



## SHAWANAGA FIRST NATION GOVERNMENT

COUNCIL OF SHAWANAGA FIRST NATION		
ROBINSON HURON TREATY 1850		
IN THE PROVINCE OF: <b>ONTARIO</b>		
PLACE:	<b>COUNCIL CHAMBER</b>	
DATE: Day <b>30</b>	Month <b>09</b>	Year <b>2017 AD</b>

SHAWANAGA FIRST NATION RESOLUTION		
CHRONOLOGICAL NO. <b>17-17-497</b>		
A QUORUM FOR THIS GOVERNMENT		
CONSISTS OF: <b>(4) FOUR</b>		
COUNCIL MEMBERS		

### WAIVER OF SPECIES AT RISK CONSULTATION

#### WHEREAS:

1. Shawanaga First Nation is subject to the *First Nation Lands Management Act*. In particular, Shawanaga First Nation may approve the Project in accordance with an environmental assessment ("EA") process pursuant to Annex F to the Individual Agreement entered into between Canada and the First Nation under that Act.
2. The EA process under Annex F is being carried out by Shawanaga First Nation with respect to the proposed Henvey Inlet Wind transmission line on Shawanaga First Nation Reserve Lands ("Project").
3. Notice of the Project and the EA process was provided to members of the First Nation by website posting and a community information meeting about the Project and the EA Process was held on July 13, 2017.
4. Shawanaga First Nation has taken into account the Environmental Review Report prepared for Henvey Inlet Wind dated September 2015 and the Environmental Effects Determination Report prepared by Henvey Inlet Wind dated June 2017.
5. An independent, expert peer reviewer was retained by Shawanaga First Nation to review such reports.
6. Notice of the retainer of the peer reviewer and the EA process was provided to the members of the Shawanaga First Nation by posting on the First Nation's website.
7. The peer reviewer issued a preliminary report of its technical review (*Environmental Review of EA and Related Documents*, August 16, 2017). Such report was delivered to all occupants of the First Nation's Reserve Lands.
8. The peer reviewer has made inquiries, consultations and investigations as it has deemed appropriate to allow it to provide an opinion regarding the environmental assessment of the Project and advise the First Nation's Council.
9. In conjunction with its review, the peer reviewer conducted community consultations on August 30, 2017. As a result of such community consultations, the peer reviewer requested additional information from the proponent and considered such information in its review.
10. The peer reviewer has recently issued an Addendum report in which it provided the opinion that no significant adverse environmental effect would result from the Project being

constructed, operated and decommissioned on the First Nation's Reserve Lands subject to certain conditions being satisfied. Council will consider this opinion in conjunction with making its decision under the EA process.

11. The EA process, including the peer review, has included consideration of species at risk and potential environmental effects to such species.

12. Members of the Shawanaga First Nation have been and will be consulted in relation to an Environmental Protection and Permitting Land Law for the Project on its Reserve Lands. Such Land Law provides for the EA process and also establishes an environmental protection regime, including the obligation of the First Nation to retain an independent, expert Commissioner to act as regulatory authority over the construction, operation and decommissioning of the Project. The Commissioner and its representatives have inspection, investigation and enforcement powers similar to provincial and federal regulatory authorities.

13. A copy of the Land Law was mailed to each member of the First Nation, along with notice of the meeting of members to be held in advance of the vote on the Land Law.

14. An information meeting for members will take place on September 30, allowing members of the First Nation to discuss the EPP Land Law and the EA process as well as consult with the peer reviewer and receive information from representatives of the proponent's assessment team.

15. The EPP Land Law will be subject to a vote of the First Nation's members. Only after such vote will Council consider whether the EA process is complete and the EA for the Project can be approved.

16. Notwithstanding that the Government of Canada is undertaking its own permitting process with respect to the Project under the federal *Species at Risk Act*, the Shawanaga First Nation has ensured that any environmental protection regime for the Project (if enacted/approved) will impose prohibitions regarding species at risk consistent with that of the Canadian legislation.

**BE IT RESOLVED THAT:**

17. Shawanaga First Nation is satisfied that it has conducted a thorough review of issues with respect to environmental effects, including with respect to species at risk, in its EA process. If the EA is approved, the First Nation will implement a rigorous environmental protection regime that protects species at risk. Members of the community have been consulted in an appropriate manner.

18. On the basis of the foregoing, notice shall be provided to Environment Canada that Shawanaga First Nation does not require consultation by the Government of Canada with the First Nation with respect to its permitting process under the *Species at Risk Act*.

**MOVED BY:** Patricia Pawis  
**SECONDED BY:** Alfred Stevens

**SHAWANAGA FIRST NATION**  
**By Its Council**

  
Chief Wayne Pamajewon

  
Head Councillor Sherrill Judge

  
Councillor Dan Pawis

  
Councillor Alfred Stevens

  
Councillor Richard Jason

  
Councillor Patricia Pawis



## SHAWANAGA FIRST NATION GOVERNMENT

COUNCIL OF SHAWANAGA FIRST NATION		
ROBINSON HURON TREATY 1850		
IN THE PROVINCE OF: <b>ONTARIO</b>		
PLACE:	<b>COUNCIL CHAMBER</b>	
DATE: Day <b>30</b>	Month <b>09</b>	Year <b>2017 AD</b>

SHAWANAGA FIRST NATION RESOLUTION
CHRONOLOGICAL NO. <b>17-17-498</b>
A QUORUM FOR THIS GOVERNMENT
CONSISTS OF: <b>(4) FOUR</b> COUNCIL MEMBERS

### LAND LAW ENACTMENT RESOLUTION:

- 2017/18-001 SHAWANAGA FIRST NATION LAND LAWS REGISTER
- 2017/18-002 FIRST AMENDMENT TO THE *SHAWANAGA FIRST NATION LAND CODE*
- 2017/18-003 ENVIRONMENTAL PERMITTING AND PROTECTION FOR THE HIWLP TRANSMISSION LINE
- 2017/18-004 SPECIAL LEASE TERMS FOR THE HIWLP TRANSMISSION LINE LEASE

### BACKGROUND

- A. Shawanaga First Nation and Henvey Inlet Wind LP have reached agreement in relation to the granting of a lease of a parcel of Shawanaga First Nation Land Reserve No. 17 land to Henvey Inlet Wind GP and the operation and construction of a proposed 230kV transmission line within the leasehold parcel by Henvey Inlet Wind LP.
- B. Shawanaga First Nation wishes to enact the four draft Land Laws attached as Schedules to this Resolution, as listed below (the "four draft Land Laws"), to approve and implement the terms of the agreement:
  - Schedule "A" Shawanaga First Nation Land Laws Register
  - Schedule "B" First Amendment to the *Shawanaga First Nation Land Code*
  - Schedule "C" Environmental Permitting and Protection Land Law for the HIWLP Transmission Line
  - Schedule "D" Special Lease Terms for the HIWLP Transmission Line
- C. The four draft Land Laws were tabled for enactment by Shawanaga First Nation BCR 17-17-492 adopted in an open meeting of Council on 15 August 2015. In that resolution, Council decided, pursuant to subs. 16.14 of the *Shawanaga First Nation Land Code*, as revised, to submit all four draft Land Laws for ratification by a single ratification vote.
- D. Shawanaga First Nation BCR 17-17-492 appointed Scott Jacobs as Ratification Officer for the ratification vote, and appointed Gerry Duquette as Verifier for the First Amendment to the *Shawanaga First Nation Land Code*.

- E. Notice of (i) the tabling of the four draft Land Laws, (ii) a Meeting of Members to discuss the four draft Land Laws, (iii) the ratification vote on the four draft Land Laws, and (iv) the open Council meeting at which Council would consider the enactment of the four draft Land Laws was given to Members in the manner prescribed in the *Shawanaga First Nation Land Code*, as revised, including feedback forms to be used by Members unable to or in lieu of attending the Meeting of Members.
- F. The Meeting of Members was duly convened by the Shawanaga Lands Committee in the Recreation Centre on 30 September 2017, the date provided in the Notice, and was completed on that date.
- G. The ratification vote was conducted by on-line voting, mail-in ballots and by an in person poll held on 30 September 2017 in the Shawanaga First Nation Council Chamber, proper notice of a change of the location of the in-person poll having been given as provided in BCR 17-17-492.
- H. The Report of the Ratification Officer, attached as Schedule "E" hereto, confirmed that a quorum of Eligible Voters required by the Shawanaga First Nation Land Code cast ballots and a majority of the ballots cast, including those cast on-line, by mail and in person, were in favor of the enactment of the four draft Land Laws.
- I. The Report of the Verifier verified the ratification of the First Amendment to the Shawanaga First Nation Land Code attached as Schedule "B." hereto.
- J. Feedback forms received from Members were considered by the Lands Advisory Committee and by Council.
- K. Minor typographical errors in the drafts of the four draft Land Laws included in the Notice to Members have been corrected in the drafts attached as Schedules hereto.
- L. Schedule "G" hereto is a draft consolidation of the 2015 Shawanaga First Nation Land Code, the revisions enacted by Shawanaga First Nation BCR 17-17-491 on 15 August 2017, and the draft First Amendment to the Shawanaga First Nation Land Code attached as Schedule "B" hereto.
- M. The Lands Committee has reviewed the final revised drafts of the four draft Land Laws and the consolidated *Shawanaga First Nation Land Code, 2017* and has advised Council that, in the Committee's opinion, the Land Laws and the consolidation will benefit Shawanaga First Nation and should be adopted.

**BE IT RESOLVED THAT:**

- 1. The statements contained in the Background section of this Resolution are true and accurate.
- 2. The tabling, giving of notice, Meeting of Members the ratification vote and the process and recommendations of the Lands Committee in relation to the four draft Land Laws shall be deemed fully compliant with the *Shawanaga First Nation Land Code* and BCR 17-17-492.
- 3. The four draft Land Laws attached as Schedules hereto, in which minor typographical errors in the drafts including in the Notice to Members, have been corrected, are hereby enacted as Land Laws of Shawanaga First Nation numbered as follows:

**Land Law 2017/18-001 SHAWANAGA FIRST NATION LAND LAWS REGISTER**

**Land Law 2017/18-002 FIRST AMENDMENT TO THE SHAWANAGA FIRST NATION  
LAND CODE**

**Land Law 2017/18-003 ENVIRONMENTAL PERMITTING AND PROTECTION FOR THE  
HIWLP TRANSMISSION LINE**

**Land Law 2017/18-004 SPECIAL LEASE TERMS FOR THE HIWLP TRANSMISSION LINE  
LEASE**

4. The Chief and Lands Councillor are authorized to execute the attached Land Laws in triplicate for delivery to the Band Manager.
5. The Band Manager shall certify the original copies of the attached Land Laws and deliver one original copy thereof to the Registrar of Land Laws for registration, and to the Lands Committee.
6. The Band Manager shall arrange for publication of a notice of the enactment of the four Land Laws in the Shawanaga First Nation Administration Offices, on the Shawanaga First Nation website, and in such locally-distributed newspapers as the Band Manager deems advisable.
7. Schedule "G" hereto, being a consolidation of the 2015 *Shawanaga First Nation Land Code*, the revisions enacted by Shawanaga First Nation BCR 17-17-491 on 15 August 2017, and the First Amendment to the *Shawanaga First Nation Land Code* enacted herein, is hereby adopted as the official consolidated *Shawanaga First Nation Land Code, 2017*.
8. This Resolution shall come into effect immediately upon adoption.

**MOVED BY: Councillor Dan Pawis**

**SECONDED BY: Councillor Sherrill Judge**

**CARRIED.**

**SHAWANAGA FIRST NATION**

**By Its Council**

  
Chief Wayne Pamajewon

  
Head Councillor Sherrill Judge

  
Councillor Dan Pawis

  
Councillor Alfred Stevens

  
Councillor Richard Jason

  
Councillor Patricia Pawis





## SHAWANAGA FIRST NATION GOVERNMENT

COUNCIL OF SHAWANAGA FIRST NATION
ROBINSON HURON TREATY 1850
IN THE PROVINCE OF: <b>ONTARIO</b>
PLACE: <b>COUNCIL CHAMBER</b>
DATE: Day <b>30</b> Month <b>09</b> Year <b>2017 AD</b>

SHAWANAGA FIRST NATION RESOLUTION
CHRONOLOGICAL NO. <b>17-17-499</b>
A QUORUM FOR THIS GOVERNMENT
CONSISTS OF: <b>(4) FOUR</b> COUNCIL MEMBERS

### ACCEPTANCE OF THE ENVIRONMENTAL ASSESSMENT AND ISSUANCE OF THE ENVIRONMENTAL PERMIT FOR THE HIWLP TRANSMISSION LINE

**WHEREAS:**

1. Shawanaga First Nation entered into an Individual Agreement with Canada which, among other things, brought the First Nation's Land Code into effect with respect to Reserve No. 17 and requires that Shawanaga conduct an environmental assessment ("EA") process in accordance with Annex F of the Individual Agreement for any project within reserve lands governed by the Land Code. In particular, Annex F requires that Shawanaga elect to use an assessment process consistent with the *Canadian Environmental Assessment Act, 2012* ("CEAA 2012") or the *Canadian Environmental Assessment Act, S.C. 1992, c. 37*.

2. Where Shawanaga elects to use an assessment process consistent with the CEAA 2012 and a project is not a "designated project" thereunder, Annex F imposes the following test:

The First Nation shall not carry out the project on First Nation Land, or exercise any power or perform any duty or function conferred on it under the Land Code or a First Nation law that would permit the project to be carried out, in whole or in part, on First Nation Land, unless the Council of the First Nation determines that the carrying out of the project:

- (i) is not likely to cause significant adverse environmental effects as defined in CEAA 2012; or
- (ii) is likely to cause significant adverse environmental effects and the Council decides that those effects are justified in the circumstances.

3. The First Nation has considered the Henvey Inlet Wind transmission line ("HIW T-Line") as proposed to be constructed, operated and decommissioned, in part, on Reserve No. 17. The First Nation has conducted an EA process with respect to the HIW T-Line as proposed on its Reserve Lands.

4. Notice of the HIW T-Line was provided to members of the First Nation by website posting and a community information meeting regarding the HIW T-Line and the EA process was held on July 13, 2017.

5. Council developed a draft Environmental Protection and Permitting Land Law for the purpose of assessing, approving and regulating the HIW T-Line on Reserve No. 17 ("EPP Land Law") which was submitted to a ratification vote in accordance with the Shawanaga Land Code. Among other things, the draft EPP Land Law established the EA process to be undertaken under Annex F.

6. Notice of a Meeting of Members and the ratification vote in respect of the draft EPP Land Law was provided to the members of Shawanaga First Nation, and the Meeting of Members and ratification vote were duly completed on September 30 in compliance with the Land Code.
7. The draft EPP Land Law was approved by a quorum of the Eligible Voters and duly enacted by this Council on September 30.
8. The EA process under Annex F carried out by Shawanaga First Nation included community consultation, as noted above, through a community information meeting.
9. An independent, expert peer reviewer, Shared Value Solutions Ltd, was retained by Shawanaga First Nation to review the proponent's EA application comprised of:
- (i) *Henvey Inlet Wind Volume B: Henvey Inlet Wind - Transmission Line Environmental Review Report – Final Draft* dated September 2015 (the "Environmental Review Report"); and
  - (ii) *Environmental Effects Determination Report* dated June, 2017.
10. Notice of the retainer of the peer reviewer was provided to the members of the Shawanaga First Nation by posting on the First Nation's website.
11. The peer reviewer made inquiries, consultations and investigations as it deemed appropriate to conduct a technical review of the proponent's EA application and provide an opinion to the First Nation's Council as to whether the requirements under Annex F could be met.
12. The peer reviewer's preliminary report of August 16, 2017 (*Environmental Review of EA and Related Documents*) was delivered to all occupants of the First Nation's Reserve Lands.
13. Following the issuance of the preliminary report and in conjunction with its ongoing review, the peer reviewer conducted community consultations on August 30, 2017. As a result of such community consultations, the peer reviewer requested additional information from the proponent and considered such information in its review.
14. The peer reviewer issued an Addendum report dated September 28, 2017, in which it provided the opinion that no significant adverse environmental effect would result from the HIW T-Line being constructed, operated and decommissioned on the First Nation's Reserve Lands subject to the conditions set out in Appendix E to the Addendum being satisfied.

**BE IT RESOLVED THAT:**

15. Council has reviewed the proponent's EA application, being the Environmental Review Report, the Environmental Effects Determination Report and such other information submitted by the proponent to the peer reviewer and considered in its peer review.
16. Council received the Band Administrator's summary of comments from:
- (i) the July 13, 2017 community meeting regarding the HIW T-Line and the EA process;
  - (ii) the August 30, 2017 community meeting with the peer reviewer
17. Council has received and reviewed the technical review and opinion of the peer reviewer as set out in its August 16, 2017 report and its Addendum report dated September 28, 2017.
18. In accordance with Part 2, Section I.1(5)(a), (b), (c) and Part 2, Section 6 of the EPP Land Law, Council is satisfied:
- (a) with opportunities provided for Community consultation on the EA process;
  - (b) with the technical review of the proponent's EA application by the peer reviewer;
  - (c) that the EA process and resulting report(s) conform to the EPP Land Law; and
  - (d) that the EA process is complete.

19. Council hereby waives any procedural or other irregularities in the HIW T-Line EA activities and deems the EA activities to have been conducted in compliance with the EPP Land Law.

20. In accordance with Annex F of the Individual Agreement and Part 2, Section 1.1(5)(d) and Part 2 Section 6 of the EPP Land Law, Council has determined that, taking into account mitigation and other information before Council through the EA process, (select one of the options below):

- (a) the HIW T-Line is not likely to cause significant adverse environmental effects as defined in CEAA 2012; or
- (b) the significant adverse environmental effects likely to be caused by the HIW T-Line are justified in the circumstances; or
- (c) the HIW T-Line is likely to cause significant adverse environmental effects as defined in CEAA 2012 and such effects are not justified.

21. To the extent option 20(a) or 20(b) is selected, the Approved EA Report is deemed to be comprised of:

- (a) the September 2015 Environmental Review Report;
- (b) the June 2017 Environmental Effects Determination Report;
- (c) the August 16, 2017 peer review report (Environmental Review of EA and Related Documents); and
- (d) the September 28, 2018 peer review Addendum (including conditions to the peer reviewer's approval in Appendix E).

22. The Band Manager shall have authority to execute and deliver an environmental permit in proper form for the HIW T-Line to Henvey Inlet Wind LP, and shall cause this Land Law and the environmental permit to be registered in the Shawanaga First Nation Land Laws Register.

23. Subject to the successful negotiation of the terms of a retainer agreement, which shall be finalized by the Band Manager with the advice of the Lands Committee, Savanta Sustainability shall be retained as Commissioner.

**MOVED BY:** Alfred Stevens  
**SECONDED BY:** Richard Jason

**SHAWANAGA FIRST NATION**  
By Its Council

  
Chief Wayne Pamajewon

  
Head Councillor Sherrill Judge

  
Councillor Dan Pawis

  
Councillor Alfred Stevens

  
Councillor Richard Jason

  
Councillor Patricia Pawis





05 October 2017

Henvey Inlet Wind GP Inc.  
Operating as general partner of and on behalf of Henvey Inlet Wind LP  
355 Adelaide Street West, Suite 100  
Toronto, Ontario M5V 1S2

**Project:** Proposed Henvey Inlet Wind Transmission Line  
**Location:** Shawanaga First Nation Reserve Lands No. 17

*In accordance with Part 2, Section J.1(a) of the Environmental Permitting and Protection Land Law, Land Law 2017/18-003, Council of the Shawanaga First Nation has decided to issue this environmental permit to prepare for, construct, install, operate and decommission the Henvey Inlet Wind transmission line physical works and activities on its Reserve Lands.*

- 1) Henvey Inlet Wind shall only construct, install, use, operate, maintain and decommission the Transmission Line located on the Shawanaga Reserve Lands No. 17 in accordance with:
  - a) the Approved EA Report, as determined under Band Council Resolution 17-17-498, and comprised of:
    - i) the September 2015 Environmental Review Report;
    - ii) the June 2017 Environmental Effects Determination Report;
    - iii) the August 16, 2017 peer review report (Environmental Review of EA and Related Documents); and
    - iv) the peer review Addendum dated September 28, 2017 (including conditions set out in Appendix E); and
  - b) the Environmental Permitting and Protection Land Law, Land Law 2017/18-003.

  
Adam Good  
Band Manager

**SCHEDULE "A"**

**Land Law 2017/18-001**

**SHAWANAGA FIRST NATION LAND LAWS REGISTER**



**Land Law 2017/18-001**  
**The Shawanaga First Nation Land Laws Register**

**Enacted under section 7 and subsection 9.2 of the**  
***Shawanaga First Nation Land Code***

**PART 1 Interpretation**

**DEFINITIONS**

1. The following definitions apply in this Land Law:

*Act* means the *First Nations Land Management Act*;

*Council* means the council of Shawanaga First Nation, as duly elected from time to time;

*electronic image* means a single computer readable image file in Adobe Acrobat (.pdf) format or tagged image file (tif) format, or a Microsoft Word document (.doc or .docx), locked to prevent editing, capable of being printed or displayed with a resolution of at least 200 dots per inch;

*holiday* means a holiday mandated by federal legislation for federally regulated employees;

*Land Code enactment* includes the Land Code itself and any Land Law, resolution, revision, rule, regulation, standard, code, policy and other instrument or amendment enacted by Council or other authority pursuant to the Shawanaga First Nation Land Code;

*Protected Information* means any information in any form in which a person has privacy rights protected by applicable privacy legislation or in respect of which Shawanaga or any body, person or authority controlled by Shawanaga, is bound by a duty of confidentiality, and includes any reference to the existence of such information.



