-nulth Treaty that may impact on economic development for the Toquaht Nation or Toquaht citizens;
- (d) assist the operating limited partnerships in developing business relationships with other persons on behalf of the Toquaht Nation;
- (e) identify, research and report to the economic development committee on any new business opportunities to be developed and owned or operated by an existing or new operating limited partnership or by a Toquaht citizen;
- (f) prepare feasibility studies and business plans as directed by the economic development committee;
- (g) negotiate, as directed by the economic development committee, new business relationships with other persons as may be necessary or desirable in order to pursue new business opportunities approved by the Executive under section 2.2(b) to be owned or operated by an existing or new operating limited partnership and the terms of any agreements that are necessary or desirable to establish those new business relationships for approval by the Executive under section 2.2(f);
- (h) identify and apply for grants or funding available from Canada, British Columbia or other persons for first nations economic development, for other types of economic development or for developing business opportunities, as directed by the director of operations;
- (i) assist the holdings board and the operating boards, in accordance with the governance and fiscal agreement, to develop appropriate governance and fiscal policies and procedures and director, officer and committee terms of reference for the holdings general partner and the operating general partners;

- (j) assist the holdings board and the operating boards, in accordance with the governance and fiscal agreement, to acquire necessary operational infrastructure for the holdings general partner and the operating general partners;
- (k) assist the economic development committee and the holdings board in developing a proposed economic development plan for review by the Executive and approval by Council;
- (l) develop and maintain a board of directors operational manual where the applicable constating documents of the Toquaht corporation, the applicable partnership agreement, the applicable operating limited partnership's business mandate, the applicable governance and fiscal policies and procedures and applicable director, officer and committee terms of reference prepared under paragraph (i) are deposited and made available to the holdings board and each operating board, as applicable;
- (m) provide the applicable Toquaht citizen, if any, with information concerning any new business opportunities identified under paragraph (e) that the Executive has determined will not be implemented and owned or operated by an existing or new operating limited partnership and has ordered under section 3.5(a)(iii) that the new business opportunity is better suited to be owned or operated by a Toquaht citizen;
- (n) provide Toquaht citizens with business development and entrepreneurship information;
- (o) provide Toquaht citizens with information concerning business planning and financing strategies for businesses to be developed, owned or operated by a Toquaht citizen; and
- (p) perform any additional duties or exercise any additional powers assigned to the economic development officer
 - (i) under this or any other Toquaht enactment, or
 - (ii) by the director of operations.

Delegation authority

- 2.9** (a) Upon the approval of the director of operations, the economic development officer may delegate, in writing, the performance of any of the economic development officer's duties or the exercise of any of economic development officer's powers to
- (i) a Toquaht director,
 - (ii) a Toquaht government employee, or

- (iii) an independent contractor of the Toquaht Nation.
- (b) Despite the delegation of any duties or powers under subsection (a), the economic development officer remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately.

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PART 3 - TOQUAHT BUSINESS PLANNING

Business mandates

- 3.1** (a) The business mandate for each Toquaht business named in Column 1 of the table in Schedule 1 is set out in Column 3 of the table in Schedule 1 next to its name and registration number.
- (b) A Toquaht business must only engage in activities that
- (i) reasonably fall within its business mandate or that are necessarily ancillary or incidental to that business mandate,
 - (ii) are contemplated in its annual plan or are necessarily ancillary or incidental to the activities contemplated in that annual plan,
 - (iii) are strictly in compliance with the governance and fiscal agreement, and
 - (iv) are substantially in compliance with all applicable laws.

Economic development plan

- 3.2** (a) The economic development plan approved by Council under section 2.1(b) must contain the following:
- (i) a communications plan on how the economic development committee will inform Toquaht citizens regarding the current status of economic development for the Toquaht Nation and its Toquaht businesses and the strategic plan for economic development for the following five years;
 - (ii) a statement concerning the strategic plan for economic development for the Toquaht Nation for the following five years and, having regard to the mission set out in section 1.5 and the values set out in section 1.6, the goals and objectives hoped to be achieved by the Toquaht Nation and Toquaht businesses in that time period.
 - (iii) a report from each operating limited partnership setting out the current status of
 - (A) how that operating limited partnership is fulfilling its business mandate,
 - (B) the financial results of that operating limited partnership's operations for the preceding fiscal year,

