



SUMMARY

Draft Land Law 2017/18-002: First Amendment to the Shawanaga Land Code

A Draft Land Law entitled “First Amendment to the Shawanaga First Nation Land Code” is enclosed for your review as part of this Notice Package. This proposed Land Law requires approval by a ratification vote.

What’s the reason for this Land Law?

The proposed amendment to the Land Code deals with five issues:

1. Enabling commercial activities on Shawanaga First Nation Land

The Land Code contains a number of provisions that were intended to apply primarily to the use of reserve land by members – for example, member’s homes. Some of these provisions are obstacles to commercial activities. A development like the Henvey Inlet Wind Transmission Line will need assurance that Shawanaga First Nation will not expropriate the project once it is built, and that Council will not intervene in the mortgaging of project assets, or transfers of those assets.

The draft amendment will allow Council to add exemptions from these sections to leases that are for “Commercial Purposes.” Any exemptions beyond the basic list will require a Community vote.

2. Effect of Code non-compliance

The Land Code currently states that an interest in land – for example, a lease – is void if it is not in total compliance with the Code. This approach does not allow a minor defect in a document like a lease, which may be discovered years after the lease has been in effect, to be corrected: a void document cannot be fixed. The amendment will make non-compliant documents unenforceable instead of void, which will allow errors to be corrected, if possible.

3. Separate Shawanaga First Nation Lands Register

Leases, permits and other land transactions under our Land Code must be registered in the INAC First Nations Land Registry System. The Land Code also requires the creation of a duplicate copy of the INAC system, maintained by Shawanaga First Nation. At present, the number of annual land transactions does not justify the complexity and expense of creating this separate land transaction register and appointing a Registrar and Deputy Registrar. An amendment is being added that will allow Council to postpone creating the duplicate Lands Register until we need it in future. The postponement will not have any effect on the enforceability of any existing or future land transactions.

4. Dispute Resolution



Part 8 of the Land Code provides an optional model for dispute resolution, but the wording does not clearly state that parties can use other dispute resolution methods by written agreement. An amendment is being added to provide greater certainty that the other dispute resolution methods can be agreed to by the parties.

5. Clarification of community participation

A project – like the HIWLP transmission line – may include features which trigger up to three different kinds of community participation under the Land Code: community input, community approval and ratification. An amendment is being added to the Land Code to permit combining two or more separate processes relating to the same project, as long as the highest applicable standard of community participation is used. Council has already put this principle in place through its power to revise the Land Code as long as the “revisions” do not change the substance of the Land Code; the revision has been added to this amendment package for greater certainty.

Benefit to Shawanaga First Nation

The First Amendment to the Shawanaga Land Code will clean up drafting errors identified, allow Council to determine when to create a separate Shawanaga Lands Register and will facilitate commercial leases and investment by lenders in projects on Shawanaga First Nation Land which benefit our community.

Advice of the Lands Committee

Shawanaga’s Lands Committee has reviewed the draft First Amendment to the Shawanaga First Nation Land Code and recommends that it be enacted.