



# TSAWOUT FIRST NATION

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## M E M O R A N D U M

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**TO:** Tsawout Members

**FROM:** Gwen Underwood, Lands Manager  
Tsawout First Nation/Tsawout Land Management Committee

**DATE:** December 19, 2012

**Re:** Land Code Amendments Summary for Voter's Package

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### I. BACKGROUND AND PURPOSE OF THIS MEMO

In the course of “operationalizing” the Tsawout Land Code, we have observed that amendments to the Land Code are required to clean up wording in the Land code that does not leave us open to legal challenges; and to propose changes that clearly set out how the Tsawout Lands Management Committee and Sub-Committee is appointed.

The Purpose of this memo is to summarize the amendments to the Land Code for the vote taking place on February 21, and 22 2013. We hope you as a member will support the changes with a *YES vote*. If you have any questions in relation to the proposed amendments please feel free to contact me.

### II. PROPOSED AMENDMENTS TO THE TSAWOUT LAND CODE

In each section that we are amending, we provide a brief explanation of the proposed amendments. If you want a copy of the full land code please contact me or visit our website [www.tsawout.com](http://www.tsawout.com)

#### Definitions (Section 2.1)

A definition of “**Chair**” is added, and refers to the Chair of the Land Management Committee.

The Land Code refers to “resources” and “natural resources” but these are not defined terms. Accordingly, *a new definition of “Natural Resources” is proposed.*

The existing definition of “**Resolution**” is inaccurate. Therefore, a revised definition is proposed, which mirrors the language of paragraph 2(3)(b) of the *Indian Act*.

The definitions of “**Spouse**” and “**Common-Law Spouse**” are vulnerable to a human rights challenge because they refer to relationships between a man and a woman. The proposed revisions address this

risk by making them gender neutral.

The Land Code refers to land which is held in common (i.e., not subject to a Permanent Interest) as “**Band Land**.” Since the term “Band” is associated for many with the *Indian Act*, the proposal is to replace the term “Band Land” throughout the Land Code with the term “**Community Land**.”

The definition of “**Law**” is amended to include regulations enacted by Council under the Land Code.

Throughout the Land Code there are numerous references to “**Interests**” and “**licences**,” but these terms are not defined. The lack of definitions has caused confusion to third parties. New definitions for “**Interest**” and “**License**” as well as other common types of interests in land (“**Easement**,” “**Leasehold**,” “**License**,” “**Mortgage**,” “**Permit**,” and “**Sub-Lease**”) are proposed for clarity.

### **Long-term dispositions of interests in interests in Community Land: when is LMC approval required? (old sections 7.3- 7.6; new section 28.4)**

The existing section 7.3 of the Land Code has been problematic to interpret. The result of this is that there is a danger of inconsistent treatment of long term granting of interests in Community Land. (ie. Long term leases)

The intent of section 7.3 is, at minimum, that Land Management Committee approval is required for any Laws respecting dispositions of Community Land exceeding 25 years, dispositions of natural resources on Community Land, or development of cultural or heritage sites.

However, there is also a legitimate interpretation that section 7.3 requires LMC approval for the actual disposition of the long-term interest and/or that a disposition of a long term interest is not lawful in advance of a Law being enacted under section 7.3.

The proposed amendment would replace sections 7.3 to 7.6 with new sections 28.4 and 28.5, which are clearer and address the inherent problems with the sections 7.3 – 7.6. The proposed section 28.4 provides that Council will enact a Law setting out the principles and factors it will consider when deciding to grant or dispose of an Interest or License in Community Land, and which requires the LMC to make a written recommendation. The proposed section 28.4 includes a requirement that the Law set out the authority of Council to grant an interest or dispose of an interest.

### **Procedure for Repeal and Amendment of Land Code Laws (section 7.12)**

A new section is added which describes the procedure for repealing and amending Laws, so that this does not have to be set out each time in every Law that Council enacts.