- (C) the number of Toquaht citizens employed by that operating limited partnership and the full time equivalent of their positions,
 - (D) the number of contracting and training opportunities provided by that limited partnership to other Toquaht businesses, businesses owned or operated by Toquaht citizens and to Toquaht citizens, and
 - (E) how the information provided under subparagraphs (A) to (D) compares to the information reported for those subparagraphs in the previous economic development plan for that operating limited partnership;
- (iv) the plan of each operating limited partnership for the following five years on how it intends to
- (A) fulfill its business mandate,
 - (B) increase its revenues and profitability,
 - (C) increase the number of Toquaht citizens employed by that operating limited partnership and increase the full time equivalent of those positions; and
 - (D) increase the number of contracting and training opportunities provided by that limited partnership to other Toquaht businesses, businesses owned or operated by Toquaht citizens and to Toquaht citizens;
- (v) a brief overview of each new business opportunity
- (A) for which a feasibility study has been prepared, and
 - (B) which Council, after considering the recommendation of the Executive made under section 2.2(a), approves in principle;
- (vi) the priority of each new business opportunity referred to in paragraph (v); and
- (vii) a brief overview of each new business opportunity currently being researched, or which should be researched, by the economic development officer.
- (b) The economic development plan must be updated by the economic development committee, in conjunction with the holdings board and with the assistance of the economic development officer, at least on an annual basis and those updates be

reviewed by the Executive and approved by Council, after considering any recommendation of the Executive concerning the update.

Feasibility study

- 3.3** (a) The economic development committee may, by resolution, direct the economic development officer to prepare a feasibility study for a new business opportunity.
- (b) A feasibility study must include the following:
- (i) an assessment of the new business opportunity as compared to other new business opportunities in terms of likely return on investment, risks and sustainability;
 - (ii) a description of the purpose of the new business opportunity, the goods and services to be offered and the potential location of the new business opportunity;
 - (iii) an overview of the market for the goods and services to be offered, including target consumers, competitors and estimated market share;
 - (iv) an estimate of the capital required to establish and maintain the sustainability of the new business opportunity and the planned source of that capital, including, where appropriate, potential business partners;
 - (v) an overview of the possible risks facing the new business opportunity and possible action that could be taken to mitigate those risks; and
 - (vi) a recommendation regarding the viability of the new business opportunity.
- (c) A direction under subsection (a) may include a requirement to consult with one or more operating boards when preparing the feasibility study.

Business plan

- 3.4** (a) If a new business opportunity has been approved in principle by Council and included in the economic development plan, the economic development committee may, by resolution, direct the economic development officer to prepare a comprehensive business plan for that new business opportunity.
- (b) A business plan must include the following:
- (i) an assessment of the new business opportunity as compared to other new business opportunities identified in the economic development plan in terms of likely return on investment, risks and sustainability;

- (ii) a description of the purpose of the new business opportunity, the goods and services to be offered and the potential location of the new business opportunity;
 - (iii) a comprehensive analysis of the market for the goods and services to be offered, including target consumers, competitors and estimated market share;
 - (iv) the capital required to establish and maintain the sustainability of the new business opportunity and the planned source of that capital, including, where applicable, the business partners that have expressed interest in participating in the new business opportunity and the capital they will contribute;
 - (v) a description of the corporate structure for the new business opportunity;
 - (vi) an estimate of the profit or loss of the new business opportunity for the first five years, including projected financial statements and estimates of return on investment;
 - (vii) an assessment of the possible risks facing the new business opportunity and possible action that should be taken to mitigate those risks; and
 - (viii) a description of any other requirements necessary to begin or complete the new business opportunity such as the purchase, leasing, surveying, registration or rezoning of land or approvals from another government.
- (c) A direction under subsection (a) may include a requirement to consult with one or more operating boards when preparing the business plan.

Approval of new Toquaht businesses

- 3.5** (a) If a new business opportunity has been approved in principle by Council and included in the economic development plan and a business plan has been prepared in relation to that new business opportunity, after considering that business plan, including the estimated return on investment, and the recommendation of the economic development committee made under section 2.5(e), the Executive may, by Order, determine that the new business opportunity
- (i) be implemented, owned and operated by a new operating limited partnership and, if so ordered, that Order must include the business mandate of that new operating limited partnership,
 - (ii) be implemented, owned and operated by an existing operating limited partnership and, if so ordered, that Order amends the business mandate of that existing operating limited partnership by adding a brief description of

the nature of the new business opportunity to the existing business mandate of that operating limited partnership, or

