



STÁUTW FIRST NATION SUMMARY OF PROPOSED LAND CODE AMENDMENTS

To: Members of Tsawout First Nation

A Ratification Vote will be held on **November 18, 2016** on the following matter:

Amendments to the Tsawout First Nation Land Code

Background:

The Council on the Recommendation of the Land Management Committee is proposing changes to the Land Code to make the law more effective for Members, Residents, and potential investors in Tsawout Lands, and to improve Tsawout's ability to manage its lands.

The Eligible Voters of Tsawout need to vote to approve these changes. A Ratification Vote is being proposed for **November 18, 2016**.

What changes to the Land Code are being proposed?

- Language changes to make to Land Code easier to understand and work with;
- Require a Land Management Committee recommendation rather than a ratification vote to create a Permanent Interest;
- Clarify the process requirements before Council can expropriate interests and licences; amend approval requirements;
- Reduce overlap with Tsawout's *Financial Administration Law*;
- Allow Members to be able to give a life estate in their Permanent Interest or home to a spouse, whether or not the spouse is a Member;
- Month-to-month and short term tenancies do not have to meet registration and consent requirements in order to be valid;
- Allow members who don't have a Permanent Interest to own their own home through a "Residential Allocation";
- Remove requirement for Council consent to leasehold Mortgages;
- Simplify and streamline the Dispute Resolution process;
- Additional enforcement tools, such as ticketing and stop work orders.

A clause-by-clause summary of the Land Code amendments is attached to this Notice as Appendix A. A copy of the proposed changes to the Land Code can be obtained at the Tsawout website (www.tsawout.ca) or by calling Gwen Underwood, Lands Manager at 250-652-9101. If you have questions about it please email your questions to Gwen at shaysema@tsawout.ca or to Heather Mahony at heather@woodwardandcompany.com

THANK YOU FOR PARTICIPATING!

Appendix A
Clause-by-Clause Summary of Land Code Amendments (2016)

1. **Stylistic Changes:** non-substantive changes are proposed to spelling, definitions, and phrasing to make the language more clear and precise.
 - Stylistic changes are not tracked in the draft amended Land Code. See list of non-substantive changes (available from the Lands Department).
2. **Definitions of Interests:**
 - The definitions of “Interest,” “Easement,” “Leasehold,” “Sub-lease,” “Mortgage” and “Licence” have been amended.
 - There are new definitions for “Lease,” “Life Estate” and “Residential Allocation.”
 - “Permit” is deleted.
3. **Other changes to Definitions:**
 - Definition of “Member” amended.
 - Definition of “Immediate Family” amended to include siblings and parents.
 - Definition of “Extended Family” amended to include first cousins.
 - Definition of “Person” amended to include partnerships and other entities.
 - Definition of “Law” amended to remove reference to “regulation.”
4. **Interpretation provisions:**
 - A section added to clarify the names for various parts of the Law – Part, Division, section, paragraph, Schedule (para 2.7(g)).
 - A new section 2.13 makes the interpretation provisions of the Land Code apply to Land Code Laws.
5. **Additional Lands:**
 - Proposed amendment to section 5.4 to require Council to make a request to Canada to amend the Individual Agreement, and to make all other necessary steps to make the added land “First Nation Land.”
6. **Examples of Laws within Tsawout Lawmaking Jurisdiction:**
 - Section 6.2 amended to provide additional examples of types of laws that Council may enact: fees and charges, creation of a permitting system, landlord/tenant rights and responsibilities.
7. **Delegation of Powers:**
 - Section 6.4 amended to provide that authority may be delegated by Resolution of Council, not just by way of a Law.
8. **Emergency Laws:**
 - Effective period for emergency laws extended from 28 to 60 days.

9. Requirement to implement certain laws:

- Section 10.2 currently requires that a community process be established to develop and implement certain laws “within a reasonable time after this Land Code takes effect.”
- This section is removed.

10. No Ratification vote for creation of a Permanent Interest (section 13.1(d)):

- Instead, the creation of a CPI would be subject to the process set out in the Community Land Disposition Law (including a recommendation from the Land Management Committee).

11. Reduction in Funding:

- Section 13.2: amendment such that unless the Individual Agreement amendment or renewal “significantly” reduces the amount of funding, no ratification vote is required (currently *any* change to amount of funding would require a ratification vote).

12. Expropriation of Licences

- Division 14: amendments to allow for expropriation of Licences in the same way as Interests.

13. No Ratification vote for expropriation of a Member’s Interest:

- Currently the Land Code sections 13.1(e) and 14.9 requires a ratification vote before a Member’s Interest in First Nation land can be expropriated.
- This requirement is removed.