## PART 2 The Shawanaga First Nation Land Laws Register

### LAND LAWS REGISTER

2. Forthwith upon the coming into force of this Land Law, Council shall establish and maintain the Shawanaga Land Laws Register which shall include the following books of record:

- a. an indexed Land Laws Archive containing:
  - i. original signed paper copies of all Land Code enactments accepted for registration, together with any supporting documentation required by the Land Code or included by reference in the enactment, endorsed by the Registrar with the time and date of registration thereof; and
  - ii. electronic images of all registered Land Code enactments; and
- b. a Land Laws Abstract Index containing an abstract of each registered Land Code enactment.

### ALL LAND CODE ENACTMENTS TO BE SUBMITTED FOR REGISTRATION

3. Council shall submit to the Registrar an original copy of every Land Code enactment, signed by a majority of a quorum of Council, or by a person appointed by Council to certify its enactments, for registration.

### REGISTRATION

4. Upon receipt of a Land Code enactment in proper form, the Registrar shall register the enactment by endorsing the original enactment with a Land Laws Register number, the Registrar's seal and a certificate of the time and date of registration.

### REGISTRATION, CONT'D

5. Upon registering a Land Code enactment, the Registrar shall:
- a. store the original enactment and an electronic image of the registered enactment in the Land Law Archive;
  - b. abstract from the registered enactment its title, date of enactment, type of enactment, date of registration, Land Laws Register number, brief subject matter, in force date and any other information which the Registrar deems relevant, and add that information to the Land Laws Abstract Index.

### GROUND FOR REFUSING REGISTRATION

6. The Registrar shall not register a Land Code enactment document if:
- a. the document is not dated;
  - b. any material part of the document is not legible or any schedule or other attachment referred to in the document is not attached;
  - c. the document does not bear the original signatures of a majority of a quorum of Council, or the original certificate of a person appointed by Council to certify Land Code enactments.

### SPENT AND REPEALED ENACTMENTS

7. Upon notice from Council that a registered Land Code enactment is spent or has been amended or repealed, the Registrar shall add an endorsement of that change to the original enactment, the stored image of the enactment and the Land Laws Abstract Index, under the Registrar's seal.



ACCESS TO THE LAND LAWS REGISTER

8. Subject to subsection 15, any person may attend at the Shawanaga First Nation Land Laws Register during normal business hours and may view or obtain a copy of an electronic image of any registered Land Code enactment or the Land Laws Abstract Index.

### **PART 3 Administration**

APPROPRIATIONS

9. Council shall appropriate to the Shawanaga First Nation Land Laws Register an annual budget for its staffing, training and operations and extraordinary funds as may be required for special projects from time to time.

TERMS OF APPOINTMENT

10. Council shall appoint and fix the qualifications and terms of engagement of the Registrar of Land Laws and at least one Deputy Registrar, both of whom shall serve at the pleasure of Council, by resolution.

SEAL OF OFFICE

11. The Registrar shall have a Seal of Office and shall affix the seal to all Land Code enactments accepted for registration in the Land Laws Register, and to all certified copies of documents or abstracts.

DELEGATION

12. The Registrar may delegate any or all of the Registrar's duties pursuant to this Land Law to the Deputy Registrar.

VACANCY IN OFFICE OF REGISTRAR

13. Where the office of Registrar becomes vacant, the Deputy Registrar may exercise the power and shall perform the duties of the Registrar until a Registrar is appointed.

REGISTER OPEN HOURS

14. The Shawanaga First Nation Land Laws Register shall be open from Monday to Thursday from 9:00 a.m. to 4:00 p.m. and on Friday from 9:00 a.m. to noon, EST or EDST, as applicable, except on holidays.

REDACTION OF PRIVATE AND CONFIDENTIAL INFORMATION

15. Prior to providing copies or allowing access to or inspection of any record, the Registrar shall ensure that any Protected Information is completely and effectively redacted, except:

- a. where the application is made by Council or by the authority which enacted the record;
- b. where the applicant produces releases signed by all parties having a protected interest in the Protected information or
- c. pursuant to an order of a court of competent jurisdiction.



ADMINISTRATIVE FEES

16. Council may from time to time by resolution prescribe reasonable fees for the review of documents submitted for registration or recording, for searches or viewings of abstracts and documents, for certification of abstracts or documents and other administrative services provided by the Shawanaga First Nation Land Laws Register.

**PART 4 Coming Into Force and Amendment**

COMING INTO FORCE DATE

17. This Land Law shall come into force immediately upon enactment by Council.

AMENDMENT

18. This Land Law may be amended with Community input pursuant to section 13 of the Land Code.



**SCHEDULE "B"**

**Land Law 2017/18-002**

**FIRST AMENDMENT TO THE *SHAWANAGA FIRST NATION LAND CODE***



**Land Law 2017/18-002**  
**First Amendment To The**  
***Shawanaga First Nation Land Code***

**PREAMBLE**

In accordance with a ratification vote conducted on 30 September 2017 in which a quorum of Eligible Voters cast votes and in which a 50% plus 1 majority of the votes cast approved the amendments contained in this Land Law, as certified by the report of the Verifier, Council is authorized to amend the Shawanaga First Nation Land Code dated 16 March 2015 as provided herein.

**A. Exemptions from Land Code provisions to promote commercial activities**

1. The following shall be added as a new definition, in alphabetical order, in subsection 2.3:

**“Commercial Purposes”** means a use of Shawanaga First Nation Land intended to produce income for Shawanaga First Nation or other persons having an interest or licence therein;

2. Subsection 32.3 of the Code shall be renumbered 32.4 and the following shall be added as new subsection 32.3 with marginal note:

**Interests and Licences created for Commercial Purposes**

32.3 An Interest or Licence which Council deems by resolution to be for Commercial Purposes may include exemptions from:

- (a) any or all of section 17 and subsections 36.2, the application of subsections 37.5, 37.6, 37.7 and 37.8 to any charge, pledge or mortgage of the Interest or Licence; and
- (b) subject to a community approval vote under section 15, any other provision of this Land Code.

3. Subsection 37.4(c) is repealed and the following is substituted therefor:

- (c) a leasehold interest in Shawanaga First Nation Land may be charged, pledged or mortgaged, and is subject to any lender's remedies at law or specified in such charge, pledge or mortgage, including, without limitation, attachment, levy, seizure, distress and the taking of possession of the leasehold Interest.



**B. Clarification of effect of failure to comply with Land Code provisions**

4. Subsection 28.3 and its marginal note are repealed and the following is substituted therefor:

**Certificate required for registration**

28.3 An instrument to which subsection 28.2 applies shall not be registered in the Shawanaga First Nation Lands Register unless it includes the certificate referred to in that subsection.

5. Subsection 30.3 and its marginal note are repealed and the following is substituted therefor:

**Contravention of Land Code**

30.3 A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which the Shawanaga First Nation, a Member or any other person purports to grant, dispose of, transfer or assign an Interest or Licence in Shawanaga First Nation Land after the date this Land Code takes effect is unenforceable if it contravenes this Land Code.

**C. In force date for provisions relating to the separate Shawanaga First Nations Lands Register**

6. Subsections 29.1, 29.2 and 29.3 of the Code shall be renumbered 29.2, 29.3 and 29.4, and the following shall be added as new subsection 29.1 with marginal note:

**In force resolution of Council required**

29.1 Notwithstanding section 50, the requirements of this Land Code relating to the separate Shawanaga First Nation Lands Register shall not come into force until a day to be fixed by resolution of Council.

**D. Part 8 Dispute Resolution optional**

7. Subsections 41.4 and its marginal note are repealed and the following provision and marginal note are substituted therefor:

**Other dispute resolution methods**

41.4 Nothing in this Part shall be construed to prevail over the dispute resolution provisions of a written agreement or to limit the ability of any person to reach agreement to settle a dispute without recourse to this Part.

**E. In Force Date**

8. This Land Law shall come into force immediately upon enactment by Council:

[End]

**SCHEDULE "C"**

**Land Law 2017/18-003**

**ENVIRONMENTAL PERMITTING AND PROTECTION FOR THE HIWLP  
TRANSMISSION LINE**



**Land Law 2017/18-003**  
**Environmental Permitting And Protection**  
**Henvey Inlet Wind Transmission Line**

*This Land Law is enacted by Shawanaga First Nation to govern environmental assessment, protection, permitting and enforcement with respect to the pre-construction, construction, installation, operation and decommissioning of a power transmission line which Henvey Inlet Wind GP proposes to construct, subject to the terms of a lease to be granted by Shawanaga First Nation in favor of Henvey Inlet Wind GP Inc. (the "T-Line Lease"), on a parcel of Shawanaga First Nation Land within Reserve No. 17.*

*WHEREAS the Shawanaga First Nation has a profound relationship with the Land that is rooted in respect for the spiritual value of the Earth and the gifts of the Creator and has a deep desire to preserve their relationship with the Land;*

*AND WHEREAS Go-iji-mi-nigo-izit Anishinabe, the Creator gave Shawanaga First Nation laws that have always been and that govern all of our relationships to live in harmony with nature and humankind and those laws define our rights and responsibilities and we have maintained our freedom, our language, and our traditions from time immemorial.*

*(Collectively, these are the "Relationship Principles".)*

**PART 1. DEFINITIONS**

**A. DEFINITIONS**

For the purpose of this Environmental Protection and Permitting Land Law, the following definitions apply:



- (1) "abatement Officer" means a person appointed by the Commissioner to act independently of Council who has environmental protection expertise and relevant experience;
- (2) "Act" and "FNLMA" mean the *First Nations Land Management Act*, S.C. 1999, c. 24, as amended;
- (3) "adverse effect" means one or more of,
  - (a) impairment of the quality of the natural environment for any use that can be made of it,
  - (b) injury or damage to Go-iji-mi-nigo-izit, land or organic and inorganic matter and living organisms,
  - (c) harm or material discomfort to any person,
  - (d) an adverse impact on the health of any person,
  - (e) impairment of the safety of any person,
  - (f) rendering any land or plant or animal life unfit for human use,
  - (g) loss of enjoyment of normal use of land, resource, structure, or thing, and
  - (h) interference with the normal conduct of business as a result of an effect described in paragraphs (a) to (g).
- (4) "air" means open air not enclosed in a building, structure, machine, chimney, stack or flue;
- (5) "Anishinabe traditional knowledge" means the cumulative knowledge held by Anishinabe peoples through generations of living in close contact with nature. It encompasses cultural, environmental, economic, political, and spiritual inter-relationships;
- (6) "Annex F" means the Annex "F" to the Individual Agreement between Shawanaga FN and Canada under the FNLMA;
- (7) "Application" means all reports and supporting documents received by Shawanaga FN Council from HIW in support of the HIW request for an Environmental Permit for the T-Line;
- (8) "Approved EA Report" means collectively the reports approved by or created in conjunction with Shawanaga FN Council's environmental assessment of the T-Line, as further described in Part 2, I.1(6)(a), and may include the Environmental Review Report and the Environmental Effects Determination Report (with any recommendations or changes made in conjunction with Council's technical review);





- (9) "Archaeological resources" includes artifacts, archaeological sites, and marine archaeological sites. The identification and evaluation of such resources are based upon archaeological fieldwork undertaken in accordance with Ontario Ministry of Tourism, Culture and Sport's Standards and Guidelines for Consultant Archaeologists;
- (10) "Commissioner" means a person appointed by Council to act independently of Council who has environmental and administrative expertise and relevant experience;
- (11) "Community" means the membership from time to time of Shawanaga FN;
- (12) "contaminant" means any solid, liquid, gas, odour, heat, sound, vibration, radiation, or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect;
- (13) "Construction Activities" means the construction activities described in Section 2 of Schedule B to this Land Law;
- (14) "contractor" includes any person, who is not directly employed by HIW, conducting work or other activities in relation to the T-Line on behalf of or at the request of HIW;
- (15) "Council" means the Council of the Shawanaga First Nation elected pursuant to the provisions of the *Indian Act*, R.S.C., 1985, c. I-5;
- (16) "Decommissioning Activities" means the decommissioning activities described in Section 5 of Schedule B to this Land Law;
- (17) "discharge" when used as a verb includes add, deposit, leak, or emit, and when used as a noun includes addition, deposit, emission, or leak;
- (18) "Disputes" has the meaning set out in Part 5, K.1(1);
- (19) "EA application" means the Environmental Review Report and the Environmental Effects Determination Report and any other information required of HIW by Shawanaga First Nation for the purposes of the environmental assessment;
- (20) "EA Peer Reviewer" means the qualified person retained by Council to conduct the technical review of the EA application;
- (21) "enforcement Officer" means a person appointed by the Commissioner to act independently of Council who has law enforcement expertise and relevant experience;
- (22) "environment" means the components of the Earth and includes:
  - (a) land, *water* and *air*, including all layers of the atmosphere,



- (b) all organic and inorganic matter and living organisms, and
  - (c) the interacting natural systems that include components referred to in (a) and (b);
- (23) "environmental assessment" or "EA" means the Shawanaga FN process for assessing the T-Line that complies with the requirements of Annex F to the Shawanaga FN Individual Agreement with Canada and includes a technical review of the EA application;
- (24) "environmental effects" mean,
- (1) in respect of the proposed *T-Line*,
    - (a) a change that the *T-Line* may cause to the following components of the environment: fish and fish habitat, aquatic species at risk, and migratory birds,
    - (b) a change that the *T-Line* may cause to the environment on federal lands, including any change it may cause to a listed wildlife species, its critical habitat, or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the *Species at Risk Act*, S.C. 2002, c.29,
    - (c) with respect to aboriginal peoples, an effect of any change to the environment on:
      - (i) health and socio-economic conditions,
      - (ii) physical and cultural heritage, including Go-iji-mi-nigo-izit,
      - (iii) the current use of lands and resources for traditional purposes by aboriginal persons, or
      - (iv) any structure, site, or thing that is of historical, archaeological, paleontological, or architectural significance; and
  - (2) where the carrying out of the *T-Line* requires the exercise of any federal power, duty or function,
    - (a) a change to the environment, other than a change listed in paragraphs (1)(a) or (b), that is directly linked or necessarily incidental to the exercise of the federal power, duty or function; and
    - (b) an effect of any change to the environment in paragraph (2)(a), other than an effect listed in paragraph (1)(c), on:



- (i) health and socio-economic conditions,
  - (ii) physical and cultural heritage, or
  - (iii) any structure, site, or thing that is of historical, archaeological, paleontological, or architectural significance;
- (25) "Environmental Effects Determination Report" means the report on the T-Line within the Leased Lands prepared by HIW dated June, 2017 to address the requirements of Annex F;
- (26) "Environmental Permit" means the permit, including any schedules to it, issued by Council in accordance with this Regime;
- (27) "Environmental Review Report" means the environmental assessment report for the transmission line as it extends from the eastern boundary of Henvey Inlet First Nation T-Line, including through the Leased Lands (*Henvey Inlet Wind Volume B: Henvey Inlet Wind - Transmission Line Environmental Review Report – Final Draft* dated September 2015), as reviewed and approved by Council with respect to the Leased Lands (including any changes undertaken in conjunction with Council's technical review);
- (28) "EPA" means *Environmental Protection Act*, R.S.O. 1990, c. E.19 and regulations thereunder, as may be amended from time to time;
- (29) "EPP Land Law" means this Environmental Protection and Permitting Land Law, including any schedules to it, enacted pursuant to the Shawanaga FN Land Code;
- (30) "Equipment" means equipment as defined in the T-Line Lease;
- (31) "FN" means Shawanaga First Nation;
- (32) "FNLMA" mean the *First Nations Land Management Act*, S.C. 1999, c. 24, as amended;
- (33) "Go-iji-mi-nigo-izit" means either (i) a social or cultural feature or condition in the Leased Lands that has been identified as valued by Shawanaga First Nation (including in a traditional land use study), or (ii) a heritage site designated in accordance with the Land Code;
- (34) "HIW" means Henvey Inlet Wind GP Inc. operating as general partner of and on behalf of Henvey Inlet Wind LP, its successors, transferees, and assigns;
- (35) "impair" when used in relation to the quality of water, means the discharge of material if the material or a derivative of the material enters or may enter the water, directly or indirectly, and,



- (a) the material or derivative causes or may cause injury to or interference with any living organism that lives in or comes into contact with,
    - (i) the water, or
    - (ii) the soil or sediment that is in contact with the water,
  - (b) the material or derivative causes or may cause injury to or interference with any living organism as a result of it using or consuming,
    - (i) the water,
    - (ii) soil or sediment that is in contact with the water, or
    - (iii) any organism that lives in or comes into contact with the water or soil or sediment that is in contact with the water,
  - (c) the material or derivative causes or may cause a degradation in the appearance, taste or odour of the water,
  - (d) a scientific test that is generally accepted as a test of aquatic toxicity indicates that the material or derivative, in diluted or undiluted form, is toxic, or
  - (e) peer-reviewed scientific publications indicate that the material or derivative causes injury to or interference with organisms that are dependent on aquatic ecosystems;
- (36) "industrial waste" includes:
- (a) damaged, defective, or superfluous materials, liquids, or substances used or produced by industrial processes or operations, including without restriction, by the T-Line,
  - (b) by-products of materials, liquids, or substances used in industrial processes or operations, including without restriction, by the T-Line operations,
  - (c) used or superfluous lubricants, including petroleum-derived or synthetic crankcase oil, engine oil, hydraulic fluid, transmission fluid, gear oil, heat transfer fluid, or other oil or fluid used for lubricating machinery or equipment, and
  - (d) hazardous waste and hazardous waste chemicals as defined in Ontario Regulation 347: General –Waste Management;
- (37) "In-water Works" means any Construction Activity that takes place below the high water mark during flowing conditions and/or when water is present;



- (38) "land" means surface land not enclosed in a building, land covered by water and all subsoil, or any combination or part thereof;
- (39) "Land Code" means the Shawanaga First Nation Land Code as amended from time to time;
- (40) "Leased Lands" means the lands described in Schedule A;
- (41) "mitigation" means the elimination, reduction, or control of any adverse environmental effect of a proposed work or activity. It also includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation, or other means;
- (42) "monitoring" means plans to provide for the evaluation of the effectiveness of proposed mitigation measures and to verify the accuracy of the environmental assessment predictions. If monitoring indicates that adverse environmental effects are more severe than predicted or if mitigation is less effective than planned, such monitoring results serve as an early indicator to allow adaptive or remedial measures to be implemented in a timely manner;
- (43) "natural environment" means the air, land and water, or any combination or part thereof, on or within Reserve Lands;
- (44) "Notice of Arbitration" is defined in Part 5, K.6(1);
- (45) "Notice of Dispute" is defined in conjunction with the dispute resolution process in Part 5, K.2;
- (46) "Officer" means a person appointed by the Commissioner to act independently of Council who has either law enforcement expertise and relevant experience (in the case of an enforcement Officer) or environmental protection expertise and relevant experience (in the case of an abatement Officer);
- (47) "Operation Activities" means the operation and maintenance activities described in Section 3 of Schedule B to this Land Law;
- (48) "permanent stream" means a stream that continually flows in an average year;
- (49) "person" includes a corporation or a natural person and means HIW, its officers, employees, agents, or contractors;
- (50) "Pre-Construction Activities" means the site preparation and land clearing activities described in Section 1 of Schedule B to this Land Law;
- (51) "proponent" means HIW;
- (52) "public" means persons who are not members of Shawanaga FN;



- (53) "Regime" means the Shawanaga FN EPP Land Law for the T-Line on the FN Reserve Lands, including any documents issued by Shawanaga FN Council pursuant to this Land Law;
- (54) "Reserve Lands" means Reserve No. 17 as referenced in the Shawanaga Land Code;
- (55) "Respondent" means a party to a dispute resolution process as defined in Part 5, K.2, or a party who is not the Claimant in an arbitration under Part 5, K.6 and K.7 of this Land Law;
- (56) "Single Arbitrator" is defined in Part 5, K.6(4).
- (57) "significant adverse environmental effect" means an adverse environmental effect that has been assessed as significant considering residual environmental effects (after mitigation is applied) based on whether the effects are adverse, significant and likely;
- (58) "source of contaminant" means anything that discharges into the natural environment any contaminant;
- (59) "spill" means a discharge of a contaminant (other than heat, sound, vibration or radiation)
  - (a) into the natural environment,
  - (b) from or out of a structure, vehicle or other container, and
  - (c) that is abnormal in quality or quantity in light of all of the circumstances of the discharge,

and when used as a verb has a corresponding meaning.