- (iii) should be left to be developed and owned or operated by a Toquaht citizen and may, if applicable, indicate which Toquaht citizen should be offered the opportunity.
- (b) An Order made under subsection (a)(i) is deemed to amend the table in Schedule 1 by
 - (i) adding to the table in Schedule 1 an additional row with
 - (A) the name of the new operating limited partnership in Column 1 of that new row,
 - (B) the registration number of the new operating limited partnership in Column 2 of that new row, and
 - (C) the business mandate of the new operating limited partnership ordered by the Executive under subsection (a)(i) in Column 3 of that new row, and
 - (ii) adding to the table in Schedule 1 a second additional row with
 - (A) the name of the new operating general partner in Column 1 of that new row,
 - (B) the registration or incorporation number of the new operating general partner in Column 2 of that new row, and
 - (C) the business mandate of the new operating general partner ordered by the Executive under subsection (a)(i) in Column 3 of that new row.
- (c) An Order made under subsection (a)(ii) is deemed to amend the table in Schedule 1 by adding the brief description of the nature of the new business opportunity as ordered by the Executive under subsection (a)(ii) to the existing business mandate of that operating limited partnership in Column 3 next to the name and registration number of that operating limited partnership.

Implementation of business plans

- 3.6** (a) The applicable operating limited partnership will, to the greatest extent possible, implement any new business opportunity approved by the Executive under section 3.5 to be owned or operated by that operating limited partnership in accordance with the business plan for that new business opportunity.

- (b) The annual plan for each operating limited partnership must include a description of any anticipated material variations to any applicable business plan for that operating limited partnership as it relates to the period covered by that annual plan.
- (c) The reporting requirements contemplated in section 4.2(h) must also include a requirement that each operating limited partnership report to the holdings limited partnership on any material variations to any applicable business plan for that operating limited partnership as it relates to the period covered by the report.

PART 4 - GOVERNANCE AND FISCAL AGREEMENT

Executive authority

- 4.1** (a) Subject to section 4.2, the Executive must, by regulation, enter into a governance and fiscal agreement on behalf of the Toquaht Nation, as represented by the Toquaht government, with the holdings limited partnership, as represented by the holdings general partner, and each operating limited partnership, as represented by each applicable operating general partner.
- (b) Any amendment to the governance and fiscal agreement requiring the approval of the Toquaht Nation may be approved by the Executive, by Order.

Terms of agreement

- 4.2** The governance and fiscal agreement must contain terms addressing the following matters:
- (a) the process by which new operating limited partnerships will be added as a party to, and be bound by the terms of, the governance and fiscal agreement;
 - (b) the composition of, criteria for appointment and term of each member of each operating board;
 - (c) the circumstances under which a member of an operating board can be removed from office;
 - (d) major business decisions of Toquaht businesses that cannot be made without the approval of the Executive;
 - (e) major business decisions of the operating limited partnerships that cannot be made without the approval of the holdings board;
 - (f) annual planning requirements for Toquaht businesses;
 - (g) reporting requirements that require the holdings limited partnership to report to the Executive on its financial and operational circumstances no less than quarterly; and
 - (h) reporting requirements that require each operating limited partnership to report to the holdings limited partnership on its financial and operational circumstances no less than monthly.

Periodic review

- 4.3** At least 90 days, but no more than 180 days, before general voting day in a regular election is held in accordance with the Election Act, the economic development committee must
- (a) review this Act and may provide Council with its recommendation on any amendments to this Act that may be necessary or desirable for the better governance or more efficient operation of Toquaht Nation's economic development, and
 - (b) review the Governance and Fiscal Agreement Regulation, including Schedule 1 to that regulation, and may provide the Executive with its recommendation on any amendments to that regulation or schedule that may be necessary or desirable for the better governance or more efficient operation of Toquaht Nation's economic development.