14. Additional Compensation for Land Exchange:

- Section 15.6: if the First Nation receives additional Fee Simple land as part of a land exchange, the land may be held by *or in trust for* the First Nation.
- This addresses a potential problem that currently land cannot be registered in the name of the First Nation in the Land Title Office.

15. Other proposed changes regarding Land Exchanges:

- Information for members on Land Exchange: s 15.8 amendment to provide for “Council or authorized delegate” to provide the information, rather than “Council or the Land Management Committee.”
- New section 15.10 to enable Council to request that Canada agree to amend the Individual Agreement to allow the lands to be governed under the Land Code.

16. Part 5 – Conflict of Interest:

- Conflicts of Interest relating to Council Members, employees, officers and contractors of the First Nation are addressed already in the *Financial Administration Law, Schedule A: Procedures for Avoiding and Mitigating Conflicts of Interest*; amendment to section 16.1 to provide that these conflicts of interest are dealt with per the FAL Schedule A.
- Section 16.2 amendment so that its application is restricted to boards, committees and Panels, as these bodies are not covered by the FAL Schedule A.

17. Part 6 – Land Administration (Div. 17 Financial Management, Div. 18 Financial Records, Div 19 Audit, Div 20 Annual Report):

- Amendments proposed to these Divisions to ensure consistency and eliminate redundancy with Tsawout's Financial Administration Law.
- Section 19.5: amendment to allow auditor's report to be presented at a community meeting OR a Meeting of Members, as it may be difficult to get quorum at a Meeting of Members (10% of eligible voters).

18. Role of Land Management Committee:

- Section 22.3 amendment: the LMC "will" make certain recommendations is changed to, the LMC "may" make certain recommendations. (see also similar edit to section 28.3 (LMC "will" / "may" advise Council on the granting of Interests and Licences).
- Section 22.6 amendment: currently, the LMC may *establish* remuneration policies and orientation programs for its members; amendment to provide that LMC will *recommend* and Council will *approve*.

19. Division 25 – Registration of Interests:

- Currently, the Land Code provides for 2 registers: the Tsawout Land Register, and the First Nations Lands Register.
- Currently, the Tsawout Land Register, maintained by the First Nation, is the "Official" Register. This creates some problems. In practice, Tsawout does not maintain a Register; instead, documents are registered in the First Nation Land Register, maintained by the First Nation Land Registry in Ottawa.
- Proposed amendments provide that documents and instruments are registered in the First Nation Land Register.
 - i. Definitions of "Tsawout Lands Register" and "First Nation Land Register" are removed;
 - ii. Replaced by a new definition of "Register."
- Section 25.4: Persons receiving an interest from a member must provide the instrument for registration to the Lands Manager.
- Section 25.5: requirement for Council or its delegate to register instruments:
 - i. Amendment puts the onus on the person getting the interest to ensure that the First Nation has a registerable copy of the instrument to be registered. If not, then the First Nation's obligation to register the instrument is not engaged.
- New sections 25.7 and 25.8 permit financial claims and other assertions of right, as well as a variety of types of documents (e.g., judgments, court orders, rights of first refusal, CPLs, caveats, liens, assignments of rent, options to purchase and tax certificates) to be registered against the affected parcel(s).

20. Life Estates:

- *ŚMELI* (Matrimonial) Real Property Law provides for life estates; therefore, in order to ensure that this provision of the *ŚMELI* (Matrimonial) Real Property Law is valid, it is advisable to amend the Land Code to recognize life estates.
- New definition – "Life Estate": Life Estate included within the definition of "Interest".
- Paragraph 29(2)(c): CPI holders can grant life estates in their CP to a spouse, including to a non-member spouse. (see also section 26.4)

- Paragraph 30.4(c): Residential Allocation holders can grant life estates in their Residential Allocation to their spouse, including a non-Member spouse.
- Limits on Life Estates: section 26.5.1 – life estates generally do not include rights to Natural Resources, are not transferable or assignable, and do not include the right to receive rents or other revenue from the lands.
- Council consent to a Life Estate is not required.

21. Holding Interests in Trust:

- New definition: “Trustee.”
- New section 26.5.2: A Permanent Interest or Residential Allocation may be held in trust only if the Trustee and all individuals holding the beneficial interest are Members and the trust agreement is registered.