- (60) "Terms" means the environmental terms and conditions imposed pursuant to Part 4 of this Land Law;
- (61) "T-Line" means the portion of the HIW transmission line that is proposed to cross Shawanaga FN Reserve Lands on the Leased Lands (but is distinguished from whole of the HIW transmission line which extends approximately 86 kilometres from the eastern boundary of the Henvey Inlet First Nation Reserve Lands to the HONI transmission system south of Parry Sound, of which the T-Line is only a part) and, for clarity, the T-Line does not include any ownership interest in the Reserve Lands;
- (62) "waste" means industrial waste, commercial waste, construction waste, ashes, garbage, refuse, domestic waste and sewage;





- (63) "water" means a well, lake, river, pond, spring, stream, reservoir, artificial watercourse, intermittent watercourse, groundwater, or other water or watercourse;
- (64) "wetland" means land such as a swamp, marsh, bog, or fen, other than land that is being used for agricultural purposes and no longer exhibits wetland characteristics, that,
  - (i) is seasonally or permanently covered by shallow water or has the water table close to or at the surface, and
  - (ii) has hydric soils and vegetation dominated by hydrophytic or water-tolerant plants;
- (65) "wildlife habitat" means an area where plants, animals, and other organisms live or have the potential to live and find adequate amounts of food, water, shelter, and space to sustain their population, including an area where a species concentrates at a vulnerable point in its annual or life cycle and an area that is important to a migratory or non-migratory species;
- (66) "woodland" means a treed area, woodlot, or forested area, other than a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas trees; and
- (67) "well" means a hole made in the ground to locate or to obtain ground water or to test or to obtain information in respect of groundwater or an aquifer, and includes a spring around or in which works are made or equipment is installed for collection or transmission of water and that is or is likely to be used as a source of water for human consumption.

## **PART 2. ENVIRONMENTAL ASSESSMENT**

### **A. ENVIRONMENTAL ASSESSMENT PRINCIPLES**

A.1 The following principles guide the environmental assessment required by Council for the proposed T-Line, pursuant to Annex F:

- (1) The purpose of an environmental assessment of the T-Line is to adhere to the Relationship Principles and to assess the proposed pre-construction, construction, operation, and decommissioning of the T-Line to avoid or minimize and mitigate potential significant adverse environmental effects on Reserve Lands, including with respect to species at risk.
- (2) To promote the avoidance or mitigation of adverse environmental effects, the environmental assessment will provide for protection of any Go-iji-mi-nigo-izit and otherwise consider substantive standards that are at least equivalent in effect to the



federal and provincial standards applicable to similar transmission facilities located in Ontario, not on Reserve Lands.

- (3) To promote community engagement, the environmental assessment will include a process of notice, information, and opportunity for comment, including receipt of Anishinabe traditional knowledge relevant to the EA.
- (4) Council may delegate to any person the exercise of some or all powers, duties, or functions required to carry out and complete the environmental assessment other than Council's decisions on the environmental assessment.
- (5) Council shall not make a decision with respect to the environmental assessment unless Council is satisfied that the reports to be approved in its decision conform to this Land Law.

## **B. APPLICATION**

### **B.1**

- (1) Prior to any irrevocable decision by Council to issue an Environmental Permit that would authorize the construction or operation of the T-Line, the proponent of the T-Line shall carry out and complete an environmental assessment that is acceptable to Council.
- (2) Pursuant to this Land Law, Council authorizes HIW to undertake all investigations or actions necessary to conduct the preliminary analysis for the environmental assessment required by this Part. Council acknowledges that HIW has, as of the date of the EPP Land Law, undertaken such investigations and analysis and has issued the Environmental Review Report and the Environmental Effects Determination Report for review by Council and in satisfaction of Section B.1(1).
- (3) HIW's EA application comprises the Environmental Review Report and the Environmental Effects Determination Report and any other information required of HIW by Shawanaga First Nation for the purposes of the environmental assessment.

## **C. ADMINISTRATION**

### **C.1 Council is responsible for:**

- (1) Administering this environmental assessment of the T-Line; and
- (2) Ensuring that all requirements of the environmental assessment process are carried out in accordance with the principles and requirements of this Part before it makes an irrevocable decision to issue a permit for the T-Line.

### **C.2 Council may delegate powers, duties, or functions over the environmental assessment required for the T-Line other than decisions pursuant to Section I of this Part.**



**D. PROVISION OF INFORMATION**

D.1

- (1) During the environmental assessment process for the T-Line, HIW shall:
  - (a) provide to Council any letter or record received from a third party commenting upon the environmental assessment of the T-Line; and
  - (b) ensure that the Environmental Review Report and the Environmental Effects Determination Report are available on its website for public and Community access.
- (2) During the environmental assessment process for the T-Line, Council shall:
  - (a) provide to HIW and the EA Peer Reviewer a copy of all notices issued by Council or third party comments received by Council with respect to the environmental assessment;
  - (b) where a person or body that has provided or is subject to a duty to provide a record forming part of the environmental assessment under this Land Law reasonably believes that the record would not reasonably be expected to be disclosed under the federal *Access to Information Act* and/or the Ontario equivalent, as amended, permit that person or body at the time of providing the record to the Council to request that such record be held in confidence;
  - (c) following receipt of a record requested to be held in confidence under paragraph (c), review the request and decide within 15 days whether such record would not reasonably be expected to be disclosed under the above-noted legislation and, if so, hold such record in confidence and not disclose it; and
  - (d) maintain on the Shawanaga website a copy of the Environmental Review Report and the Environmental Effects Determination Report.

**E. EXPERTS**

- E.1 Council may at any time appoint experts to advise it on the environmental assessment, including an EA Peer Reviewer.

**F. ENVIRONMENTAL ASSESSMENT PROCESS**

F.1

- (1) The environmental assessment process consists of three phases:
  - (a) Phase 1: Community notice by Council;
  - (b) Phase 2: Review of the EA application; and



- (c) Phase 3: Council decision on the EA.
- (2) During the environmental assessment process. Council may at any time:
  - (a) consult with HIW or request information from HIW that Council deems relevant to this environmental assessment; and
  - (b) consult with Canada, Ontario or any other government or ministry or agency.

**G. PHASE 1: COMMUNITY NOTICE**

G.1

- (1) In addition to Section D.1(2)(d) above, Council shall provide on the Shawanaga website, and by any other means as Council may deem appropriate, a copy of any other documents and notices it determines of benefit to the Community regarding the environmental assessment process. Council will advise the Community and the public of the opportunity to provide comments.
- (2) Council shall hold a meeting for the Community in order to review the environmental assessment process. Notice of such meeting shall be given and the meeting shall be held so as to ensure a period of not less than 30 days for comments on the EA application before any report of the EA Peer Reviewer is considered by the Council.

**H. PHASE 2: REVIEW OF THE EA APPLICATION**

H.1

- (1) Council shall undertake a review of the EA application.
- (2) Council shall cause a technical review of the EA application to be carried out by any experts that may be retained by Shawanaga, such as the EA Peer Reviewer. Council may provide, in its sole discretion, guidance to any expert retained for the technical review, including requiring current data to be considered.
- (3) The purpose of the technical review is to provide Council with written input that identifies the merits of the Environmental Review Report and the Environmental Effects Determination Report, with particular attention to possible adverse environmental effects, the significance of such effects, and measures to avoid or mitigate such effects.

**I. PHASE 3: COUNCIL DECISION ON THE EA**

I.1



- (1) On completion of the technical review, Council may, in respect of any concerns, findings or conclusions (including any recommended changes to the Environmental Review Report and the Environmental Effects Determination Report by the EA Peer Reviewer) that it considers to be relevant to the assessment of the significance of adverse environmental effects:
  - (a) provide opportunities for further Community input;
  - (b) request an update to the Environmental Effects Determination Report.
- (2) To decide whether the environmental assessment is acceptable, the Council shall have before it:
  - (a) the Environmental Review Report;
  - (b) the Environmental Effects Determination Report;
  - (c) a summary of any Community and public comments on the Environmental Review Report or the Environmental Effects Determination Report received in conjunction with Phase 1; and
  - (d) any report of the EA Peer Reviewer or other expert and any material recommendations or changes to the Environmental Review Report or the Environmental Effects Determination Report and any updates (as such may result from the technical review), or the results of any further Community input with respect to such updates.
- (3) Subject to subsection (5), Council shall make a decision whether the environmental assessment is acceptable within 15 days of receipt of the EA Peer Reviewer's report (or any other report of the technical review).
- (4) In deciding whether the environmental assessment is acceptable, Council may waive any procedural defects or irregularities in the environmental assessment process which in its opinion are not relevant to assessing the significance of adverse environmental effects likely to be caused by the T-Line.
- (5) Council shall not decide that the T-Line environmental assessment is acceptable unless Council concludes it is satisfied:
  - (a) with opportunities provided for Community consultation on the environmental assessment;
  - (b) with the technical review of the environmental assessment;
  - (c) that the environmental assessment process and resulting report(s) conform to this Land Law; and



- (d) that, taking into account mitigation and other information before Council through the environmental assessment process,
  - (i) the T-Line is not likely to cause significant adverse environmental effects; or
  - (ii) the significant adverse environmental effects likely to be caused by the T-Line are justified in the circumstances.
- (6) Where Council decides that the environmental assessment is complete and the conditions of Section I.1 (5) have been satisfied, it shall issue a Band Council Resolution confirming completion of the environmental assessment and approval of the Environmental Review Report and the Environmental Effects Determination Report (including any recommendations or any changes made in conjunction with the technical review) or any report created in conjunction with the environmental assessment (collectively the "Approved EA Report").

#### **J. ISSUANCE OF ENVIRONMENTAL PERMIT**

J.1 Where Council has confirmed completion of the environmental assessment, it shall:

- (a) issue, by Band Council Resolution, the Environmental Permit authorizing HIW to proceed to pre-construct, construct, operate and decommission the T-Line (without further notice to the Community); and
- (b) notify Canada that the environmental assessment for the T-Line has been completed by Council and the Approved EA Report is available for use by all federal authorities for any decisions made on matters related to the T-Line.

#### **PART 3. ENVIRONMENTAL PROTECTION**

##### **A. ENVIRONMENTAL PROTECTION PRINCIPLES**

A.1 Where Council has issued an Environmental Permit for the T-Line, the following principles apply to the interpretation of the Environmental Permit and the enforcement of the Environmental Permit terms and conditions under this Land Law:

- (1) Adherence to the Relationship Principles and protection of the environment for present and future generations of the Shawanaga First Nation are the fundamental objectives of this Land Law.
- (2) Environmental protection is provided through:
  - (a) the requirements and Terms under PART 3 and PART 4 that must be met by the T-Line;



- (b) Council's powers and duties set out in PART 5 to appoint personnel to inspect T-Line construction and operations for compliance with the standards under Part 3, take appropriate action from a range of options to address non-compliance; and
  - (c) Council's powers and duties set out in PART 6 to reach agreement with Ontario or otherwise authorize appointed personnel to initiate penal proceedings, including proceedings to impose appropriate punishments for non-compliance; and
  - (d) interpreting and administering this Land Law consistent with the provisions set out in Part 7.
- (3) Together PART 3 and PART 4 contain all the environmental requirements and standards of the Shawanaga FN for the pre-construction, construction, operation and decommissioning of the T-Line.
- (4) The aim of PART 5 and PART 6 are to ensure that environmental protection is administered and enforced in a manner that is:
  - (a) proportional, by providing that for any instance of non-compliance with the Terms, any resulting enforcement decision or action is commensurate to the risk to the environment presented by the non-compliance, the compliance history, and the response of the violator to the incident;
  - (b) just, by providing several means of dispute resolution, including negotiation, arbitration, and, where required, proceedings before courts; and
  - (c) fair, by providing means for Shawanaga FN to recover the full costs of any action required beyond abatement to protect the environment in compliance with the Terms.
- (5) This Land Law provides Shawanaga FN stewardship over the environmental protection of Reserve Lands by ensuring that Council retains ultimate authority to make decisions and take actions where necessary to address or justify activities that are contrary to the Terms and risk causing adverse effects to these lands.
- (6) The powers and responsibilities under this Land Law are comparable to the environmental protection laws of other jurisdictions such that any punishments imposed for non-compliance with the Terms:
  - (a) have been harmonized by Shawanaga FN with federal environmental protection regimes and processes and Ontario's environmental protection regimes and processes, to promote effective and consistent environmental protection and avoid uncertainty and duplication; and
  - (b) are at least equivalent in their effect to standards established and punishments imposed by the laws of Ontario.



**B. ENVIRONMENTAL PROTECTION STANDARDS**

**B.1**

- (1) Subject to subsection (2), the standards of environmental protection applicable to the T-Line on Reserve Lands are set out in the Terms.
- (2) For greater certainty and in accordance with the Lease, HIW is prohibited from constructing or operating the T-Line except in compliance with all terms and conditions hereunder.
- (3) If, for any reason, this Land Law is determined to be of no force or effect, HIW shall have no authority to, as applicable, construct or operate the T-Line until Council has amended the Land Law to authorize the T-Line.

**C. PROHIBITIONS AND DUTIES**

C.1 Notwithstanding any other provision of this Land Law, no person acting under the authority of the Environmental Permit shall discharge or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an adverse effect.

C.2 Every person acting under the authority of the Environmental Permit that discharges or causes or permits the discharge of a contaminant into the natural environment shall forthwith notify the Commissioner if the discharge is out of the normal course of events and causes or is likely to cause an adverse effect.

C.3 Without limiting the generality of Section C.1 and notwithstanding any other provision of this Land Law, no person acting under the authority of the Environmental Permit shall discharge or cause or permit the discharge of any material of any kind into or in any waters or on any shore or bank thereof or into or in any other place where the material is likely to enter water if the material may impair the quality of the water of any waters.

C.4 Every person acting under the authority of the Environmental Permit that discharges or causes or permits the discharge of any material of any kind, and such discharge is not in the normal course of events, or from whose control material of any kind escapes, into or in any waters or on any shore or bank thereof or into or in any other place where the material is likely to enter water if the material may impair the quality of the water of any waters, shall forthwith notify the Commissioner of the discharge or escape, as the case may be.

C.5 No person acting under the authority of the Environmental Permit shall cause or permit any waste generated in conjunction with the installation, construction, operation or decommissioning of the T-Line to be permanently stored on Reserve Lands.

**C.6**

- (1) No person acting under the authority of the Environmental Permit shall:





- (a) kill, harm, harass, capture or take a living member of a species that is listed as extirpated, endangered or threatened pursuant to the Canadian *Species at Risk Act*;
- (b) kill, harm, harass, capture or take a living member of a species that is listed as endangered or threatened pursuant to the Ontario *Endangered Species Act, 2007*;
- (c) damage or destroy the residence of species listed as endangered, threatened or extirpated (if a recovery strategy has recommended reintroduction of the species into the wild in Canada), pursuant to the Canadian *Species at Risk Act* or destroy any part of the critical habitat of a species listed as endangered, threatened or extirpated (if a recovery strategy has recommended reintroduction of the species into the wild in Canada), pursuant to the Canadian *Species at Risk Act*;
- (d) damage or destroy the habitat of a species listed as extirpated, endangered or threatened pursuant to the Ontario *Endangered Species Act, 2007*;

except in accordance with this Land Law, the Approved EA Report and any authorization under the Canadian *Species at Risk Act*.

#### **PART 4. ENVIRONMENTAL PERMITTING - TERMS AND CONDITIONS**

##### **A. GENERAL TERMS AND CONDITIONS**

###### **A.1**

- (1) HIW shall only pre-construct, construct, install, use, operate, maintain and decommission the T-Line in accordance with:
  - (a) all applicable laws, regulations, rules, ordinances, orders, directions, legal requirements, and legal rulings related to the environment, whether of Canada, the Province of Ontario or of any competent Federal or Provincial authority or agency as in effect or promulgated during the duration of this Land Law;
  - (b) all terms and conditions, including any mitigation, monitoring and contingency measures, of the Approved EA Report, as applicable to the Leased Lands;
  - (c) any permits, authorizations or approvals issued by Canada or the Province of Ontario with respect to the T-Line on the Reserve Lands; and
  - (d) the terms and conditions of this Land Law and in accordance with the schedules attached hereto, which are incorporated as part of this Land Law:
    - Schedule A – T-Line Description



- Schedule B – Physical Activities by Phase
- Schedule C – Waste Management Measures

- A.2 By undertaking any activity authorized by the Lease and this Land Law, HIW accepts and acknowledges the jurisdiction of Ontario courts where recourse to Ontario courts is provided for in PART 5 of this Land Law.
- A.3 Where this Land Law requires mitigation measures or plans to be developed after the date this Land Law is issued or Council or the Commissioner have approved mitigation measures, the mitigation measure or plans shall form part of this Land Law.
- A.4 The physical activities, buildings and structures permitted for each phase of the T-Line are set out in Schedule B to this Land Law and any modifications thereto.
- A.5 HIW shall provide the Commissioner at least ten (10) days written notice of the following:
- (a) the commencement of any Pre-Construction Activities for the T-Line;
  - (b) the commencement of any Construction Activities for the T-Line;
  - (c) the completion of the Construction Activities for the T-Line; and
  - (d) the commencement of operation of the T-Line.
- A.6 HIW shall ensure a copy of this Land Law, including schedules, is:
- (a) posted on HIW's publicly accessible website within five (5) business days of enactment of this Land Law; and
  - (b) accessible at all times by HIW staff operating the T-Line.

**B. IN-WATER WORKS DURING CONSTRUCTION**

- B.1 Activities requiring In-Water Works shall not contravene section 35 of the *Fisheries Act*, R.S.C., 1985, c. F-14.

**C. FOUNDATION DEWATERING**

- C.1 Prior to any foundation dewatering, if the amount of water to be discharged is in excess of 50,000 L per day to facilitate the Construction Activities, HIW shall prepare and submit to the Commissioner, at least two weeks prior to the commencement of any such groundwater takings in excess of 50,000 L per day, a dewatering plan which employs best management practices. HIW shall not commence any foundation dewatering in excess of 50,000 L per day until such dewatering plan has been approved in writing by the Commissioner (such approval not to be unreasonably delayed).
- C.2 During construction, HIW shall implement the dewatering plan.

**D. WASTE**



D.1 HIW shall implement the waste management mitigation measures set out in Schedule C.

**E. BLASTING**

E.1 HIW shall prepare and submit to the Commissioner, at least two weeks prior to the commencement of any blasting in conjunction with Construction Activities, a blasting plan which employs best management practices for drilling and blasting, including site security and safety and hazard mitigation. HIW shall not commence blasting until such plan has been approved in writing by the Commissioner (such approval not to be unreasonably delayed).

E.2 During construction, HIW shall implement the blasting plan.

**F. ENDANGERED SPECIES**

F.1 For each of the pre-construction, construction, operation and decommissioning phases of the T-Line, set out in Schedule B, HIW shall implement any mitigation, monitoring and contingency measures, with respect to a species that is listed as (i) extirpated, endangered or threatened pursuant to the Canadian *Species at Risk Act*, S.C. 2002, c. 29 or (ii) endangered or threatened pursuant to the Ontario *Endangered Species Act, 2007*, S.O. 2007, c. 6, in accordance with the Approved EA Report and any permit issued with respect to the T-Line in the Leased Lands pursuant to the *Species at Risk Act*.

F.2

(1) If a species that is extirpated, endangered or threatened, other than a species listed in the Approved EA Report or any authorization under the Canadian *Species at Risk Act*, is encountered by HIW on the site of the T-Line, HIW shall immediately:

(a) cease any activity that may adversely affect the species;

(b) contact the Commissioner immediately to discuss how and when activities shall resume; and

(c) provide a report of such encounter, including the date, time and location of observation, a description of the species, its behaviour and any noted features of surrounding habitat as well as actions taken to minimize or mitigate adverse effects, if any, as developed in accordance with Section F.3 of this Part.

F.3 No activity requiring authorization under the Canadian *Species at Risk Act* may proceed unless the necessary authorizations have been obtained by HIW. HIW shall ensure compliance with any authorization under the Canadian *Species at Risk Act*.

**G. NATURAL HERITAGE**

G.1 For the pre-construction, construction, operation and decommissioning phases of the T-Line set out in Schedule B, HIW shall implement the mitigation measures set out in the Approved EA Report for that respective phase, to the extent such apply to the Leased Lands.



**H. ENVIRONMENT AND CLIMATE CHANGE CANADA**

H.1 To the extent Environment and Climate Change Canada requires HIW to make commitments with respect to exceptional weather events, HIW shall enter into the necessary arrangements with Environment Canada.

**I. ARCHAEOLOGICAL AND OTHER GO-IJI-MI-NIGO-IZIT**

I.1 HIW shall not pre-construct, construct, install, use, operate, maintain, decommission or conduct any other physical activity in the areas of Go-iji-mi-nigo-izit except in accordance with the Approved EA Report.

I.2

(1) Should any previously undocumented archaeological resources be discovered at any time in the course of pre-constructing, constructing, operating or decommissioning the T-Line, HIW shall:

(a) cease all alteration of the area in which the archaeological resources were discovered immediately;

(b) notify Council and the Commissioner as soon as reasonably possible;

(c) engage a consultant archaeologist to:

(i) carry out the archaeological fieldwork necessary to further assess the area in accordance with the Ontario Ministry of Tourism, Culture and Sport's Standards and Guidelines for Consultant Archaeologists;

(ii) propose a plan to protect the archaeological resources; and

(d) if Council requests one or more Community meetings to discuss the archaeological find(s) and the proposed Archaeological Resources Protection Plan, arrange and participate in such meeting(s).

I.3 No further alteration of the area shall proceed until such time as Council is satisfied that an appropriate plan is in place that will ensure the protection of the previously undocumented archaeological resources.

I.4 All archaeological and other Go-iji-mi-nigo-izit are the property of Shawanaga FN and shall not be removed from the Leased Lands without the written authorization of Council.