### **Procedure and Threshold for a Ratification Vote (Section 13.4; 12.9 and 12.10)**

Under the proposed amendment, in order for a ratification vote to pass, at least 10 percent of the Eligible Voters must participate in the vote, and a majority of those who vote must vote in favour.

If this change to ratification procedure is approved, then the provisions for a referendum (requiring

25% participation) are redundant and it is proposed that this be removed.

## **Land Management Committee Appointment and Procedures (Sections 22.1.1 – 22.1.5, and 23.1, 23.1.1, 23.2, 23.8)**

### New Method of Appointing Land Management Committee (LMC) members – section 23

The current Land Code requires that 6 members of the Committee be elected, and one be appointed by Council. A new way of selecting LMC members is proposed; namely, LMC members will be appointed by Council in a manner so as to provide for broad representation of the Tsawout community. The procedure for appointments to ensure broad representation on the Committee must include consultation with elders, heads of families and Members. There is a requirement that Council enact a Law setting out the details of the procedure for appointments.

### Delegation to Sub committee – section 22.1.1 to 22.1.5

A new clause is added to enable the Land Management Committee (LMC) to delegate the duties of the LMC to a Sub-Committee. The Sub-Committee will be composed of 5 members of the LMC including the Chair, and one non voting Council member who will meet on a monthly basis and who will report to the full LMC every three months (quarterly). The full LMC will retain its role in setting strategic land management direction, in developing an annual land management work plan, and in overseeing land management finances and community projects such as land use planning.

## **Registration of Interests but not Licences (section 25.2 and 25.4)**

Section 25 is amended to clarify that Interests must be registered, but not Licences. This is consistent with the practice of the Indian Lands Register that only instruments which grant an interest in land are registered. By way of example, authorizations such as timber permits which don't give a right of possession would not be registered, but leases, mortgages, easements, etc. would, because these instruments create an interest in land.

## **Limitation of Tsawout's Liability in relation to Registration of Instruments (section 25.4.1)**

A new section is proposed which clarifies that neither the First Nation, the Council, the Lands Manager, nor any First Nation employee is liable for ensuring that an instrument that affects or purports to affect First Nation Land is valid or legally compliant, or that it will be accepted for registration in the First Nation Land Register. This provision is strongly recommended due to the fact that the Tsawout Lands Register and the First Nation Lands Register are notice registries, and puts all users of the system on notice that they are required to rely on their own investigations to determine the status of a parcel of land.

## **Clarification of which Interests require Council consent; Sub-leases and Assignments of Sub-Leases do not require consent (Sections 26.6 and 26.7)**

Section 26.6 of the Land Code provides that Council's written consent is required for any grant or disposition of a "lease, license or permit" to a non-Member. Because the Land Code does not currently define these terms, there has been uncertainty about which Interests require Council Consent. The proposed amendments makes clear that any grant or disposition of an Interest or License to a non-Member requires Council's consent, with the exception of Sub-Leases and assignments of Subleases, in which case Council's consent is not required.

## **Ceasing to be a member (Sections 31.4 – 31.5)**

The Land Code currently does not specify what happens to a Certificate of Possession/Permanent Interest if the CP/CPI holder ceases to be a Member of the First Nation. This is a gap in the Land Code that needs to be addressed. The proposed amendment provides that a CP/CPI holder must transfer his or her Permanent Interest within 6 months of ceasing to be a member. If he or she does not do so, then the CP/CPI is cancelled and the interest reverts to the First Nation. If there are more than one CP/CPI holder in respect of a parcel that hold their interests as tenants in common, then the interest of the person ceasing to be a Member will revert, but any other CP/CPI holder(s) will continue to hold their interest(s) in the land.

## **Additional Minor Amendments**

The proposed amendments also include changes as a result of amendments to the definitions section, as well as minor amendments for clarification. For examples of these clarification amendments, see: sections 11.1, 13.3, 22.2, 28.1, 28.2, 29.2(c) and (e), 30.3(b), 31.2, and 36.6(c).