22. Removal of requirement for registration and consent for month to month tenancies and leaseholds of less than 1 year:

- Currently, all tenancies that are not registered, and in the case of non-member tenants, which did not receive Council consent, are technically void.
- New section 26.8: removes the requirement for registration and consent for month to month tenancies and leaseholds of one year or less (means that such Interests would be valid and enforceable).
- New 26.8: contains some discretion for Council to require registration or consent on a case-by-case basis: “...unless Council specifies otherwise by Resolution.”

23. Division 28 – New Interests and Licences:

- Section 28.1 – amendment allows Council to grant Interests and Licences in ALL First Nation Land, not only Community Land.
- However, Council may not grant an Interest or Licence in CP land without the CPI holders’ consent. (section 28.2)

24. Section 28.4 - Community Land Disposition Law:

- This Section is amended to be consistent with the Community Land Disposition Law, and in particular, which types of long-term dispositions in Community Land require a Land Management Committee recommendation.

25. Division 30 - Residential Allocations:

- Section 30 amended to provide for a new form of tenure: “Residential Allocation.”
- Has many features of a CPI except that it can be used only for residential purposes and reverts to the First Nation if it is abandoned or used for other than a residential use.
- A Certificate of Residential Allocation will be issued and registration is required.
- Therefore, survey and other registration requirements will need to be completed.
- No community vote required, however under s. 28.4 a LMC recommendation will be required.
- A Residential Allocation may only be transferred, devised or otherwise disposed of to another member. Therefore, this type of interest cannot be mortgaged. If a RA holder needs a home construction or renovation loan, a band guarantee would be required.
- A RA holder can give a life estate to a Spouse.

26. When a CP holder ceases to be a member – what happens to sub-interests?

- Amendment to provide that if a CPI is cancelled the land becomes Community Land *subject to any encumbering Interests or Licences*.
- Sections. 31.4 and 31.5 (CPI reverts and becomes community land) applies also to Residential Allocations.

27. Division 32 – Mortgages:

- Proposed amendment to remove the requirement for Council consent to mortgages of Leaseholds (ss 32.3; 26.7(d)).
- Amendments to make it easier for Members to obtain mortgages:
 - i. Clarify that CPI holders can obtain a “self lease” of their CPI in order to facilitate getting a mortgage (see para 29.2.1).
 - ii. Subsection 32(2)(a): a member can grant a mortgage in any Interest in First Nation land that he or she holds EXCEPT that he or she cannot mortgage a Permanent Interest or a Residential Allocation.
 - iii. Subsection 32(2)(b) (see also s. 32.1): Leaseholds by Indians are subject to seizure, foreclosure and other enforcement actions in the same manner as non-Indians (this proposed amendment facilitates mortgages of lease held by “Indians”).
- Section 32.4: maximum mortgage terms:
 - i. The maximum term of a mortgage is currently 25 years; proposed amendment: Council can extend this by Resolution to a maximum of 35 years.
- Section 32.5: amendment to provide CPI Holders a right of redemption for mortgages on CPI Land (in addition to Council).

28. Dispute Resolution (Part 8):

- This Part is streamlined as follows:
 - 7 person Dispute Resolution Panel (4 Member Panelists, and 3 non-Member Panelists) is amended to provide for Council to establish an “Eligibility List” comprised of 5 individuals (Members or non-Members).
 - Panel is only constituted if and when a notice of dispute arises that cannot be resolved through preliminary steps.
 - A “Facilitator,” rather than a “Chair” oversees the preliminary steps prior to panel hearing.
 - Single Arbitrator may be appointed, rather than a 3 person Arbitration Panel.
 - Disputes by the First Nation heard by the Dispute Resolution Panel rather than the Land Management Committee.
- Clarifies that Rent review disputes can be dealt with under Part 8 (36.4(e)).
- Exempts residential tenancy disputes from Part 8, where Tsawout has enacted a Residential Tenancy Law which specifies a different procedure.
- Land Code Dispute resolution process is not mandatory; people have the option of going to court instead (s. 36.10).
- Limitation period for filing a dispute extended from 30 days to 60 days (s. 38.2).

29. Section 44.3: Requirement for Employees to be bondable:

- Requirement that employees be bondable is narrowed to those employees collecting and accounting for revenue from First Nation Land.

30. Ticketing Laws enabled:

- S. 45.1.1 – Allows Council to enact laws providing for enforcement mechanisms including ticketing, stop work orders, restorative orders and fines.

31. Community Justice Process enabled – s. 45.2:

- This is an enabling provision only.
- Enables Council to establish a community justice process as an alternative to justices of the peace for enforcement of the Land Code and Laws.

32. Minor Amendments:

- Section 46.1: Minor amendments (typos, remedying inconsistencies, changes ordered by a court) can be made without a ratification vote.