**J. OPERATIONS AND MAINTENANCE**

J.1 HIW shall implement the operations and maintenance procedures set out in the Approved EA Report, as applicable to the Leased Lands.

**K. EMERGENCY RESPONSE**



- K.1 HIW shall comply with and implement any emergency response measures required under the Approved EA Report, to the extent applicable to the Leased Lands.

**PART 5. ENVIRONMENTAL PROTECTION - ENFORCEMENT**

**A. ENVIRONMENTAL PROTECTION ENFORCEMENT - GENERAL**

A.1

- (1) Council shall ensure that, at all material times, there are qualified personnel in place to address all requirements set out in this Land Law to administer and enforce the Terms.
- (2) To administer and enforce, the Council will appoint and retain a Commissioner throughout the duration of the Lease.
- (3) To assist in the administration and enforcement of the Lease and the Terms, the Commissioner shall retain an abatement Officer.
- (4) To investigate potential violations of the Lease and the Terms, the Commissioner may retain an enforcement Officer.
- (5) At no time shall the Commissioner appoint the same individual as the abatement Officer and enforcement Officer.
- (6) The Commissioner may retain technical experts to provide technical advice on matters related to the administration, modification or enforcement of the Terms.

A.2

- (1) HIW shall ensure that it provides the Commissioner concurrently with an electronic copy of all documents prepared by it in response to requirements of the Terms.
- (2) All documents, records, or things provided to or prepared by an Officer or Commissioner are owned by Shawanaga FN and shall be maintained in an electronic and physical manner to ensure convenient access by Council.
- (3) No Officer or Commissioner has any authority to destroy or remove from convenient access by Council any document, record, or thing owned by Council except in accordance with express written direction of Council.

A.3

- (1) Despite any other provision in this Land Law, where the Commissioner finds that there is an exceptional circumstance that has resulted, will result or is likely to result in an adverse environmental effect that was not identified in the Approved EA Report or not assessed as likely to occur, Council may conclude by Band Council Resolution that:



- (a) the exceptional circumstance is not likely to cause a significant adverse environmental effect or is not likely to cause a significant adverse environmental effect with additional mitigation and may deem the effect to be compliant with the Terms; or
  - (b) the exceptional circumstance is likely to cause a significant adverse environmental effect, but the significant adverse environmental effect is justified in the circumstances, and may deem the effect to be compliant with the Terms, and take any action consistent with its conclusion, including requiring additional mitigation.
- (2) Before enacting a Band Council Resolution pursuant to subsection (1), Council shall:
- (a) ensure that it has before it information on the potential environmental effects of the exceptional circumstance, the significance and likelihood of any adverse environmental effect, and any measures proposed by HIW to avoid or mitigate the adverse environmental effect; and
  - (b) prior to amending the Terms, obtain Community input in the manner prescribed for a Land Law under the Land Code with such procedural modifications as Council deems appropriate.
- (3) Any conclusion, decision, or action taken by Council under subsection A.3(1) is not subject to review by an Officer or Commissioner.

## **B. IMPLEMENTATION OF EPP LAND LAW**

### **B.1**

- (1) Where the Commissioner or Council requests of HIW:
- (a) information regarding implementation of this Land Law, including without restriction, detailed information regarding the implementation of mitigation measures and plans; or
  - (b) one or more site visits or meetings to review implementation of this Land Law;

HIW shall comply with the Commissioner's request in a timely manner.

- B.2 Where the Commissioner on reasonable grounds is of the opinion that guidance is needed to ensure that the mitigation measures and plans required under this Land Law are implemented so as to ensure significant adverse environmental effects are unlikely, the Commissioner may provide directives to HIW with respect to the implementation of such mitigation measures and plans, provided that no directive may add to, remove or alter the mitigation measures and plans required by this Land Law.



B.3 Directives issued by the Commissioner pursuant to Section B.2 of this Part shall be implemented by HIW.

B.4 The Commissioner's directives are not modifications for the purposes of Section E of this Part.

**C. RECORD CREATION AND RETENTION**

C.1 HIW shall create any operations log required in accordance with the Approved EA Report, to the extent applicable to the Leased Lands.

C.2 HIW shall create a record of any complaint alleging an Adverse Effect caused by the pre-construction, construction, installation, use, operation, maintenance or decommissioning of the T-Line.

C.3

(1) A record described under Section C.2 of this Part shall include a description of the complaint that includes as a minimum the following:

(a) the date and time the complaint was made;

(b) the name, address and contact information of the person who submitted the complaint;

(c) a description of each incident to which the complaint relates that includes as a minimum the following:

(i) the date and time of each incident;

(ii) the duration of each incident;

(iii) the ID of the equipment involved in each incident at the time of each incident;

(d) the location of the person who submitted the complaint at the time of each incident; and

(e) a description of the measures taken to address the cause of each incident to which the complaint relates and to prevent a similar occurrence in the future.

C.4 HIW shall retain, for a minimum of five (5) years from the date of their creation, all records described in Section C.2 and C.3 and make these records available for review by the Commissioner upon request.

**D. NOTIFICATION OF COMPLAINTS**

D.1 HIW shall notify the Commissioner of each complaint within two (2) business days of the receipt of the complaint.



D.2 HIW shall provide the Commissioner with the written records created under Sections C.1 and C.2 within eight (8) business days of the receipt of the complaint.

**E. MODIFICATIONS OF THE ENVIRONMENTAL PERMIT**

E.1

- (1) Subject to the conditions below, the Commissioner may, without the approval of Council, modify the Approved EA Report or the Terms by modifying the Environmental Permit, with respect to the following:
  - (a) modifications necessary to achieve minimum compliance with an authorization under the Canadian *Species at Risk Act*, *Fisheries Act* or *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22, or an order of any Federal or Ontario Court of competent jurisdiction.
  - (b) modifications to refine mitigation, monitoring and contingency measures under the Approved EA Report;
  - (c) modifications to refine reporting requirements; and
  - (d) modifications to clarify the wording of this Land Law or its schedules, the Approved EA Report or the Environmental Permit where such clarifications are in keeping with the intent of this Land Law.

E.2

- (1) The Commissioner shall not modify the Environmental Permit unless the Commissioner determines that the modifications:
  - (a) do not reduce the level of protection provided to the environment, archaeological resources or other Go-iji-mi-nigo-izit by this Land Law;
  - (b) are not likely to result in increased adverse environment effects; and
  - (c) do not conflict with Canadian *Species at Risk Act*, *Fisheries Act* or *Migratory Birds Convention Act, 1994*, or any authorization issued thereunder.

E.3 Where, pursuant to Section E.1(1), a modification is necessary in order to achieve minimum compliance with an authorization under the Canadian *Species at Risk Act*, *Fisheries Act* or *Migratory Birds Convention Act, 1994* or an order of any Federal or Ontario Court of competent jurisdiction, conditions under Section E.2 shall be deemed to have been met.

E.4

- (1) The modifications may be proposed by the Commissioner, or at the written request of HIW, as follows:





- (a) Where modifications are proposed by either the Commissioner or HIW, the Commissioner shall provide reasonable notice to Council. Except where the Commissioner has proposed the modification pursuant to Section E.1(1)(b) of this Part, Council shall have an opportunity to make written submissions regarding the proposed modifications.
- (b) Where modifications are proposed by the Commissioner, the Commissioner shall provide to HIW reasonable notice and an opportunity to make written submissions.
- (c) Where modifications are proposed by HIW, the Commissioner may require a report demonstrating that the proposed modifications meet conditions under Sections E.2(1)(a)-E.2(1)(c).
- (d) Where the Commissioner approves a modification, written notice is to be given to HIW. Where the Commissioner proposed and approves a modification pursuant to Sections E.1(1)(b) or E.1(1)(d), HIW may appeal the modification to Council, subject to the following:
  - (i) HIW shall provide written notice of the grounds of appeal to the Commissioner and Council within 30 days of the day HIW first received written notice of the Commissioner's decision to approve the modification;
  - (ii) in the case of E.1(1)(d), an appeal may be initiated on the basis that a modification is inconsistent with the wording or intent of this Land Law;
  - (iii) the Commissioner and HIW may make submissions to Council; and
  - (iv) Council may only allow the appeal where it has determined that the modification is not necessary to avoid a significant adverse environmental effect.

E.5 No modification made by the Commissioner pursuant to Section E.1 is effective unless it is proposed in writing and approved in writing.

E.6 Changes to equipment location otherwise authorized by this Land Law, including pursuant to the Approved EA Report, are not modifications pursuant to Section E.1.

## **F. CHANGE IN OWNERSHIP**

### **F.1**

- (1) HIW shall notify the Commissioner in writing, and forward a copy of the notification to the Commissioner, within thirty (30) days of the occurrence of any of the following changes:



- (a) the ownership of the T-Line;
- (b) the operator of the T-Line;
- (c) the address of HIW;
- (d) the partners, where HIW is or at any time becomes a partnership and a copy of the most recent declaration filed under the *Business Names Act*, R.S.O. 1990, c. B.17, as amended, shall be included in the notification; and
- (e) the name of the corporation where HIW is or at any time becomes a corporation, and a copy of the most current information filed under the *Corporations Information Act*, R.S.O. 1990, c. C.39, as amended, shall be included in the notification.

## G. ENVIRONMENTAL PROTECTION ENFORCEMENT – INSPECTIONS

### G.1

- (1) For the administration of this Land Law on Reserve Lands, the abatement Officer may, without a warrant or court order, at any time and with any reasonable assistance make an inspection regarding compliance with the conditions of the Terms.
- (2) HIW is required to provide all reasonable assistance, including the provision of reasonably requested information, to enable the abatement Officer to carry out his or her duties and functions under this Land Law.
- (3) HIW is prohibited from preventing or interfering with an inspection carried out by the abatement Officer, including the provision of false information to an abatement Officer, acting in accordance with this section.
- (4) An inspection may include:
  - (a) entering any part of the environment to ascertain the extent, if any, to which contaminants released by the T-Line are contrary to the prohibitions hereunder, the causes of any release contrary to the prohibitions hereunder, and how any release that is contrary to the prohibitions hereunder may be prevented, eliminated, or ameliorated and the environment restored;
  - (b) entering any place in which the abatement Officer reasonably believes can be found anything that is governed or regulated under this Land Law or anything the dealing with which is governed or regulated under this Land Law;
  - (c) entering any place in or from which the abatement Officer reasonably believes a Contaminant is being, has been, or may be discharged into the environment contrary to the prohibitions hereunder;



- (d) entering any place that the abatement Officer reasonably believes is, or is required to be, subject to or referred to in the Terms, agreement, order or otherwise governed under this Land Law;
  - (e) stopping, re-routing or detaining any conveyance which the abatement Officer reasonably believes may contain anything that is governed or regulated under this Land Law or that is related to an offence under this Land Law; and
  - (f) entering any place where a contaminant is spilled contrary to the prohibitions hereunder.
- (5) During an inspection under subsection (1), the abatement Officer may take any action or require that an action be taken by HIW or others under conditions specified by the abatement Officer in order to assist the inspection, including:
- (a) make necessary excavations;
  - (b) require that anything be operated, used, or set in motion under conditions specified by the abatement Officer;
  - (c) take samples for analysis;
  - (d) conduct tests or take measurements;
  - (e) examine, record, or copy any document or data, in any form, by any method;
  - (f) record the condition of a place or the environment by means of photograph, video recording, or other visual recording;
  - (g) require the production of any document or data, in any form, required to be kept under this Land Law and of any other document or data, in any form, related to the purposes of the inspection;
  - (h) remove from a place documents or data, in any form, produced under clause (g) for the purpose of making copies; and
  - (i) make reasonable inquiries of any person, orally or in writing.
- (6) The abatement Officer shall not remove any document or data under subsection (5) without giving a receipt for it or them and shall promptly return the document or data to the person who produced them.
- (7) The abatement Officer who exercises the power set out in subsection (5) may exclude from the questioning any person except counsel for the individual being questioned.



- (8) During an inspection under this Section, an abatement Officer may, without a warrant or a court order, seize anything that is produced to the abatement Officer or is in plain view, if,
  - (a) the abatement Officer reasonably believes that the thing will afford evidence of an offence under this Land Law;
  - (b) the abatement Officer reasonably believes that the thing was used or is being used in connection with the commission of an offence under this Land Law and that the seizure is necessary to prevent the continuation or repetition of the offence; or
  - (c) the thing is discharging or is likely to discharge a contaminant into the natural environment and an adverse effect has resulted or is likely to result from the discharge.
- (9) An abatement Officer who seizes a thing under subsection (8) may remove the thing or detain it in the place where it is seized.
- (10) An abatement Officer shall not seize anything without providing a written receipt for same.
- (11) The Commissioner may order that a thing seized under subsection (9) be forfeited to the Shawanaga FN.
- (12) The abatement Officer engaged in an inspection shall prepare and complete forthwith a written report describing all material actions undertaken, information gathered and items seized from the inspection and relating these actions, information, and items to compliance with the terms and conditions of this Land Law.
- (13) On completion of an inspection report, the abatement Officer shall provide the report to the Commissioner.

## **H. ENVIRONMENTAL PROTECTION ENFORCEMENT - ORDERS**

### **H.1**

- (1) The Commissioner may issue a notice of contravention of or non-compliance with this Land Law to HIW or to any person that the Commissioner reasonably believes is or has contravened or not complied with this Land Law and such notice may direct action to achieve compliance under this Land Law and prevent continuation of such contravention or non-compliance.
- (2) When a copy of an order is served upon any person, that person:
  - (a) shall comply with the order forthwith; or



- (b) shall, if the order sets out a future date by which it is to be complied with, comply with the order on or not later than such future date.

## H.2

- (1) When the abatement Officer completes an inspection report or an enforcement Officer completes an investigation report that contains a finding that a contaminant has been or is being discharged into the natural environment in contravention of this Land Law, the Officer shall provide a copy of the report to the Commissioner forthwith.
- (2) On receipt of a report under subsection (1), the Commissioner may issue a control order directed to:
  - (a) HIW as owner of the source of contaminant;
  - (b) a person who is or was in occupation of the source of contaminant; or
  - (c) a person who has or had the charge, management, or control of the source of contaminant.
- (3) No order shall be issued under subsection (2) as a result of a finding that a contaminant is being discharged in contravention of this Land Law unless the contravention causes or is likely to cause an adverse effect.
- (4) Where the Commissioner concludes that a control order is appropriate and prepares such an order for issuance, the Commissioner shall seek to ensure that the order will be sufficient in scope to redress non-compliance, and is otherwise appropriate and proportional in relation to the non-compliance.
- (5) Where the Commissioner proposes to issue a control order, the Commissioner shall serve notice of its intention, together with written reasons therefore and a copy of the report of the Officer or other person upon which the reasons are based, and shall not issue the control order until 15 days after the service thereof.
- (6) On receipt of a notice under subsection (5), the person receiving the control order may make submissions to the Commissioner at any time before the control order is issued.
- (7) The Commissioner shall give notice of the control order to Council and the Community in such manner as the Commissioner considers appropriate.

## H.3

- (1) When the Commissioner, upon reasonable and probable grounds, is of the opinion that a source of contaminant is discharging into the environment any contaminant in contravention of this Land Law and that constitutes, or the amount, concentration, or level of which constitutes, an immediate danger to human life, the



health of any persons, or to property, the Commissioner may issue a stop order directed to:

- (a) HIW as owner of the source of contaminant;
  - (b) a person who is or was in occupation of the source of contaminant; or
  - (c) a person who has or had the charge, management, or control of the source of contaminant.
- (2) Where the Commissioner concludes that a stop order is appropriate and prepares such an order for issuance, the Commissioner shall seek to ensure that the scope of the order appropriately and proportionately reflects the scope of non-compliance.
- (3) The Commissioner shall give notice of the stop order to Council and to the Community in such manner as the Commissioner considers appropriate.

H.4 Where any person causes or permits the discharge of a contaminant into the natural environment in contravention of this Land Law which is likely to have an adverse effect, the Commissioner may issue an abatement order to the person to:

- (a) repair the injury or damage; or
- (b) prevent future injury or damage.

H.5

- (1) The Commissioner may, where authorized by this Land Law to issue an abatement order to a person, include in that order the following additional requirements:
- (a) to stop, limit, or control the rate of discharge of the contaminant into the environment in accordance with the directions set out in the order;
  - (b) to comply with any directions set out in the order relating to the manner in which the contaminant may be discharged into the environment;
  - (c) to ameliorate the adverse effects of the discharge and to restore the environment to its pre-discharge condition;
  - (d) to comply with any directions set out in the order relating to the procedures to be followed in the control or elimination of the discharge of the contaminant into the environment;
  - (e) to install, replace, or alter any equipment or thing designed to control or eliminate the addition, emission, or discharge of the contaminant into the environment;



- (f) to monitor and record, both in the manner specified in the order, the discharge into the environment of the contaminant specified in the order and to report thereon to the Commissioner;
  - (g) to study and to report to the Commissioner upon,
    - (i) measures to control the discharge into the environment of the contaminant specified in the order,
    - (ii) the effects of the discharge into the environment of the contaminant specified in the order,
    - (iii) the environment into which the contaminant specified in the order is being or is likely to be discharged; and
  - (h) to report to the Commissioner in respect of fuel, materials, and methods of production used and intended to be used, and the wastes that will or are likely to be generated.
- (2) Where an order subject to Section H.5 includes the requirement under subsection (g) to study and to report to the Commissioner on a matter, the person subject to the order shall report to the Commissioner in the manner, at the times, and with the information specified by the Commissioner in the order.

H.6

- (1) When a copy of an order is served upon any person, that person:
- (a) shall comply with the order forthwith; or
  - (b) shall, if the order sets out a future date by which it is to be complied with, comply with the order on or not later than such future date.

H.7 The Commissioner may, by a further order, amend, vary, or revoke an order made under this Land Law and in each case shall cause a copy of the order to be served upon the person subject to the original order and HIW.

H.8 An order under this Part takes effect immediately upon service of the order in accordance with this Part.

**I. ENVIRONMENTAL PROTECTION ENFORCEMENT - ACCIDENT AND EMERGENCY POWERS**

I.1

- (1) Where an Officer or the Commissioner identifies on Reserve Lands an accident or an emergency that, in his or her opinion, requires immediate attention in order to:



- (a) prevent or minimize a breach of this Land Law that may cause an adverse effect; or
  - (b) prevent or minimize an adverse effect to Reserve Lands or the T-Line, the Officer or the Commissioner may cause to be done anything required by him or her to prevent or minimize that adverse effect.
- (2) The Officer shall make reasonable efforts to give immediate notice to HIW and the Commissioner of his or her intention to take action under subsection (1).
  - (3) A person other than the Commissioner who receives a notice under subsection (2) shall not take the action referred to in the notice without the permission of the Commissioner.

**J. ENVIRONMENTAL PROTECTION ENFORCEMENT – RECOVERY OF COSTS**

**J.1**

- (1) Where an Officer or the Commissioner takes action or causes action to be taken under this Land Law, other than an inspection, in respect of a breach of this Land Law (including the Terms), the Commissioner may issue an order to pay costs to any person considered by the Commissioner on reasonable grounds to be responsible, in whole or in part, for the action or costs.
- (2) An order to pay costs shall include:
  - (a) a description of the action that the Commissioner or Officer caused to be done under this Land Law;
  - (b) a detailed account of the costs incurred in taking the action; and
  - (c) a direction that the person to whom the order is issued pay the costs to the Commissioner.
- (3) An order under subsection (1) to pay costs shall also include a brief statement of the circumstances giving rise to the decision to take or cause action.
- (4) To the extent persons not responsible were required to take action by the Officer or Commissioner, the Commissioner may use payments made in accordance with this section to reimburse any such person for expenses incurred in taking such action.
- (5) Where two or more persons are liable to pay costs pursuant to an order under subsection (1), they are jointly and severally liable to the Council.
- (6) Where the Commissioner has authority to issue an order to two or more persons under subsection (1), as between themselves, in the absence of an express or implied contract, each of those persons is liable to make contribution to and indemnify the other in accordance with the following principles:





- (a) Where the Commissioner is entitled to issue an order to two or more persons under subsection (1) in respect of costs and one or more of them caused or contributed to the costs by fault or negligence, such one or more of them shall make contribution to and indemnify,
    - (i) where one person is found at fault or negligent, any other person to whom the Commissioner is entitled to issue an order under subsection (1), and
    - (ii) where two or more persons are found at fault or negligent, each other and any other person to whom the Commissioner is entitled to issue an order under subsection (1) in the degree in which each of such two or more persons caused or contributed to the costs by fault or negligence.
  - (b) For the purpose of subsection (6)(a)(ii), if it is not practicable to determine the respective degrees in which the fault or negligence of two or more persons to whom the Commissioner is entitled to issue an order under subsection (1) caused or contributed to the costs, such two or more persons shall be deemed to be equally at fault or negligent.
  - (c) Where no person to whom the Commissioner is entitled to issue an order under subsection (1) caused or contributed to the costs by fault or negligence, each of the persons to whom the Commissioner is entitled to issue an order under subsection (1) is liable to make contribution to and indemnify each other in such degree as is determined to be just and equitable in the circumstances.
- (7) The right to contribution or indemnification under subsection (5) may be enforced by an action or application in a court of competent jurisdiction in Ontario.
  - (8) Wherever it appears that a person not already a party to an action under subsection (6) may be a person to whom the Commissioner is entitled to issue an order under subsection (1) in respect of the costs, the person may be added as a party to the action on such terms as are considered just or may be made a third party to the action in the manner prescribed by the Ontario Rules of Civil Procedure for adding third parties.
  - (9) In considering whether to issue an order under subsection (1), the Commissioner shall consider:
    - (a) whether a person other than an Officer or Commissioner could have been ordered to do the action that was taken by the Officer or Commissioner; and
    - (b) whether to order the withdrawal of any monies from funds created for the T-Line under the Lease.