PART 5 - PROHIBITIONS

Definitions

5.1 (a) In this Part

“interfere with” means to interfere with or attempt to influence, either directly or indirectly, by promises, threats or by any other means, including

- (i) to offer to pay, give, lend or procure an inducement, or give a reward or other benefit, to or for any person to have an operational decision made, not made, or be made in a certain manner, or
- (ii) to intimidate, impede, attempt to persuade, punish or attempt to compel by threats, abduction, duress or fraudulent means an operational decision to be made, not made, or be made in a certain manner;

“operational decision” means a day-to-day management or administrative decision typically made by management of a trade or business engaged in primarily for the purposes of profit including

- (i) the hiring, promotion, demotion, remuneration, discipline or termination of personnel,
- (ii) the assignment of duties or powers to personnel;
- (iii) the acquisition of products or services in an amount that does not exceed the limits set out in the governance and fiscal agreement for the acquisition of products or services by a Toquaht business;
- (iv) the acquisition of capital assets in an amount that does not exceed the limits set out in the governance and fiscal agreement for the acquisition of capital assets by a Toquaht business;
- (v) the disposition of capital assets or sale of products in the normal course of business in an amount that does not exceed the limits set out in the governance and fiscal agreement for the disposition of capital assets or sale of products in the normal course of business by a Toquaht business;
- (vi) the provision of services in the normal course of business that are within the business mandate of the Toquaht business;
- (vii) the acquisition of credit facilities or loans in an amount that does not exceed the limits set out in the governance and fiscal agreement for the acquisition of credit facilities or loans by a Toquaht business;

(viii) the opening of accounts at a bank or credit union in accordance with the governance and fiscal agreement; and

(ix) the preparation of an annual plan;

“senior member of government” means a Toquaht government representative, the director of operations, a Toquaht director, a member of the economic development committee and, for certainty, the economic development officer.

- (b) For certainty, “interfere with” and “operational decision” do not include a decision or the making of a decision, advice or the giving of advice, approve or giving approval, not approve or withholding approval, or a recommendation or the making of a recommendation that forms part of, or is necessarily ancillary or incidental to, any duty or power of a senior member of government given under this Act, any other Toquaht enactment or the governance and fiscal agreement provided that duty is performed or power is exercised in good faith and for a purpose other than to interfere with an operational decision.

Separation of politics and business

- 5.2** A senior member of government must not interfere with an operational decision of a Toquaht business or a decision made by an officer, manager or employee of a Toquaht business made within the scope of their authority in the normal course of business.

Prohibited and permitted businesses

- 5.3** (a) Except as otherwise provided in this Act or a regulation under this Act, a Toquaht institution must not
- (i) carry on a business as a proprietor or trustee,
 - (ii) acquire any interest in a partnership as a general partner, or
 - (iii) act in the capacity of trustee in respect of any property used or held in the course of carrying on a business.
- (b) If approved by the Executive by Order, a Toquaht institution may engage in a business that
- (i) is necessarily ancillary or incidental to the provision of programs, services or other functions of government,
 - (ii) is not a trade or business engaged in primarily for the purposes of profit and, in the opinion of the Executive at any particular or future time, cannot result in any material liability or otherwise expose the property or resources of the Toquaht Nation to any material risk, or

- (iii) derives income solely because of granting a lease or licence in, or in respect of,
 - (A) an interest in, or licence in relation to, Toquaht lands or resources on or under Toquaht lands,
 - (B) any right of the Toquaht Nation referred to in Chapter 10 Fisheries of the Maa-nulth Treaty, or
 - (C) any other property of the Toquaht Nation.

TOQUAHT NATION GOVERNMENT
ECONOMIC DEVELOPMENT ACT TNS 3/2012
OFFICIAL CONSOLIDATION - CURRENT TO SEPTEMBER 16, 2015

PART 6 - GENERAL PROVISIONS

Regulations

- 6.1 The Executive may make regulations which it considers necessary or advisable for the purposes of this Act.

Offences

- 6.2 (a) A Toquaht business that contravenes section 3.1(b) commits an offence and is liable, on summary conviction, to a fine not exceeding \$10,000.
- (b) A director or officer of a Toquaht business that knowingly authorizes an action of a Toquaht business that contravenes section 3.1(b) commits an offence and is liable, on summary conviction, to a fine not exceeding \$1,000.
- (c) An individual who contravenes section 5.2 commits an offence and is liable, on summary conviction, to a fine not exceeding \$1,000.

Transition

- 6.3 Each limited partnership and corporation listed in Column 1 of the table in Schedule 1 as of the date this Act comes into force is a Toquaht business for purposes of this Act and has the business mandate set out in Column 3 of the table in Schedule 1 next to its name and registration number.

Amendments

- 6.4 (a) Part 17 of the Council Rules of Order and Procedure Act is repealed.
- (b) The Council Rules of Order and Procedure Act is amended in section 14.1 by deleting subsections (i) to (ii) and replacing them with the following:
- “(i) the finance portfolio;
- (ii) the community services portfolio;
- (iii) the lands, public works and environmental protection portfolio; and
- (iv) the resource harvesting portfolio.”
- (c) The Environmental Protection Act is amended in section 1.2 by deleting the words “the lands, public works and resources portfolio” and replacing them with “the lands, public works and environmental protection portfolio”.