**K. ENVIRONMENTAL PROTECTION ENFORCEMENT - DISPUTE RESOLUTION**

**K.1**

- (1) Any disputes, disagreements, controversies, questions, or claims arising out of or relating to this Land Law including, without limitation, their formation, execution, validity, application, interpretation, performance, breach, termination, or enforcement (collectively, "Disputes"), will be determined in accordance with this Part which sets out the exclusive procedure for the resolution of Disputes.
- (2) All processes to resolve Disputes shall be carried out expeditiously and subject to the following timetable:
  - (a) Step 1 - initiating a Dispute and negotiation: within 15 days of the decision or event giving rise to the Dispute, provide Notice of Dispute and, in conjunction with the provision of such notice, initiate negotiations;
  - (b) Step 2 – where the Dispute has not been resolved, a mediation may be commenced within 30 days of the delivery of the Notice of the Dispute;
  - (c) Step 3 - where the Dispute has not been resolved, an appeal under Section K.6 of this Part or an arbitration under Section K.7 of this Part may be commenced within 30 days of Step 2 having been completed; and
  - (d) Step 4 - in the case of arbitration, the arbitration shall be completed within 4 months of the receipt of the Notice of Dispute.
- (3) Where there is a Dispute about requirements that have caused or may cause an adverse effect, the Commissioner and HIW (for the purposes of this Section, the "Party" or collectively the "Parties") agree that, subject to subsection (4), dispute resolution shall be carried out in a way that does not cause or increase an adverse effect.
- (4) Where there is a Dispute and the Parties cannot agree on how to carry out dispute resolution in a way that does not cause or increase an adverse effect, either Party may apply to a court of competent jurisdiction in Ontario for an order that addresses how dispute resolution may occur in the circumstance of avoiding or minimizing an adverse effect.

K.2 The Commissioner or HIW will give notice of a Dispute by delivering a written notice of dispute (the "Notice of Dispute") to the other Party (the "Respondent").

K.3 The Notice of Dispute will include:

- (a) the full names, descriptions, and addresses of the Parties;
- (b) a general description of the Dispute; and



(c) the relief or remedy sought.

K.4 In conjunction with the provision of a Notice of Dispute, the Parties will give first priority to resolve the Dispute by negotiation and will participate in negotiations in good faith before any initiation of mediation under Step 2 under Section K.1(2)(b).

K.5 Where all issues have not been resolved within 30 days of the delivery of the Notice of Dispute, either of the Parties may initiate a non-binding and without prejudice mediation by providing written notice to the Commissioner. Within seven days of such notice being given, the Parties shall jointly appoint a person generally recognized as having expertise in the matter which is the subject of the Dispute as the mediator. Mediation rules shall be determined by the mediator, with the agreement of the Parties. The mediator shall promptly mediate the Dispute and shall render its recommendations in writing to the Parties within 30 days of being appointed. Within five days of issuance of the mediator's recommendations, each Party shall provide notice in writing to the other Party of its acceptance or rejection of such recommendations. The Parties may extend the time for the mediation by mutual written agreement.

K.6

- (1) Within 30 days of the completion of Step 2 under Section K.1(2)(b), where all issues have not been resolved, any person subject to an order, notice of contravention or notice of non-compliance issued under this Land Law may, with written notice to the Commissioner, appeal such order, notice of contravention or notice of non-compliance to the Ontario Superior Court of Justice.
- (2) The Parties may by mutual written agreement extend the time for Appeal provided under subsection (1) above.
- (3) The Superior Court of Justice may set aside, confirm or vary the order, notice of contravention or notice of non-compliance, or may remit it to the Commissioner for reconsideration with such directions as the Court deems proper.
- (4) An appeal under subsection (1), and any subsequent appeal from the order of the Superior Court of Justice, shall be governed by the Ontario Courts of Justice Act and the Rules of Civil Procedure enacted thereunder.
- (5) The Commissioner may retain a lawyer to respond to an appeal under subsection (1).

K.7

- (1) Upon completion of Step 2 under section K.1(2)(b), where all issues have not been resolved, a Party may require that the Parties submit to arbitration under this Part with respect to any unresolved issues by delivering a written notice of arbitration ("Notice of Arbitration") to the other Party, The Notice of Arbitration will include:
  - (a) the full names, descriptions, and addresses of the Parties;



- (b) a demand that the Dispute be referred to arbitration under this section;
  - (c) a general description of the Dispute;
  - (d) the relief or remedy sought;
  - (e) the proposed location of the arbitration; and
  - (f) the name of the person whom the Commissioner, HIW, or Disputant (the "Applicant") nominates as an arbitrator.
- (2) The Parties may by mutual written agreement extend the time for the delivery of the Notice of Arbitration provided under subsection (1) above.
  - (3) Arbitrations will be conducted in Ontario in accordance with the *Arbitration Act*, SO 1991. Chapter 17.
  - (4) The arbitrator nominated by the Applicant will be the single arbitrator (the "Single Arbitrator") to resolve the Dispute unless, within 5 days of service of the Notice of Arbitration on the Respondent, the Respondent, by notice to the Applicant, appoints a second arbitrator to serve on the panel of Arbitrators who will resolve the Dispute, and the arbitrator nominated by the Applicant will be deemed to have also been so appointed.

#### K.8

- (1) A Party may not proceed with both an appeal under Section K.6 and an arbitration under Section K.7 with regard to the same order, notice of contravention or notice of non-compliance.
- (2) The Commissioner may retain a lawyer to respond to an arbitration under Section K.7.
- (3) If the Respondent has appointed a second arbitrator under this section, then, within 5 days of that appointment, the appointees of the Applicant and Respondent will, by notice to the Parties, appoint a third and final arbitrator to act as chair of the Arbitrators, failing which a chair will be appointed by a judge of the Superior Court of Justice of Ontario on the application of any Party on notice to all other Parties.
- (4) Subject to the *Arbitration Act*, and this Land Law, the Arbitrators may conduct the arbitration in the manner the Arbitrators consider appropriate. The Parties or, as applicable, the Commissioner and Disputant intend and will take such reasonable action necessary or desirable to ensure that there be a speedy resolution to any Dispute, and the Arbitrators will conduct the arbitration of the Dispute with a view to making a determination and written, reasoned order as soon as possible.



- K.9 As provided for by Section 50 of the *Arbitration Act*, the Party entitled to enforcement of an arbitral award made pursuant to this section may make an application to the court to that effect.
- K.10 Notwithstanding any other remedy available under this Part, if, following the Commissioner's notice to HIW of non-compliance or notice of contravention with the Terms, the non-compliance or contravention persists and presents a risk of harm to the environment or human health, the Commissioner has authority to initiate judicial proceedings for injunctive and other relief to provide compliance.
- K.11
- (1) An order to pay costs under this Part may be filed with a local registrar of the Superior Court of Justice and enforced as if it were an order of the court.
  - (2) Section 129 of the *Courts of Justice Act* applies in respect of an order filed with the Superior Court of Justice under subsection (1) and, for the purpose, the date of filing shall be deemed to be the date of the order.
- K.12 Where an order to pay costs under this Part: is directed to a person who has given a deposit or financial assurance under the Terms for the lease of Reserve Lands, the deposit or financial assurance may be used to recover amounts specified in the order to pay costs.
- K.13 No aspect of this Part is intended to affect the exclusive jurisdiction of the Federal Courts of Canada under the Federal Courts Act, as amended.

## **PART 6. PENAL ENFORCEMENT**

### **A. PENAL ENFORCEMENT - GENERAL**

- A.1 Where the Commissioner obtains information which provides the Commissioner with reasonable and probable grounds for believing that there is non-compliance with this Land Law or any order under this Part and the Commissioner determines that civil means of dispute resolution available under this Part are not adequate to appropriately resolve matters relating to the non-compliance, the Commissioner may retain an enforcement Officer, pursuant to PART 5, Section PART 5.A.1(4) for the purpose of investigating whether a person has committed an offence.

### **B. PENAL ENFORCEMENT BY ONTARIO**

#### **B.1**

- (1) Council may reach agreement with the Province of Ontario to:
  - (a) provide penal investigation or enforcement of non-compliance with this Land Law, for some or all of the offences under this Part, including use of Ontario laws for, among other things, investigations, offences, prosecution, and punishments; or



- (b) avoid double enforcement by Shawanaga FN and the Province of Ontario where the same acts or omissions give rise to an offence under Ontario law and under this Land Law.
- (2) Where, consistent with subsection (1)(a). Council has reached agreement on penal enforcement with the Province of Ontario, the Commissioner may, for the purpose of ensuring compliance with the Terms, refer the non-compliance to enforcement personnel at the Province of Ontario in accordance with the terms of the agreement.

**C. PENAL ENFORCEMENT - INVESTIGATION OF OFFENCES**

**C.1**

- (1) The Commissioner, or an enforcement Officer retained under PART 5, Section PART 5.A.1(4) may, for the purpose of ensuring compliance with the Terms, enter on or into any land or place without an order if:
  - (a) the entry is made with the consent of an occupier or owner of the land or place; or
  - (b) the delay necessary to obtain an order would result in,
    - (i) danger to the health or safety of any person,
    - (ii) impairment or serious risk of impairment of the quality of the environment for any use that can be made of it, or
    - (iii) injury or damage or serious risk of injury or damage to any property or to any plant or animal life.
- (2) Where subsection (1) does not apply, an application by the Commissioner or the enforcement Officer to a court of competent jurisdiction of Ontario may be brought on the basis of evidence under oath demonstrating reasonable grounds for the belief that entry on land or into or on a place is necessary for the purpose of ensuring compliance with the Terms and such court may issue an order authorizing the Commissioner or the enforcement Officer to make the entry and do the thing.
- (3) An order issued under subsection (2) shall:
  - (a) specify the times, which may be 24 hours each day, during which the order may be carried out; and
  - (b) state when the order expires.
- (4) Before or after the order expires, the court may renew the order for such additional periods as it considers necessary.



- (5) The Commissioner or the enforcement Officer authorized under subsection (1)(b) or (2) to enter land or a place for the purpose of ensuring compliance with this Land Law may call on police officers as necessary and may use force as reasonably necessary to make the entry and do the thing.
- (6) The Commissioner or the enforcement Officer named in an order issued under subsection (2) may call on any other persons he or she considers advisable to execute the order.
- (7) An application for an order or renewal of an order under this section may be made without notice to the owner or occupier of the land or place.
- (8) On the request of an owner or occupier of the land or place, the Commissioner or the enforcement Officer who exercises a power conferred under subsection (1) or (2) shall identify himself or herself and shall explain the purpose of the entry.
- (9) During an investigation under this part, the Commissioner or an enforcement Officer may, without a warrant or a court order, seize anything that is produced or is in plain view, if,
  - (a) the Commissioner or enforcement Officer reasonably believes that the thing will afford evidence of an offence under this Land Law;
  - (b) the Commissioner or enforcement Officer reasonably believes that the thing was used or is being used in connection with the commission of an offence under this Land Law and that the seizure is necessary to prevent the continuation or repetition of the offence; or
  - (c) the thing is discharging or is likely to discharge a contaminant into the natural environment and an adverse effect has resulted or is likely to result from the discharge.
- (10) The Commissioner or an enforcement Officer who seizes a thing under subsection (9) may remove the thing or detain it in the place where it is seized.
- (11) The Commissioner or an enforcement Officer shall not seize anything without providing a written receipt for same.
- (12) Pursuant to this Part, the Commissioner may order that a thing seized under subsection (9) be forfeited to the Shawanaga FN.
- (13) The Commissioner or the enforcement Officer engaged in an investigation shall prepare and complete forthwith a written report, an investigation report, describing all material actions undertaken, information gathered and items seized from the investigation and relating these actions, information and items to compliance with the terms and conditions of this Land Law.



- (14) On completion of an investigation report by the enforcement Officer, the Officer shall provide the report to the Commissioner.

#### **D. OFFENCES**

##### **D.1**

- (1) It is an offence for:
  - (a) any person to breach this Land Law, an order made by the Commissioner or a notice of contravention or notice of non-compliance issued by the Commissioner; or
  - (b) any person who is a director or officer of a corporation to fail to take all reasonable care to prevent the corporation from:
    - (i) a breach of an order made by the Commissioner or a breach of a notice of contravention or notice of non-compliance issued by the Commissioner, or
    - (ii) discharging a contaminant to the environment in contravention of this Land Law or failing to notify the Commissioner of such a discharge.
- (2) For the purposes of this Land Law, an act done or omitted to be done by an officer, official, employee, or agent of a corporation in the course of his or her employment or in the exercise of his or her powers or the performance of his or her duties shall be deemed to also be an act done or omitted to be done by the corporation.
- (3) Where the Commissioner prepares or receives an investigation report under Section C.1(13) of this Part, the Commissioner may conclude that the person has committed an offence under this Land Law.
- (4) Within 60 days of the Commissioner reaching a conclusion that a person has committed of an offence under this Land Law, the Commissioner shall deliver notice of offence to that person.

#### **E. PROSECUTION OF OFFENCES**

##### **E.1** Prosecution under this Land Law will be conducted through courts of competent jurisdiction of the Province of Ontario, pursuant to section 24(5) the FNLMA.

- (1) Such prosecutions, including any appeals, shall be conducted in a manner consistent with Part XXVII of the Criminal Code.
- (2) Prosecutors shall be appointed in accordance with section 22(3) of the FNLMA, and may be:





- (a) retained by the Commissioner,
  - (b) appointed pursuant to an agreement between Shawanaga FN and the federal and provincial governments for the use of provincial prosecutors, or
  - (c) appointed pursuant to an agreement with the federal government for the use of agents engaged by the federal government.
- (3) The Commissioner shall not initiate any prosecution under this Land Law more than 2 years after the date on which evidence of the offence first came to the attention of the Commissioner.

E.2

- (1) In respect of federally protected species at risk the Commissioner shall not prosecute a person:
- (a) where a prosecution is proceeding for an offence under the Canadian *Species at Risk Act* in respect of the same act or omission by the same person;
  - (b) the charges under the *Species at Risk Act* have not been withdrawn; and
  - (c) the essential elements of the offense under this Part and the Canadian *Species at Risk Act* are the same.
- (2) Where subsection (1) applies, and charges under the Canadian *Species at Risk Act* have subsequently been withdrawn, the limitation period under Section E.1(3) shall be tolled for a period equal to the period for which the prosecution under the Canadian *Species at Risk Act* proceeded before it was withdrawn.

**F. PUNISHMENTS FOR BREACH OF EPP LAND LAW**

F.1

- (1) Where the Commissioner has delivered a notice of offence to a person for breach of the Terms and the offence does not involve harm or possible harm to the environment, that person is liable on conviction to a fine of not more than \$25,000.00 on a first conviction and \$50,000.00 on each subsequent conviction.
- (2) Where the Commissioner has delivered a notice of offence to a person for breach of the Terms and the offence does involve harm or possible harm to the environment, that person is liable on conviction:
- (a) in the case of a corporation, other than a non-profit corporation, to a fine of not more than \$1,000,000.00, for each day or part of a day on which the offence occurs;



- (b) in the case of a non-profit corporation, to a fine of not more than \$250,000.00, for each day or part of a day on which the offence occurs; and
  - (c) in the case of any other person, to a fine of not more than \$250,000.00, for each day or part of a day on which the offence occurs or to imprisonment for a term of not more than one year, or to both.
- (3) The penalties set out under subsection (2) are commensurate with those imposed under section 40 of the *Endangered Species Act, 2007* and shall automatically increase in accordance with any increase in the relevant penalties under that legislation.
- (4) Where a person in receipt of a notice of offence has been previously convicted of an offence for breach of the Terms, that person is liable on conviction to a fine that is double the fine available on a first conviction.
- (5) In addition to being subject to any fine payable under subsections (2) or (3), a person guilty of an offence may be subject to an order to pay:
- (a) reasonable expenses incurred by the Commissioner to respond to any damage caused by the commission of the offence; and
  - (b) an amount equal to the amount of monetary benefit acquired by or that accrued to the person as a result of non-compliance with the Terms.
- (6) Any fine payable under this Land Law shall be payable to Shawanaga FN.

## **PART 7. INTERPRETATION AND ADMINISTRATION OF EPP LAND LAW**

### **A. COMING INTO FORCE**

- A.1 PART 1, PART 2 and PART 7 of this EPP Land Law shall come into force upon enactment by Council immediately following ratification by the Community. Any activities carried out under 2 in advance of such Part coming into force are deemed to have been conducted in accordance with this Land Law.
- A.2 PART 3, PART 4, PART 5 and PART 6 of this EPP Land Law shall come into force when Council issues the Environmental Permit by Band Council Resolution.
- A.3 The Environmental Permit shall come into force when the T-Line Lease is in effect and Council's obligations under Part 5A.1 of this Land Law have been satisfied.

### **B. SERVICE OF DOCUMENTS**

- B.1 Any document given or served under this Land Law is sufficiently given or served if it is,
- (1) delivered personally;



- (2) sent by mail addressed to the person to whom delivery or service is required to be made to the last address for service provided by the person or, if no such address has been provided, to the person's last known address;
- (3) if the person consents, by emailing a copy of the document to the person; or
- (4) on application without notice, a court of competent jurisdiction in Ontario, on being satisfied that service cannot be made effectively in accordance with subsections (1) to (3), may by order authorize another method of service that has a reasonable likelihood of coming to the attention of the person.

**B.2** A document is delivered personally:

- (1) to a corporation, by delivering the document personally to the manager, secretary or other officer of the corporation or to a person apparently in charge of a branch office of the corporation; or
- (2) to a partnership or sole proprietorship by delivering the document personally to a partner or the sole proprietor, or to a person apparently in charge of the office or the partnership or sole proprietorship.

**B.3** Service is deemed to be effective:

- (1) in the case of personal delivery, at the time of delivery;
- (2) in the case of service by mail, on the fifth day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control receive the notice or order until a later date; or
- (3) in the case of service by email, at the time the person receiving the email acknowledges and accepts receipt.

**C. EXPIRY OF LAND LAW**

**C.1**

- (1) Construction and installation of the T-Line must be completed within four (4) years of the later of:
  - (a) the date this Land Law is issued; or
  - (b) if there is a hearing or other litigation in respect of the issuance of this Land Law, the date that this hearing or litigation is disposed of, including all appeals.

**C.2** This Land Law ceases to apply in respect of any portion of the T-Line not constructed or installed before the later of the dates identified in Section C.1.



**D. AMENDMENT**

- D.1 Council shall consult with Members at a Meeting of Members conducted pursuant to subsection 13.1 of the Land Code prior to amending this Land Law.
- D.2 Council may amend the Environmental Permit by a Band Council Resolution.
- D.3 Where Council is considering amending this Land Law or the Environmental Permit, Council shall provide notice in writing to HIW of the proposed amendment at least 10 days in advance of deciding whether to approve the amendment.

**E. INTERPRETATION**

- E.1 Headers are a part of this Land Law.
- E.2 Where this Land Law uses a term defined in the Shawanaga First Nation Land Code, the Land Code definition applies.
- E.3 Where there is a conflict between the provisions of this Land Law and any document submitted by HIW in relation to the EA Application, the provisions of this Land Law and Regime shall take precedence.
- E.4 Where there is a conflict between the text of this Land Law and the schedules attached hereto, the text of this Land Law shall prevail.
- E.5 Any ambiguity in this Land Law shall be resolved in favour of the interpretation that is most protective of the environment and Go-iji-mi-nigo-izit.

**SCHEDULE A**

**LEASED LANDS**

The lands described in Schedule A of the T-Line Lease.

**SCHEDULE B****PHYSICAL ACTIVITIES BY PHASE****PRE-CONSTRUCTION PHASE****PART 1. THE FOLLOWING PHYSICAL ACTIVITIES ARE PERMITTED DURING THE PRE-CONSTRUCTION PHASE:**

1. Site Preparation and Land Clearing:
  - (i) Geotechnical sampling
  - (ii) Delineation of work area
  - (iii) Vegetation clearing
  - (iv) Delineation and preparation of temporary work areas

**CONSTRUCTION PHASE****PART 2. THE FOLLOWING PHYSICAL ACTIVITIES ARE PERMITTED DURING THE CONSTRUCTION PHASE:**

1. Construction of access roads and laydown areas:
  - (i) Construction of access roads as required (including blasting)
  - (ii) Installation of temporary facilities including laydown yards
2. Transportation of *equipment* and material:
  - (i) On-site delivery of construction vehicles, *equipment*, and materials
3. Foundation excavation and construction.
4. Transmission line installation:
  - (i) Installation of above and/or below ground electrical collector lines
  - (ii) Installation of transmission infrastructure
5. Construction completion
  - (i) Reclamation of temporary construction areas
  - (ii) Demobilization of construction works
6. Power connection and commissioning

7. Construction phase *mitigation* measures and monitoring

#### **OPERATIONS AND MAINTENANCE**

#### **PART 3. THE FOLLOWING PHYSICAL ACTIVITIES ARE PERMITTED DURING THE OPERATING PHASE OF THE T-LINE:**

1. Transmission system, road and crossing repair/maintenance:
  - (i) Preventative and unplanned maintenance of *T-Line* components (includes accessing such components)
  - (ii) Maintenance of the transmission system (includes accessing such components)
  - (iii) Access road maintenance
2. *Mitigation* measures and monitoring

#### **DECOMMISSIONING**

#### **PART 4. THE FOLLOWING PHYSICAL ACTIVITIES ARE PERMITTED DURING THE DECOMMISSIONING PHASE OF THE T-LINE:**

1. Power disconnection and decommissioning of service:
  - (i) Disconnection of transmission system
2. Transportation of materials:
  - (i) On-site delivery of decommissioning vehicles and *equipment*
  - (ii) Removal of *T-Line* components and infrastructure from site
3. Disassembly and removal of transmission system components:
  - (i) Disassembly and removal of transmission infrastructure
4. Decommissioning completion:
  - (i) Reclamation of disturbed areas (includes reclamation of access roads)
  - (ii) Demobilization of decommissioning works
  - (iii) *Mitigation* measures and monitoring

**SCHEDULE C  
WASTE MANAGEMENT MEASURES**

<b>Waste</b>	<b>Management Protocol</b>
All waste	<p>Waste will be stored so as to prevent leaks or spills.</p> <p>There will be no permanent storage of waste on site.</p> <p>Temporary storage will be either (a) permitted during the Pre-construction, Construction and Decommissioning phases until the completion of such phase or 90 days thereafter; or (b) permitted during Operation Activities for up to 90 days.</p> <p>Disposal (following any temporary storage, as above) will be arranged at off-site, licensed facilities.</p> <p>Transportation off-site will be by licensed haulers with appropriate manifests, in accordance with applicable provincial or federal regulations.</p>
Potentially hazardous waste	Stored temporarily in containment systems (labelled, sized to provide a minimum impoundment of 100% of the volume of the largest tank/drum plus 10% of the aggregate volume of all remaining tanks/drums).
Domestic solid waste (e.g., garbage, cardboard, plastics and organics)	Collected and permanently disposed of at offsite licensed facility.
Surplus excess impacted soil (topsoil and subsoil)	If soil impacted with contaminants is encountered during course of excavations, removal offsite, disposed will be arranged at offsite, licensed facilities as appropriate (in accordance with applicable provincial or federal regulations).
Wood waste	Removed from site and recycled.
Construction waste and debris	<p>Collected by licensed operator and disposed of at licensed facility.</p> <p>All reasonable efforts will be made to recycle materials.</p>
Packing frames for WTG components and cabling spools	Returned to their respective vendors or will be recycled.
Plastics from other containers and packaging	Disposed of through offsite disposal and recycling facilities, where appropriate.
Construction materials and scrap metals (e.g., copper wiring and conductor)	Where not saleable/reusable, recycle or permanently dispose of at offsite licensed facility.
Spent welding rods used during Construction Activities	Disposed of by licensed contractor at licensed offsite facility.



Oils, fuels and lubricants used in maintenance and operation of equipment or machinery	Stored temporarily in containment systems (labelled, sized to provide a minimum impoundment of 100% of the volume of the largest tank/drum plus 10% of the aggregate volume of all remaining tanks/drums) and subsequently removed and disposed of off-site.
Surplus lubricating oils, grease, rags, batteries and filters used in maintenance during Operation Activities	Stored temporarily in accepted containment systems (labelled, sized to provide a minimum impoundment of 100% of the volume of the largest tank plus 10% of the aggregate volume of all remaining tanks) and subsequently removed and disposed of at off-site, licensed disposal and/or recycling facility.
Cleaning of concrete trucks and cement construction materials	Will occur at designated areas, located greater than 30 m from water features Ensure wash water used for cleaning of cement construction materials does not come in contact with ground and deposit waste water in concrete washout container that allows evaporation and hardening for easier disposal or recover and recycle wash water back into cement truck.
Sanitary sewage (O&M building washroom facilities)	Transported to an off-site, licensed facility by hauler, as needed.
Some packing-material waste	All recyclable materials will be separated from non-recyclable materials and both streams will be removed from site and disposed of at licensed facility.
Impacted soil from accidental spills or releases of contaminants (i.e., fuel, lubricating oils and other fluids)	During Construction Activities, spills to be cleaned up as soon as possible, with soils impacted with contaminants to be removed off-site, to a licensed disposal site if required (in accordance with applicable provincial or federal regulations). During Decommissioning Activities, in event any soils are impacted with contaminants, impacted soils will be removed offsite and disposed of at licensed facility if required (in accordance with applicable provincial or federal regulations).
Any soil encountered during Construction or Operation Activities that has visual staining or odours, or contains rubble, debris, cinders or other visual evidence of impacts or contaminants identified during Decommissioning Activities	Soils impacted with contaminants to be removed to off-site, to an offsite licensed disposal site where required (under applicable provincial or federal regulations). Soils impacted with contaminants identified at Decommissioning phase will be removed off site and disposed of at off-site, licensed facility where required (under applicable provincial or federal regulations).
Dismantled turbine generators, pad-mounted transformers, access roads, overhead collector lines, transformer	Efforts will be made to re-use equipment and salvage parts; otherwise, removed components will be disposed off-site at licensed waste facility, scrap metal yard or recycling facilities.

stations, meteorological towers and O&M building – includes removed concrete including any rebar or steel anchor bolts, removed granular base material/crushed gravel from access roads and metal and wood components	Granular base material and crushed gravel used to construct access roads will be removed from site. At the request of Shawanaga FN, all or portions of access roads may be left in place for future use. Culverts installed during Construction Activities will also be removed from the site unless otherwise requested by Shawanaga FN.
Stripped chemically-treated exterior of dismantled monopoles of overhead collection lines	Monopoles will be removed and disposed of at off-site, licensed facility.
Geotextile fabric removed during Decommissioning Activities	Will be removed and disposed of at off-site, licensed facility.

**SCHEDULE "E"**

**RATIFICATION OFFICER'S REPORT**

**CONFIRMATION BY RATIFICATION OFFICER**  
(Conclusion of Vote)


CANADA )  
 )  
Province of Ontario )

I, Scott Jacobs, Ratification Officer for Shawanaga First Nation in the Province of Ontario, DO SOLEMNLY DECLARE THAT:

1. I was present at Shawanaga First Nation on the 30<sup>th</sup> day of September, 2017 when Eligible Voters of Shawanaga First Nation voted concerning approval of *the Shawanaga First Nation Land Code* Amendments with the Shawanaga First Nation Land Code.
2. A true copy of the Notice of Vote is attached as Annex "1" to this Declaration.
3. The voting procedure, including the handling of electronic ballots, mail-in ballots and the counting of results, was conducted in accordance with the Shawanaga First Nation Community Ratification Process.
4. The names of 541 Eligible Voters appeared on the List of Eligible Voters.
5. The number of Eligible Voters who registered was 187 and their names were entered on the List of Registered Voters.
6. The number of Eligible Voters who constituted the minimum quorum required for approval under Section 15 of Land Code was 55.
7. The results of the Ratification Vote are as follows:
  - a) 54 mail-in ballots were cast in the Ratification Vote in accordance with section 14 of the Shawanaga First Nation Community Ratification Process
  - b) 64 regular ballots were cast in the Ratification Vote in accordance with sections 17 and 18 of the Shawanaga First Nation Community Ratification Process;
  - c) 70 electronic ballots were cast in the Ratification Vote in accordance with section 15 of the Shawanaga First Nation Community Ratification Process;
  - d) 0 ballots were spoiled as provided in clauses 14.5 and 17.18 of the Shawanaga First Nation Community Ratification Process;
  - e) 1 ballots were rejected in accordance with clause 14.10 of the Shawanaga First Nation Community Ratification Process and not opened or deposited into the ballot box;

- f) 0 ballots were cancelled in accordance with clause 17.19 of the Shawanaga First Nation Community Ratification Process;
  - g) 0 ballots were rejected in accordance with clause 20.1 of the Shawanaga First Nation Community Ratification Process;
  - h) 142 ballots were marked "YES" for the Ballot Question; and
  - i) 45 ballots were marked "NO" for the Ballot Question.
8. Based on the need to meet or exceed the number of Eligible Voters in item 7, and the number of Eligible Voters in item 8, above, the Ratification Documents were **approved** by the Registered Voters.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE me at the Shawanaga )  
of First Nation in the )  
Province of Ontario, this 30th day of )  
September 2017. )  
 )  
A Commissioner for Oaths in and for the )  
Province of Ontario )

  
\_\_\_\_\_  
Scott Jacobs  
Ratification Officer



**NOTICE OF VOTE  
NOTICE OF MEETING OF MEMBERS  
NOTICE OF ENACTMENT OF LAND LAWS**

**TO** : All Members, Shawanaga First Nation  
**FROM** : Chief Wayne Pamajewon  
**DATE** : 16 August 2017  
**RE** : Lease for the HIWLP Transmission Line

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At the meeting of Council on 15 August 2017, four draft Land Laws relating to the creation of a lease across Shawanaga First Nation Reserve No. 17 for the proposed **Henvey Inlet Wind Transmission Line** were tabled. These four new Land Laws, which include amendments to our Land Code, require review and input at a Meeting of Members and ratification by the Eligible Voters.

**Explanation and Overview**

We have negotiated a business arrangement with Henvey Inlet Wind LP to permit them to construct a 230 kV transmission line across our traditional lands and Reserve No. 17. Within the reserve, the transmission line will require a new lease of Shawanaga First Nation Land.

The compensation package for the transmission line is described in the Lease Term Sheet attached to draft Land Law 2017/18-004, included in the documents attached to this Notice. Shawanaga First Nation is planning to make a *per capita* distribution of part of the up-front lease payment, if the HIWLP Transmission Line Lease Land Laws are ratified. More particulars of the proposed distribution are included in my Chief's Letter to Members in this Notice package.

**Land Code Amendment and 3 New Land Laws to support the Lease**

Before we can create the transmission line lease, we need to do some Land Code housekeeping. Some technical amendments to the Land Code are required, as well as three new Land Laws – a Land Law to create the Magnetawan Land Laws Register, a Land Law to govern Environmental

**Notice of Ratification Vote: Saturday, 30 September 2017**

The HIWLP transmission line settlement agreement cannot be implemented unless all four Land Laws – the Land Code amendment, the Land Laws Register, the Environmental Permitting and Protection Land Law, and the Special Lease Terms – are ratified. For that reason, all four have been combined into a **single ballot question** to which Eligible Voters must answer **Yes** or **No**.

**In-Person Voting on Saturday, 30 September 2017**

Eligible voters will be able to vote in person at the Meeting of Members on Saturday, 30 September 2017, at the Recreation Centre, 2B Village Road, on Shawanaga Reserve No. 17. The in-person poll shall open at 9:00 am and close at 5:00 pm. **Remember, you must bring proper identification to vote in person.**

**Mail-in Voting**

Eligible Voters may also vote by mail: if you are an Eligible Voter, the copy of this notice you receive should include a mail-in voting package – if not, please contact the Band Administration Office. Mail-in ballots must be mailed to P.O. Box 40, Nobel, Ontario P0G 1G0, and must be received on or before 29 September 2017. Ballots received by mail after 29 September 2017 will not be opened or counted.

**On-Line Voting**

Eligible Voters will also be able to vote on-line through the link provided for this Shawanaga First Nation ratification vote at the following URL: <https://onefeather.ca/elections>. If you vote on-line, you cannot vote in person or by mail.

**Ratification Officer and Verifier**

Scott Jacobs will be the Ratification Officer for the ratification vote, and Gerry Duquette will be the Verifier for the purposes of the First Land Amendment to the Shawanaga First Nation Land Code. Contact information is provided below.

**Vote Quorum**

THE RATIFICATION VOTE WILL NOT COUNT UNLESS VOTES ARE CAST BY AT LEAST 10% OF THE ELIGIBLE VOTERS. If the vote quorum is not satisfied, the ratification process will fail and **Shawanaga First Nation will be unable to move ahead with the transmission line lease settlement package.**

**Notice of Open Council Meeting: Saturday, 30 September 2017**

Subject to ratification of the package of four Land Laws by the Eligible Voters, an open meeting of Council will be convened at 6:00 pm on 30 September 2017, or as soon thereafter as the results

**SCHEDULE "F"**

**VERIFIER'S REPORT**

[DELETED]



**SCHEDULE "D"**

**Land Law 2017/18-004**

**SPECIAL LEASE TERMS FOR THE HIWLP TRANSMISSION LINE LEASE**

~~SECRET~~



**DRAFT LAND LAW 2017/18-004**

**SPECIAL LEASE TERMS FOR THE  
HIWLP TRANSMISSION LINE LEASE**

Subject to ratification of this Land Law by the Eligible Voters, the Council of Shawanaga First Nation shall have authority to create and grant a leasehold interest in Shawanaga First Nation Land for the Henvey Inlet Wind LP Transmission Line (the "Transmission Line Lease") which includes the following terms or features:

1. The effect of the development authorized by the Transmission Line Lease on heritage sites and environmentally sensitive property shall not exceed the terms of an Environmental Permit to be issued by Council.
2. The rate and criteria for the payment of fees or rent, or other compensation, set out in the Lease Compensation Term Sheet attached as Schedule "A" to this Land Law.
3. The term of the lease, inclusive of renewals and extensions, may exceed 25 years but shall not exceed 47 years, and the extensions, renewals and dispositions of the lease or any interests therein authorized by the lease's terms shall not require further community approval.

[End]

**SCHEDULE "A"**  
**LEASE COMPENSATION TERM SHEET**

The compensation that has been negotiated takes into account that the transmission line will traverse reserve lands and traditional lands subject to treaty and aboriginal rights, including the duty to consult and accommodate. The compensation payable to each of Magnetawan and Shawanaga First Nations for the Henvey transmission project shall be comprised of the following:

- 1) Lump Sum Payment: A one-time, lump-sum payment of \$1,000,000.00 shall be paid on the date that the Tenant starts construction on the Reserve. This payment shall be accommodation for impact on aboriginal and treaty rights in the traditional lands and consideration for the period between the Commencement of Construction and the Commercial Operations Date ("COD").
- 2) Initial Term – Land Rent: The sum of \$200,000.00 shall be paid annually, commencing on the COD, for each year of the Initial Term of the twenty (20) year FIT Contract. This payment shall also be accommodation for impacts on aboriginal and treaty rights in the traditional lands.
- 3) Optional Search Extensions – Land Rent: At the end of the Initial Term, the tenant may extend the term, one year at a time, for up to three further years, to enable the tenant to search for a second Power Purchase Agreement or Offtake Agreement to sell power to a third party. The sum of \$50,000.00, adjusted by accumulated CPI, shall be paid annually for each Search Option Extension year.
- 4) Optional Extension for a Second PPA/Offtake Agreement– Land Rent: If the tenant obtains a new Power Purchase Agreement or Offtake Agreement after the end of the Initial Term (including any Search Extensions), the sum of \$200,000.00, adjusted by accumulated CPI, shall be paid annually for each year of the term of the PPA/Offtake Extension up to a maximum of 20 years, commencing on the COD under that second PPA/Offtake Agreement. This payment shall also be accommodation for impacts on aboriginal and treaty rights in the traditional lands. In no case can the total lease term, inclusive of extensions or renewals, exceed 47 years.

Notes:

- Annual Land rent payments shall be pro-rated for any partial year and paid to the Landlord in quarterly installments.
- Land Rents shall be adjusted annually in accordance with changes in the Consumer Price Index from the previous year, as published by Statistics Canada. The adjustments will take effect from 01 January of each year.
- At the end of the term including any extensions, the tenant will have two years to decommission, and will be required to provide security to ensure decommissioning performance.

**SCHEDULE "G"**

***SHAWANAGA FIRST NATION LAND CODE, 2017***

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## **SHAWANAGA FIRST NATION LAND CODE, 2017**

**This 2017 Land Code Consolidation includes:**

- **Original Land Code ratified 16 March 2015**
- **Minor revisions adopted pursuant to subs. 49.1 of the Land Code by BCR passed on 15 August 2017**
- **Amendments approved by ratification vote on 30 September 2017.**

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Shawanaga First Nation Land Code, 2017

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#### SHAWANAGA FIRST NATION LAND CODE PREAMBLE

**Whereas** the Shawanaga First Nation has a profound relationship with the Land that is rooted in respect for the spiritual value of the Earth and the gifts of the Creator and has a deep desire to preserve their relationship with the Land;

**And Whereas** Go-ijji-mi-nigo-izit Anishinabe, the Creator gave Shawanaga First Nation laws that have always been and that govern all of our relationships to live in harmony with nature and humankind and those laws define our rights and responsibilities and we have maintained our freedom, our language, and our traditions from time immemorial;

**And Whereas** fourteen First Nations and Canada concluded a government-to-government *Framework Agreement on First Nation Land Management* on February 12, 1996, as amended from time to time;

**And Whereas** the *Framework Agreement on First Nation Land Management* provides the option to First Nations of withdrawing their reserve Land from the land management provisions of the *Indian Act* in order to exercise control over their Land and resources for the use and benefit of their Members;

**And Whereas** Canada ratified its commitment to the *Framework Agreement on First Nation Land Management* with the enactment of the *First Nations Land Management Act*, S.C. 1999, c.24;

**And Whereas** in light of new First Nations seeking entry to the *Framework Agreement on First Nation Land Management*, the original fourteen First Nations and Canada amended the *Framework Agreement* to expand the opportunity to additional signatory First Nations;

**And Whereas** Shawanaga First Nation became a signatory on March 25, 2013, as Shawanaga First Nation wishes to govern its Land and resources under the *Shawanaga First Nation Land Code*, rather than having its Land and resources managed on its behalf under the *Indian Act*;

**And Whereas** the *Framework Agreement on First Nation Land Management* is ratified by Shawanaga First Nation through community approval of the *Shawanaga First Nation Land Code*;

**NOW THEREFORE, THIS LAND CODE IS HEREBY ENACTED AS THE FUNDAMENTAL LAND LAW OF THE SHAWANAGA FIRST NATION.**



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**PART 1  
PRELIMINARY MATTERS**

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**1. Title**

Title

- 1.1 The title of this enactment is the *Shawanaga First Nation Land Code*.

**2. Definitions**

Clarification

- 2.1 Any words or terms used in this Land Code which are defined in the *Framework Agreement* shall have the same meaning as in the *Framework Agreement*, unless the context otherwise requires.

Definitions in Land Laws

- 2.2 For greater certainty, if context requires, Shawanaga First Nation Land Laws, policies and regulations may prescribe different definitions than is provided in this Land Code.

Definitions

- 2.3 The following definitions apply in this Land Code:

"Canada" means Her Majesty the Queen in Right of Canada;

"Commercial Purposes" means a use of Shawanaga First Nation Land intended to produce income for Shawanaga First Nation or other persons having an interest or licence therein;

"Common-Law Partnership" means the relationship between two (2) persons who are cohabiting in a conjugal relationship;

"Community Land" means any Shawanaga First Nation Land in which all Members have a common interest;

"Council" means the Chief and Council of the Shawanaga First Nation or any successor elected government of the Shawanaga First Nation;

"Eligible Voter" means, for the purpose of voting in respect of Land matters under this Land Code, a Member who has attained the age of eighteen (18) years of age on or before the day of the vote;

"Extended Family", in respect of a person, means the person's grandparent, parent, uncle, aunt, first degree cousin, grandchild, and/or any other relation or relationship that Council may add by law;

"First Nation Lands Register" means the register established pursuant to clause 51 of the Framework Agreement and maintained by the Department of Aboriginal Affairs and Northern Development Canada;

"*Framework Agreement*" means the *Framework Agreement* on First Nation Land Management, entered into between the Minister of Indian Affairs and Northern Development and the signatory

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First Nations on February 12, 1996, and amended to include Shawanaga First Nation on March 25, 2013;

"Ga-iji-mi-nigo-izit Anishinabe" means what has always been, what has been given from the beginning is our Life Way and our Aboriginal Right. These define our right to Aboriginal Land and our right to the resources, and these Aboriginal Rights have never been surrendered or alienated in any way. Along with this follows our responsibility to the earth and to creation as Aboriginal People;

"Immediate Relatives", in respect of a person, means the person's parent, sister, brother, child, and Spouse;

"Individual Agreement" means the Individual Agreement made between Shawanaga First Nation and Canada in accordance with clause 6.1 of the *Framework Agreement* and may be amended from time to time;

"Interest", in relation to First Nation Land, means any Interest, right or estate of any nature in or to that Land, including a certificate of possession, certificate of entitlement, lease, easement, right of way, servitude, or profit à prendre, but does not include title to that Land;

"Land" or "Shawanaga First Nation Land" means any reserve Land that is subject to this Land Code;

"Land Code" means the Shawanaga First Nation Land Code, and sets out the basic provisions regarding the exercise of the Shawanaga First Nation's rights and powers over its Land;

"Land Law" means a law, including, but not limited to, policies, regulations, standards, restricted to Shawanaga First Nation Land, enacted in accordance with this Land Code;

"Lands Committee" means the Lands Committee established under Part 6 of this Land Code;

"Licence" in relation to Shawanaga First Nation Land, means any right of use or occupation of that Land, other than an Interest in the Land;

"Meeting of Members" means a meeting under Part 3 of this Land Code to which the Members are invited to attend;

"Member" means a person whose name appears or is entitled to appear on the Shawanaga First Nation Band Membership List;

"Shawanaga First Nation" means the Shawanaga First Nation and its Members;

"Panel" means the Dispute Resolution Panel established under Part 8 of this Land Code;

"Resolution" means a Resolution of Council enacted under this Land Code;

"Riparian Rights" means the legal right of owners of land bordering on a river or other body of water, and any law that pertains to use of the water for that land; and

"Spouse" means a person who is married to another, whether by a traditional, religious or civil ceremony, and includes a Spouse by Common- Law Partnership.