- (d) The Land Act is amended in section 1.2 by deleting the words “the lands, public works and resources portfolio” and replacing them with “the lands, public works and environmental protection portfolio”.
- (e) The Planning and Land Use Management Act is amended in section 1.2 by deleting the words “the lands, public works and resources portfolio” and replacing them with “the lands, public works and environmental protection portfolio”.
- (f) The Resources Harvesting Act is amended in section 1.2 by deleting the words “the lands, public works and resources portfolio” and replacing them with “the resource harvesting portfolio”.
- (g) The Government Act is amended by deleting the definition of “Chaa-maa-taa” in section 1.4 and the Interpretation Act is amended by inserting the following definition in section 3.3, immediately following the definition of “Canada Post office”:

““Chaa-maa-taa” means the second hereditary chief as referred to in section 2.4(c) of the Constitution;”.
- (h) The definition of “economic development committee” in section 3.3 of the Interpretation Act is amended by deleting the words “the Council Rules of Order and Procedure Act” and replacing them with the words “section 2.3 of the Economic Development Act”.
- (i) The Executive may, by Order, amend the content of Schedule 1 by adding or deleting information the Executive considers necessary or advisable to more accurately identify a Toquaht business or reflect its business mandate.

Commencement

6.5 This Act comes into force on the date it is enacted.

SCHEDULE 1 – TOQUAHT BUSINESSES

Column 1 Toquaht Business	Column 2 Registration No.	Column 3 Business Mandate
Toquaht Holdings Limited Partnership	553540-11	Holding interests in operating limited partnerships.
Toquaht Holdings Ltd.	BC0906615	Acting as the general partner in Toquaht Holdings Limited Partnership.
Toquaht Management Limited Partnership	553537-11	Engage in rental of office and storage space, capital asset ownership and/or management, and administrative, advisory and utilities services.
Toquaht Management Ltd.	BC0196181	Acting as the general partner in Toquaht Management Limited Partnership.
Toquaht Developments Limited Partnership	553532-11	Engage in forestry related ventures.
Toquaht Developments Ltd.	BC0426891	Acting as the general partner in Toquaht Developments Limited Partnership.
Toquaht Marina and Campground Limited Partnership	553544-11	Engage in marina and campground development and services.
Toquaht Marina and Campground Ltd.	BC0906636	Acting as the general partner in Toquaht Marina and Campground Limited Partnership.
Toquaht Enterprises Limited Partnership	553531-11	Engage in forestry related joint ventures.
Toquaht Enterprises Ltd.	BC0415289	Acting as the general partner in Toquaht Enterprises Limited Partnership.
Barkley Sound Shellfish Limited Partnership	553535-11	Engage in fisheries and aquaculture operations.
Barkley Sound Shellfish Ltd.	BC0460404	Acting as the general partner in Barkley Sound Shellfish Limited Partnership.
Toquaht Aquaculture Enterprises Inc.	BC0893413	Engage in closed-containment aquaculture on Toquaht lands.

LEGISLATIVE HISTORY

Economic Development Act TNS 4/2015 enacted September 16, 2015

Amendments

Section	Amendment	In Force
Schedule 1	TNO 1/2012, s. 1.3	September 11, 2012
Schedule 1	TNO 1/2013, s. 1.3	November 12, 2013
Schedule 1	TNO 2/2015, s. 1.3	August 13, 2015
2.4(a)(i)(iii)	TNS 4/2015, s. 3.1(a)	September 16, 2015
2.4(c)	TNS 4/2015, s. 3.1(b)	September 16, 2015
4.3	TNS 4/2015, s. 3.1(c)	September 16, 2015

Amending Acts:

TNS 4/2015 Miscellaneous Amendments Act No. 2 enacted September 16, 2015

Regulations:

TNR 1/2012 Governance and Fiscal Agreement Regulation enacted September 11, 2012

Orders:

TNO 1/2012 Executive Order regarding Toquaht Management Limited Partnership enacted September 11, 2012

TNO 1/2013 Executive Order #2 regarding Toquaht Management Limited Partnership enacted November 12, 2013

TNO 2/2015 Executive Order regarding Toquaht Management Limited Partnership enacted August 13, 2015