**3. Interpretation**

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**Interpretation**

**3.1 In this Land Code:**

- (a) the Land Code shall be interpreted in a fair, large and liberal manner;
- (b) the word "shall" signifies an obligation that, unless this Land Code provides to the contrary, must be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation;
- (c) unless it is otherwise clear from the context, the use of the word "including" means "including, but not limited to", and the use of the word "includes" means "includes, but is not limited to";
- (d) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine;
- (e) titles and headings of Parts and provisions have been inserted in the Land Code for convenience of reference only, and are not interpretive aids;
- (f) unless otherwise clear from the context, whenever the singular is used, it will include the plural, and the use of the plural includes the singular;
- (g) all references to a time period of days means consecutive days and not business days;
- (h) where the time limited for the doing of an act expires or falls on a Saturday or Sunday or a First Nation, federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday;
- (i) where the time limited for the doing of an act in the Shawanaga First Nation administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open;
- (j) where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded; and
- (k) the principles set out in the Preamble to this Land Code may be used to interpret this Land Code.

**Culture and traditions**

- 3.2 The structures, organizations and procedures established by or under this Land Code shall be interpreted in accordance with the culture, traditions and customs of the Shawanaga First Nation, unless otherwise provided.

**Language**

- 3.3 The language of the Shawanaga First Nation may be used to clarify the meaning of any provision in this Land Code, if the meaning of that provision is not otherwise clear in English.

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**Paramourncy**

3.4 If there is an inconsistency or conflict between this Land Code and any other enactment of the Shawanaga First Nation, including a by-law enacted under section 81 of the *Indian Act*, this Land Code prevails to the extent of the inconsistency or conflict.

**Consistency with Framework Agreement**

3.5 If there is an inconsistency or conflict between this Land Code and the *Framework Agreement*, the *Framework Agreement* will prevail to the extent of the inconsistency or conflict.

**Rights not affected**

3.6 This Land Code does not change:

- (a) the by-law powers of Council pursuant to the *Indian Act*,
- (b) any Aboriginal, Treaty, inherent rights or other rights or freedoms that pertain now or in the future to the Shawanaga First Nation or its Members; or
- (c) the fiduciary relationship between Canada and Shawanaga First Nation and its Members.

**Special Relationship**

3.7 The *Framework Agreement* acknowledges that Canada's special relationship with Shawanaga First Nation will continue.

**Lands and Interests affected**

3.8 A reference to Land in this Land Code means all rights and resources in and of that Land, and includes:

- (a) the water, beds underlying water, Riparian Rights, and renewable and non-renewable natural resources in and of that Land, to the extent that these are under the jurisdiction of Canada;
- (b) all the Interests and Licences granted to the Shawanaga First Nation by Canada listed in the Individual Agreement; and
- (c) all the Interests and Licences granted by Shawanaga First Nation after this Land Code comes into effect.

**Eligible Reserve Land**

3.9 Only Land that has reserve status is eligible to be governed under this Land Code.

## 4. Authority to Govern

**Origin of authority**

4.1 We the Original Peoples of this land know the Creator put us here. The Creator gave us our spiritual beliefs, our languages, our culture, and a place on Mother Earth which provided us with all our needs. The Laws of the Creator defined our rights and responsibilities.

**Flow of authority**

4.2 The authority of the Shawanaga First Nation flows from the Creator who has given us laws that govern all our relationships to live in harmony with nature and mankind. The Creator has given

us the right to govern ourselves and the right to self-determination. We continue to exercise the rights and fulfill the responsibilities and obligations given to us by the Creator for the land upon which we were placed. We have maintained our freedom, our languages, and our traditions from time immemorial. The rights and responsibilities given to us by the Creator cannot be altered or taken away by any other Nation.

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## 5. Purpose

### Purpose

- 5.1 The purpose of this Land Code is to set out the principles, rules and administrative structures that apply to Shawanaga First Nation Land and by which the Shawanaga First Nation will exercise authority over that Land in accordance with the *Framework Agreement*.

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### Ratification

- 5.2 The *Framework Agreement* is ratified and confirmed by the Shawanaga First Nation when this Land Code takes effect.

## 6. Description of Shawanaga First Nation Land

### Shawanaga First Nation Land

- 6.1 The Shawanaga First Nation Land that is subject to this Land Code is that Land known as Shawanaga Indian Reserve No. 17, Naiscoutaing Indian Reserve No. 17A and Shawanaga Indian Reserve No. 17B.

### Description of Land

- 6.2 The Shawanaga First Nation Land includes all reserve Lands listed in the Individual Agreement and such other Lands as may be described in the Individual Agreement as amended from time to time, and more particularly described as:

(a) **Shawanaga Indian Reserve No. 17**

All of Shawanaga Indian Reserve Number 17 as shown on a plan recorded in the Canada Lands Survey Records (CLSR) as No. 102469.

Save and except all those portions of Shawanaga Indian Reserve No. 17 more particularly described as:

FIRSTLY: all those lands described in Letters Patent 17448 and as shown on plan RR1446 CLSR;

SECONDLY: all those lands bordered red on plan 4648 CLSR;

Total lands described herein containing 3271 hectares (8083 acres).

(b) **Naiscoutaing Indian Reserve No. 17A**

All of Naiscoutaing Indian Reserve No. 17A as shown on a plan recorded in the Canada Lands Survey Records (CLSR) as number 56478;

Save and except all of those portions of Naiscoutaing Indian Reserve No. 17A more particularly described as:

FIRSTLY: all those lands described in Letters Patent 14986 and as shown on Plan 689A CLSR;

SECONDLY: all those lands described as Parts 1, 2 and 3, Plan 56448 CLSR.

Total lands described herein containing 1016 hectares (2510 acres).

(c) **Shawanaga Indian Reserve No. 17B**

All of Shawanaga Indian Reserve No. 17B being Lot 34, Broken Lot 35 and part of the Shore Road Allowance adjoining Broken Lot 35, Geographic Township of Shawanaga, District

of Parry Sound, all as shown on Plans 103585 and 57239 recorded in the Canada Lands Surveys Records; the herein described land containing 75 hectares (185 acres) more or less.

**Additional Lands**

6.3 Council shall receive community consultation in accordance with section 13, prior to the amendment of the description of Land or addition of reserve Land to the Land Code.

**No Approval Required**

6.4 For greater certainty, a community approval or ratification vote is not required for amending the description of reserve Land in the Land Code and Individual Agreement, as amended from time to time.

**Inclusion of Land or Interest**

6.5 Council may by enacting a Land Law declare the Land or Interest to be subject to this Land Code.

**PART 2  
FIRST NATION LEGISLATION**

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**7. Law-Making Powers**

**Council may make Land Laws**

- 7.1 Council may, in accordance with this Land Code, make Land Laws respecting:
  - (a) the development, conservation, protection, management, use and possession of Shawanaga First Nation Land;
  - (b) Interests and Licences in relation to Shawanaga First Nation Land; and
  - (c) any matter necessary or ancillary to the making of Land Laws in relation to the Shawanaga First Nation Land.

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**Examples of Land Laws**

7.2 For greater certainty, Council may make Land Laws including, but not limited to:

- (a) regulation, control and prohibition of zoning, Land use, subdivision control and Land development;
- (b) the creation, regulation and prohibition of Interests and Licences in relation to Shawanaga First Nation Land;
- (c) regulation, control, authorization and prohibition of residency, access, occupation and development of Shawanaga First Nation Land;
- (d) environmental assessment and protection;
- (e) provision of local services in relation to Shawanaga First Nation Land and the imposition of equitable user charges;
- (f) enforcement of Shawanaga First Nation Land Laws; and
- (g) provision of services for the resolution, outside the courts, of disputes in relation to Shawanaga First Nation Land.

**Regulatory Instruments**

7.3 For greater certainty, in addition to Land Laws, Council may also develop the following instruments, including, but not limited to, rules, regulations, standards, codes and policies.

**8. Law-Making Procedure**

**Introduction of Land Laws**

8.1 A proposed Land Law may be introduced at a duly convened meeting of Council by:

- (a) the Chief;
- (b) a Councillor;
- (c) the representative of the Lands Committee, or other body or authority composed of Members, that may be authorized by Council to do so; or
- (d) any Eligible Voter.

**Rationalization of Proposal**

8.2 A written proposal for a Land Law in subsection 8.1 shall include at minimum:

- (a) a proposed title;
- (b) a brief description of the subject matter to be addressed;
- (c) a rationale for why the proposed Land Law is needed;
- (d) a draft outline of the Land Law; and

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- (e) the section(s) of the Land Code authorizing the proposed Land Law.

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#### Procedure upon receipt of Proposal

8.3 Upon receipt of a Land Law proposal, Council may:

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- (a) table the Land Law proposal for further review or for enactment;
- (b) request that the proposer provide further information or attend before a future meeting of Council to speak to the Land Law proposal;
- (c) undertake or direct the preparation of a draft Land Law concerning matters raised in the Land Law proposal, for consideration by Council; or
- (d) decline the Land Law proposal.

#### Tabling and posting of proposed Land Laws

8.4 Before a proposed Land Law may be enacted by Council, it must first be:

- (a) tabled at a duly convened meeting of Council held at least forty-two (42) days before the Land Law is to be enacted;
- (b) deposited with the Lands Committee at least forty-two (42) days before the Land Law is to be enacted; and
- (c) provided to the Members, posted in public places on Shawanaga First Nation Land and publicly available online at least thirty-five (35) days before the Land Law is to be enacted.

#### Urgent matters

8.5 Council may enact a Land Law without the preliminary steps required under subsection 8.4, if Council is of the opinion that the Land Law is needed urgently for public health and safety or to protect Shawanaga First Nation Land or the Members.

#### Expiration

8.6 A Land Law enacted under subsection 8.5 expires one hundred and twenty (120) days after its enactment unless re-enacted in accordance with subsection 8.4.

#### Approval of Land Law

8.7 A Land Law is approved by:

- (a) a quorum of Council at a duly convened meeting of Council open to the Members; or
- (b) the Eligible Voters by community approval or ratification vote pursuant to Part 3 of this Land Code.

#### Certification of Land Laws

8.8 The original copy of any Land Law or Resolution concerning Shawanaga First Nation Land shall be approved when:

- (a) it is signed by a quorum of Council present at the duly convened meeting at which it was enacted; or



(b) it is signed at a duly convened meeting subsequent to the Community Approval.

Land Laws taking effect

8.9 A Land Law enacted by Council takes effect on the date of its enactment or such later date as specified by the Land Law.

9. Publication of Land Laws

VERIFIED

Publication

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9.1 Land Laws pursuant to this Land Code shall be published:

- (a) in the minutes of Council meeting at which it was enacted;
- (b) by the Lands Committee in minutes of the Lands Committee meeting at which an official true copy of the Land Law is noted as received;
- (c) by posting an official true copy of the Land Law in a location within the administrative office of Shawanaga First Nation accessible to all Members, as soon as practicable after enactment and for a period of not less than twenty eight (28) days thereafter;
- (d) by making it publicly available online; and
- (e) any additional method as Council may consider appropriate.

Registry of Land Laws

9.2 Council shall cause to be kept, at the administrative offices of the Shawanaga First Nation, a register of the original copy of all Land Laws and Resolutions, including Land Laws and Resolutions that have been repealed or are no longer in force.

Copies for any Person

9.3 Any person may obtain a copy of a Land Law or Resolution on payment of a reasonable fee set by Council or a designate. Fees may be amended from time to time.

10. Enforcement of Land Laws

Enforceability of Land Laws

10.1 To enforce its Land Code and its Land Laws, Shawanaga First Nation shall have the power to:

- (a) establish offences that are punishable on summary conviction;
- (b) provide for fines, imprisonment, restitution, community services, and alternate means for achieving compliance; and
- (c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information.

Prosecuting Offences

10.2 For the purpose of prosecuting offences, Shawanaga First Nation shall follow one or more of these options:

- (a) retain its own prosecutor;
- (b) enter into an agreement with Canada and the government of the province to arrange for a provincial prosecutor;
- (c) enter into an agreement with Canada to arrange for a federal agent to prosecute these offenses; or
- (d) appoint its own justices of the peace.

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**PART 3  
COMMUNITY CONSULTATIONS AND APPROVALS**

**11. Participation of Members**

**Participation of Members**

- 11.1 Every Member is entitled to participate in the community consultation process set out in Part 3 of this Land Code.

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**12. Participation of Eligible Voters**

**Participation of Eligible Voters**

- 12.1 Every Eligible Voter is entitled to participate in the community approval process set out in Part 3 of this Land Code.

**13. Community Consultation**

**Community Consultation**

- 13.1 Council shall consult with Members at a Meeting of Members prior to the enactment of a Land Law:
- (a) declaring Land or an Interest to be subject to this Land Code;
  - (b) respecting a community plan or subdivision plan;
  - (c) affecting a heritage site or an environmentally sensitive property;
  - (d) respecting environmental assessment and protection;
  - (e) respecting the transfer and assignment of rights and Interests in Shawanaga First Nation Land;
  - (f) respecting matrimonial real property on Shawanaga First Nation Land under section 39;
  - (g) respecting the rate and criteria for the payment of fees or rent for Shawanaga First Nation Land;
  - (h) respecting the rights and procedures on community expropriation; and

- (i) respecting any other matter, Land Law or class of law that Council, by Resolution, declares to be subject to this section.

**No Quorum**

13.2 For greater certainty, community input for consultation purposes does not require a quorum.

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**14. Procedure at a Meeting of Members**

**Notice of meeting**

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14.1 Council shall give written notice of the Meeting of Members that shall include:

- (a) the date, time and place of the meeting;
- (b) a brief description of the matters to be discussed and decided on at the meeting;
- (c) the name and telephone number of a contact person; and
- (d) feedback by such additional methods, if any, as Council and the Lands Committee may consider appropriate.

**Manner of notice**

14.2 The notice of a Meeting of Members must be given to the Members by:

- (a) posting the notice in public places on Shawanaga First Nation Land at least forty two (42) days before the meeting;
- (b) emailing and/ or mailing the notice to Members and taking reasonable steps to locate and inform Members who reside on and off-reserve at least forty two (42) days before the meeting;
- (c) posting the notice on a website maintained by the Shawanaga First Nation that is open and accessible by any person who may be entitled to attend the meeting at least forty two (42) days before the meeting;
- (d) publishing the notice in the community newsletter or local newspaper at least thirty five (35) days before the meeting; and
- (e) such additional method as Council may consider appropriate in the circumstances.

**Permission of Council**

14.3 A person, other than a Member, may attend a Meeting of Members only with permission of Council granted at a duly convened meeting of the Council.

**Informed Decision**

14.4 Council may schedule as many Meetings of Members as may be necessary to ensure that Members are well informed before making a decision on a proposed Land Law or Land matter.

**Additional meetings**

14.5 Council may schedule more than one Meeting of Members to discuss and decide on a matter that requires a Meeting of Members without the time requirements under subsection 14.2.

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## 15. Community Approval

### Community approval

15.1 Community approval must be obtained for the following:

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- (a) any master Land use plan;
- (b) any new grant or disposition of an Interest or Licence in any Shawanaga First Nation Land exceeding a term of twenty five (25) years;
- (c) any renewal of a grant or disposition of an Interest or Licence in any Shawanaga First Nation Land that extends the original term beyond twenty five (25) years;
- (d) any grant or disposition of any non-renewable natural resources on any Shawanaga First Nation Land;
- (e) any grant or disposition of a Licence for any non-renewable natural resources on any Shawanaga First Nation Land;
- (f) any deletion of a heritage site referred to in section 18 of this Land Code;
- (g) any voluntary exchange of Shawanaga First Nation Land referred to in section 19 of this Land Code;
- (h) any Land Law or class of law that Council, by Resolution, declares to be subject to this section.

### Method of Voting

15.2 Community approval may be obtained by various methods, including but not limited to:

- (a) secret ballot;
- (b) show of hands;
- (c) mail-in ballot;
- (d) phone voting;
- (e) electronic voting; or
- (f) any other method outlined in voting policies.

### Community Approval Vote

15.3 For greater certainty, Council may determine that the community approval may be achieved by calling for a Meeting of Members, by calling for a vote and establishing voting days and polling locations, by calling for a mail-in ballot community vote, or any other method outlined in subsection 15.2.

### Quorum

15.4 In order to obtain a quorum for community approval under section 15 of this Land Code at least ten percent (10%) of Eligible Voters must participate.

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**Approval by Majority**

15.5 For community approvals under section 15, a matter shall be considered approved if a majority of fifty percent plus one (50%+1) of the Eligible Voters cast a vote to approve the matter.

**Second Community Approval**

15.6 If a quorum was not obtained pursuant to subsection 15.4 a second community approval vote may be called.

**Second Community Approval Vote**

15.7 In order to obtain a quorum for a second attempt at a community approval vote under section 15 of this Land Code at least five percent (5%) of Eligible Voters must participate.

**Approval by Majority**

15.8 A matter shall be considered approved at a second attempt at a community approval vote, if a majority of fifty percent plus one (50%+1) of the Eligible Voters cast a vote to approve the matter.

**Proposed Land Matter rejected by Majority Vote**

15.9 A matter shall be considered not approved at a community approval vote if a majority of the Eligible Voters cast a vote in opposition of the matter.

**No Further Vote if Land Matter Rejected**

15.10 For greater certainty, at a first or second vote, if the matter is rejected pursuant to subsection 15.9, the Land Law or Land matter shall not be executed, shall have no effect and shall not be submitted for another vote. The document may be re-submitted for a vote under subsection 15.4 provided additional community consultation occurs and is incorporated into the proposed Land Law or Land matter.

## 16. Ratification Votes

**Community Approval by ratification vote**

16.1 Community approval by ratification vote must be obtained for an amendment to this Land Code.

**Exceptions**

16.2 A community approval by ratification vote is not required for:

- (a) an amendment to section 6 of this Land Code;
- (b) revisions to this Land Code made pursuant to section 49; and
- (c) an amendment to, or renewal of, the Individual Agreement.

**Other Matters**

16.3 For greater certainty, Council may, by Resolution, declare a matter, a Land Law or a class of law, to be subject to this section.

**Ratification process**

16.4 Any ratification vote required under this Land Code shall be conducted in substantially the same manner as the Shawanaga First Nation Community Ratification Process, which was used to ratify this Land Code.

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No verifier

16.5 A Verifier is not required in any ratification vote except a vote on an amendment to this Land Code.

Quorum

16.6 In order to obtain a quorum for a community approval by ratification vote under this Land Code at least ten percent (10%) of Eligible Voters must register.

Approval by majority

16.7 A matter shall be considered approved at a ratification vote if a majority of fifty percent plus one (50%+1) of the registered Eligible Voters cast a vote to approve the matter.

Proposed Land Matter rejected by Majority Vote

16.8 A matter shall be considered not approved at a ratification vote if a majority of the registered Eligible Voters cast a vote in opposition of the matter.

No Further Ratification Vote if Land Matter Rejected

16.9 For greater certainty, at a first or second vote, if the matter is rejected pursuant to subsection 16.8, the amendment to the Land Code or the proposed Land Law or Land matter shall not be executed, shall have no effect and shall not be submitted for another ratification vote. The document may be re-submitted for a ratification vote under subsection 16.6 provided additional community consultation occurs and is incorporated into the proposed amendment to the Land Code, proposed Land Law or Land matter.

Second Ratification Vote

16.10 If a quorum was not obtained pursuant to subsection 16.6 a second ratification vote may be called.

Second Attempt at Ratification Vote Quorum

16.11 In order to obtain a quorum for community approval for a second attempt at a ratification vote under this Land Code at least five percent (5%) of Eligible Voters must register.

Approval by majority

16.12 A matter shall be considered approved at a second ratification vote if a majority of fifty percent plus one (50%+1) of the registered Eligible Voters cast a vote in favour of the matter.

Policies Consultation, Approval and Ratification

16.13 For greater certainty, Council may make Land Laws or policies consistent with this Land Code:

- (a) for Meetings of Members;
- (b) for community consultations;
- (c) for community approvals;
- (d) for ratification votes; and
- (e) respecting any other matter, that Council, by Resolution, declares to be subject to Part 3 of this Land Code.

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## Avoiding duplication of community processes

16.14 Where a matter or proposal includes features which require two or more community participation processes under Part 3 of this Land Code, the processes may be combined and in such case community approval under section 15 shall be deemed to satisfy all requirements of section 13, and approval by ratification under section 16 shall be deemed to satisfy all requirements of sections 13 and 15.

## Delivery of written notice

16.15 Provisions of this Land Code which require the delivery of written notice by mail or email to Members shall be implemented as follows:

- (a) written notice shall be delivered by email or mail to those Members for whom Shawanaga First Nation, having taken reasonable steps as determined by Council to locate all Members, obtains a valid email or mailing address; and
- (b) a single notice sent by email to multiple Members for whom Shawanaga First Nation has same email address, or by mail to multiple Members for whom Shawanaga First Nation has the same mailing address, shall be deemed to be notice to all such Members.

## PART 4 PROTECTION OF LAND

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## 17. Expropriation

### Acquisition by Mutual Agreement

17.1 The right of Shawanaga First Nation to expropriate can only be exercised after a good faith effort to acquire, by mutual agreement, the Interest or Licence in Shawanaga First Nation Land rather than by expropriation.

### Rights and Interest that may be expropriated

17.2 An Interest or Licence in Shawanaga First Nation Land, or in any building or other structure on that Land, may only be expropriated by Shawanaga First Nation in accordance with the *Framework Agreement* and any Land Law enacted for the purpose of establishing the rights and procedures for community expropriations.

### Community purposes

17.3 A community expropriation shall only be made for necessary community works or other Shawanaga First Nation purposes, including but not limited to: a fire hall, sewage or water treatment facility, community center, public works, roads, schools, daycare facility, hospitals, health-care facility, and retirement home.

### Expropriation laws

17.4 Before proceeding to make any community expropriations in accordance with this Land Code and the *Framework Agreement*, Council shall enact a Land Law respecting the rights and procedures for community expropriations, including provisions respecting:

- (a) the taking of possession of the Interest or Licence;
- (b) transfer of the Interest or Licence;

- (c) notice of expropriation and service of the notice of expropriation;
- (d) entitlement to compensation;
- (e) determination of the amount of compensation; and
- (f) the method of payment of compensation.

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**Member notification**

17.5 In the case of an expropriation of a Member's Interest in Shawanaga First Nation Land, the affected Member or Members must receive notification of the expropriation within a reasonable time prior to the release of the public report referred to in subsection 17.6.

**Public report**

17.6 Before Shawanaga First Nation decides to expropriate an Interest or Licence, it shall make a public report on the reasons justifying the expropriation.

**Rights that may not be expropriated**

17.7 In accordance with clause 17.6 of the *Framework Agreement*, any Interest of Canada or the province in Shawanaga First Nation Land is not subject to expropriation by the Shawanaga First Nation.

**Compensation for rights and interests**

17.8 Shawanaga First Nation shall, in accordance with its Land Laws and the *Framework Agreement*:

- (a) serve reasonable notice of the expropriation on each affected holder of the Interest or Licence to be expropriated; and
- (b) pay fair and reasonable compensation to the holders of the Interest or Licence being expropriated.

**Compensation calculations**

17.9 Shawanaga First Nation shall calculate the total value of the compensation under this section based on the heads of the compensation set out in the *Expropriation Act (Canada)*.

**Market value**

17.10 The "market value" of an expropriated Interest or Licence is equal to the amount that would have been paid for the Interest or Licence if it had been sold by a willing seller to a willing buyer under no duress.

**Neutral evaluation to Resolve Disputes**

17.11 The resolution of disputes concerning the right of the Shawanaga First Nation to expropriate shall be determined by neutral evaluation, in the same manner as provided in Part IX of the *Framework Agreement*, and the sixty (60) day period referred to in clause 32.6 of the *Framework Agreement* shall be applied, as appropriate in the circumstance, by the neutral evaluator.

**Arbitration to resolve Disputes**

17.12 The resolution of the following disputes shall be determined by arbitration, in the same manner as provided in Part IX of the *Framework Agreement*:



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- (a) disputes concerning the right of a holder of an expropriated Interest or Licence to compensation; and
- (b) disputes concerning the amount of the compensation.

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## 18. Heritage Sites

### Community consultation of development

- 18.1 No development shall be allowed on any site designated as a heritage site under the Land use plan, unless the development receives community consultation.

### Land use plan

- 18.2 For greater certainty, no amendment may be made to a Land use plan to delete a heritage site unless the amendment receives community approval.

## 19. Voluntary Exchange of Shawanaga First Nation Land

### Conditions for a land exchange

- 19.1 The Shawanaga First Nation may agree with another party to exchange a parcel of Shawanaga First Nation Land for a parcel of land from that other party in accordance with this Land Code and the *Framework Agreement*.

### No effect

- 19.2 A land exchange is of no effect unless it receives community approval.

### Land to be received

- 19.3 No land exchange may occur unless the land to be received in the exchange meets the following conditions:
- (a) it must be equal to or greater than the area of the Shawanaga First Nation Land to be exchanged;
  - (b) it must be at least comparable to the appraised value of the Shawanaga First Nation Land; and
  - (c) it must become a reserve and Shawanaga First Nation Land subject to this Land Code.

### Negotiators

- 19.4 The person(s) who will have authority to negotiate a land exchange agreement on behalf of the Shawanaga First Nation must be designated by Resolution.

### Additional land

- 19.5 The Shawanaga First Nation may negotiate to receive other compensation, such as money or other additional parcels of land, in addition to the parcel referred to in subsection 19.1 which is intended to become a reserve. Such other parcels of land may be held by the Shawanaga First Nation in fee simple or some other manner.

**Federal Consent**

19.6 Before the Shawanaga First Nation concludes a land exchange agreement, it must receive a written statement from Canada clearly stating that Canada:

- (a) consents to set apart as a reserve the land to be received in exchange, as of the date of the land exchange or such later date as Council may specify; and
- (b) consents to the manner and form of the exchange as set out in the exchange agreement.

**Community notice**

19.7 Once negotiations on the land exchange agreement are concluded, Council shall provide the following information to Eligible Voters at least forty two (42) days before the vote:

- (a) a description of the Shawanaga First Nation Land to be exchanged;
- (b) a description of the land to be received in the exchange;
- (c) a description of any other compensation to be exchanged; (d) a report of a certified land appraiser setting out that the conditions in subsection 19.3 have been met;
- (d) a copy or summary of the exchange agreement; and
- (e) a copy of the consent referred to in subsection 19.6;

**Process of land exchange**

19.8 The land exchange agreement shall provide that:

- (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;
- (b) Council must pass a Resolution authorizing Canada to transfer title to the Shawanaga First Nation Land being exchanged, in accordance with the exchange agreement;
- (c) a copy of the instruments transferring title to the relevant parcels of land must be registered in the First Nation Lands Register; and
- (d) the land to be set apart as a reserve has been subject to an environmental audit, and clearance or remediation as necessary, or that Council is satisfied that adequate provisions have been made for such clearance or remediation at no cost to Shawanaga First Nation, and with full indemnification to Shawanaga First Nation.

## PART 5 ACCOUNTABILITY

### 20. Conflict of Interest or Appearance of Conflict of Interest

**Application of rules**

20.1 The rules in subsection 20.2 apply to the following persons:

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- (a) each member of Council who is dealing with any matter before Council that is related to Shawanaga First Nation Land;
- (b) each person who is an employee of the Shawanaga First Nation dealing with any matter that is related to Shawanaga First Nation Land;
- (c) each member of the Dispute Resolution Panel; and
- (d) each person who is a member of a board, committee or other body of the Shawanaga First Nation dealing with any matter that is related to Shawanaga First Nation Land.

#### Duty to report and abstain

20.2 If there is any actual or apparent financial, familial or personal conflict of interest in the matter being dealt with, the person:

- (a) shall disclose the interest to Council, or the board, committee or other body as the case may be;
- (b) shall not take part in any deliberations on that matter or vote on that matter; and
- (c) shall remove themselves from the proceedings.

#### Apparent conflict of interest

20.3 A person to which this Part applies has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the person's ability to deliberate or decide on the matter must have been affected by his or her private interest or the private interest of a member of his or her Immediate Family.

#### Inability to act

20.4 If the Board, committee or other body is unable to act due to a conflict of interest, the matter shall be referred to Council.

#### Meeting of Members

20.5 If Council is unable to vote on a matter, a proposed Land Law or Resolution due to a conflict of interest, Council may refer the matter to a community Meeting of Members and, if a quorum of Eligible Voters is present, a majority of the Eligible Voters present at the meeting may approve the matter, Land Law or Resolution.

#### Specific Conflict situations

20.6 No Immediate Relatives and not more than two (2) members from the same Extended Family shall be concurrent members of an appointed board, committee or other body dealing with any matter that is related to Shawanaga First Nation Land.

#### Elected Body

20.7 For greater certainty, Council or any other elected board, committee or body is not included under the rule set out in subsection 20.6.

#### Disputes

20.8 Questions about whether a breach of this section has occurred may be referred to the Panel.

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Other laws

20.9 For greater certainty, Council may develop a policy or enact Land Laws to further implement this section.

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21. Financial Management

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Application

21.1 This section applies only to financial matters relating to Shawanaga First Nation Land and natural resources.

Financial policies

21.2 Council may, in accordance with this Land Code, develop and adopt, or revise existing financial management policies including, but not limited to:

- (a) regulate the receipt, management and expenditure of moneys, including transfer payments, all capital and revenue moneys received from Canada, all Land revenue, and moneys received from a grant or disposition of any Interests or Licences in related to Shawanaga First Nation Land and natural resources;
- (b) manage financial records and accounts;
- (c) prepare financial statements and audits;
- (d) prepare and implement Land management budgets and annual presentation of budgets;
- (e) determine the general investment strategy;
- (f) contract notes, loans and other indebtedness;
- (g) establish fees, fines, charges and levies; and
- (h) establish and maintain confidentiality, records security and document retention.

Administrative structure

21.3 Council shall establish the administrative structure:

- (a) to implement all financial policies and procedures;
- (b) to oversee the day to day operational responsibilities for managing moneys related to Shawanaga First Nation Land and natural resources;
- (c) to ensure the accuracy of the accounting records;
- (d) to reconcile, review and approve bank statements;
- (e) to present the annual budgets to Members;
- (f) to present annually an audit of the financial statements to the Members; and
- (g) to prepare the annual report to Members.

## 22. Annual Report

### Publish annual report

22.1 Council, on behalf of the Shawanaga First Nation, shall publish an annual report on Land issues.

### Contents

22.2 The annual report will include:

- (a) an annual review of Shawanaga First Nation Land and natural resources management;
- (b) a copy and explanation of the audit as it applies to Shawanaga First Nation Land and natural resources; and
- (c) any other matter as determined by Council or Lands Committee.

## 23. Access to Information

### Access

23.1 Any Member may, during normal business hours at the main administrative office of the Shawanaga First Nation, have reasonable access to:

- (a) the register of Land Laws;
- (b) the auditor's report; and
- (c) the annual report on Land and natural resources.

### Access to records

23.2 Any person, at any reasonable time, inspect the financial records of Shawanaga First Nation related to Shawanaga First Nation Land.

## PART 6 LAND AND NATURAL RESOURCES ADMINISTRATION

## 24. Land Staff

### Administration

24.1 Council may delegate administrative authority to staff to carry out functions necessary for day-to-day administrative operations of Land and natural resources.

## 25. Lands Committee

### Lands Committee established

25.1 The Lands Committee is hereby established for the following purposes:

- (a) assist with the development of the Land administration system;
- (b) advise Council and its staff on matters respecting Shawanaga First Nation Land;

- (c) recommend Land Laws, Resolutions, policies and practices respecting Shawanaga First Nation Land to Council;
- (d) consult with Members and non-Members on Shawanaga First Nation Land issues, and to make recommendations on the resolution of those issues to Council;
- (e) manage and oversee ratification votes, community approvals and community consultation meetings; and
- (f) perform such other duties as may be delegated or assigned by Resolution or Land Law under this Land Code.

**Process to Implement Land Laws**

25.2 The Lands Committee shall, within a reasonable time after this Land Code takes effect, establish a community process to develop and implement the Land Laws.

**Development of Land related rules and procedures.**

25.3 Within a reasonable time after this Land Code takes effect, the Lands Committee shall, in consultation with the community, ensure that Land Laws, rules and procedures, as may be appropriate, are developed that address the following matters:

- (a) environmental protection and assessment in relation to Shawanaga First Nation Land;
- (b) any outstanding issues on the resolution of disputes in relation to Shawanaga First Nation Land;
- (c) Land use planning and zoning;
- (d) section 39 respecting Matrimonial real property on reserve and whether any change should be made to the policy upon which that section is based; and
- (e) any other matter referred by Council.

**Implementation of Policies**

25.4 The rules and procedures, once developed, shall be presented to Council for consideration and implementation as policies, Land Laws or amendments to this Land Code, whichever is most appropriate.

**Internal procedures**

25.5 The Lands Committee may establish rules for the procedure at its meetings and generally for the conduct of its affairs, not inconsistent with those established by Council.

**26. Implementation of the Lands Committee****First Lands Committee**

26.1 Immediately upon the coming into effect of this Land Code, the existing Land Code Development Committee shall continue and serve the first term for up to 2 years until a policy governing the Lands Committee comes into force. Any Lands Committee seat vacancies upon the ratification of this Land Code shall be filled by an election of the Eligible Voters. The Lands Committee shall be composed of seven (7) Members, one (1) of which will be a Councillor with the Lands related portfolio.

**Policy Governing Successors to the First Lands Advisory Committee**

- 26.2 As soon as possible after the coming into force of this Land Code, Council, in consultation with the Lands Committee, shall develop a policy providing for community involvement in the selection, election, or appointment of Eligible Voters to serve on the Lands Committee, and dealing with such matters as number of members, composition, eligibility, Chair and Deputy Chair, functions of the Chair, term of office, remuneration, conditions of service, termination of membership, vacancies arising during term and such other matters as Council deems appropriate to the operation of the Lands Committee.

**Delivery of Lands Committee's advice and recommendations**

- 26.3 Where this Land Code requires the Lands Committee to provide advice or recommendations in relation to any matter or proposal:
- (a) Council may by resolution prescribe a deadline for the delivery of the advice or recommendations, and,
  - (b) if the Lands Committee's advice or recommendations have not been delivered by the deadline, Council by resolution extend the deadline or elect to proceed without the advice or recommendations.

## PART 7 INTERESTS AND LICENCES IN LAND

### 27. Revenue from Lands and Natural Resources

**Determination of fees, and rent**

- 27.1 The Lands Committee shall, subject to the approval of Council, establish the process and recommend any Land Laws, rules and policies for determining:
- (a) the fees and rent for Interests and Licences in Shawanaga First Nation Land;
  - (b) the fees for services provided in relation to any Shawanaga First Nation Land; and
  - (c) the fees and royalties to be paid for the taking of natural resources from Shawanaga First Nation Land.

### 28. Registration of Interests and Licences

**Enforcement of Interest and Licences**

- 28.1 An Interest or Licence in Shawanaga First Nation Land created or granted after this Land Code takes effect is not enforceable unless it is registered in the Shawanaga First Nation Lands Register and the First Nation Lands Register.

**Registration of Consent or approval**

- 28.2 An instrument granting an Interest or Licence in Shawanaga First Nation Land that requires the consent of Council, or community approval, shall include a certified copy of the document indicating that the applicable consent or approval has been obtained.

**Certificate required for registration**

28.3 An instrument to which subsection 28.2 applies shall not be registered in the Shawanaga First Nation Lands Register unless it includes the certificate referred to in that subsection.

**Duty to deposit**

28.4 An original copy of the following instruments shall be deposited in the Shawanaga First Nation Lands Register and the First Nation Lands Register:

- (a) any grant of an Interest or Licence in Shawanaga First Nation Land;
- (b) any transfer or assignment of an Interest or Licence in Shawanaga First Nation Land;
- (c) every Land use plan, subdivision plan or resource use plan; and
- (d) this Land Code and any amendment to this Land Code.

**29. Separate Shawanaga First Nation Lands Register****In force resolution of Council required**

29.1 Notwithstanding section 50, the requirements of this Land Code relating to the separate Shawanaga First Nation Lands Register shall not come into force until a day to be fixed by resolution of Council.

**Maintain Shawanaga First Nation Register**

29.2 Council shall establish and maintain a separate Shawanaga First Nation Lands Register and make Land Laws with respect to the Land Register and the effect of registering documents in the Register.

**Duty to Deposit**

29.3 Every person who receives an Interest or Licence in Shawanaga First Nation Land shall deposit an original copy of the relevant instrument in the separate Shawanaga First Nation Lands Register.

**Priority**

29.4 In the event of an inconsistency or a conflict between the separate Shawanaga First Nation and the First Nation Lands Register, the separate Shawanaga First Nation Lands Register prevails to the extent of the inconsistency or conflict.

**30. Limits on Interests and Licences****All dispositions in writing**

30.1 An Interest in, or Licence to use, Shawanaga First Nation Land may only be created, granted, disposed of, assigned or transferred by a written document made in accordance with this Land Code and any relevant Land Law.

**Standards**

30.2 Council may establish mandatory standards, criteria and forms for Interests and Licences in Shawanaga First Nation Land.



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**Contravention of Land Code**

30.3 A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which the Shawanaga First Nation, a Member or any other person purports to grant, dispose of, transfer or assign an Interest or Licence in Shawanaga First Nation Land after the date this Land Code takes effect is unenforceable if it contravenes this Land Code.

**31. Existing Interests**

**Continuation of existing Interests and Licences**

31.1 Any Interest or Licence in Shawanaga First Nation Land that existed when this Land Code takes effect will, subject to this Land Code, continue in force in accordance with its terms and conditions.

**Voluntary exchange**

31.2 For greater certainty, Interests or Licences previously issued under the *Indian Act* shall continue to exist after the coming into force of this Land Code unless the Member or non-Member voluntarily agrees to have the Interest or Licence replaced with the issuance of a new Interest or Licence developed pursuant to the coming into force of this Land Code.

**Replacing the role of the Minister or Canada**

31.3 Immediately upon the coming into force of this Land Code, Canada transfers to Shawanaga First Nation all of the rights and obligations of Canada as grantor in respect of existing Interests and Licences in or in relation to Shawanaga First Nation Land.

**32. New Interests and Licences**

**Authority to make dispositions**

32.1 Subject to subsection 15.1, Council may, on behalf of Shawanaga First Nation, grant;

- (a) Interests and Licences in Shawanaga First Nation Land, including certificates of possession, member allocations, leases, permits, easements and rights-of-ways; and
- (b) Licences to take resources from Shawanaga First Nation Land, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances.

**Conditional grant**

32.2 The grant of an Interest or Licence may be made subject to the satisfaction of written conditions.

**Interests and Licences created for Commercial Purposes**

32.3 An Interest or Licence which Council deems by resolution to be for Commercial Purposes may include exemptions from:

- (a) any or all of section 17 and subsections 36.2, the application of subsections 37.5, 37.6, 37.7 and 37.8 to any charge, pledge or mortgage of the Interest or Licence; and
- (b) subject to a community approval vote under section 15, any other provision of this Land Code.

**Role of the Lands Committee**

- 32.4 The Lands Committee shall advise Council on the granting of Interests or Licences and may be authorized to act as a delegate of Council under this section.

**33. Interests of Non-Members****Non-Members**

- 33.1 A person who is not a Member of Shawanaga First Nation shall not hold any Interest in Shawanaga First Nation Land except a lease or Licence.

**Grants to non-Members**

- 33.2 A transfer or other disposition of all or any part of a lease or Licence in Shawanaga First Nation Land to a person who is not a Member shall not be effective unless and until it is confirmed by a Resolution of Council, adopted with the advice of the Lands Committee.

**34. Certificates of Possession or Member Interests****Application**

- 34.1 For greater certainty, certificates of possession or Member Interests previously issued under the *Indian Act* shall continue to exist after the coming into force of this Land Code unless the Member voluntarily agrees to have the certificate of possession or Interest replaced with the issuance of a new Interest document developed pursuant to the coming into force of this Land Code.

**35. Allocation of Land to Members****Policies and procedures for allocation of Land**

- 35.1 Subject to the provisions of this Land Code, Council in consultation with the Lands Committee shall establish Land Laws, policies and procedures for Member Interests and Licences, including certificates of possession, certificates of entitlement and allocation of Land.

**Allocation**

- 35.2 Council may, in accordance with this Land Code:

- (a) allocate Land to Members; or
- (b) issue a certificate of possession or certificate of entitlement to a Member for Land allocated to that Member.

**No allocation of Land to non-Members**

- 35.3 A person who is not a Member of Shawanaga First Nation is not entitled to be allocated Land or to hold a permanent Interest in Shawanaga First Nation Land.

**36. Transfer and Assignment of Interests****Transfer of Member Interest**

- 36.1 A Member may transfer or assign an Interest in Shawanaga First Nation Land to another Member without community approval or the consent of Council.

**Consent of Council**

36.2 Except for the transfers under subsection 36.1 and transfers that occur by operation of law, including transfers of estate by testamentary disposition or in accordance with the Matrimonial Real Property on Reserve Law enacted pursuant to section 39:

- (a) there shall be no transfer or assignment of an Interest in Shawanaga First Nation Land without the written consent of Council; and
- (b) the grant of an Interest or Licence is deemed to include subsection 36.2(a) as a condition on any subsequent transfers or assignments.

**Member authority to grant to self**

36.3 A Member holding an Allocation of Shawanaga First Nation Land may grant a Leasehold, Easement, Permit or Licence Interest to himself or herself in the same manner as to another person.

**37. Limits on Mortgages and Seizures****Protections**

37.1 In accordance with the *Framework Agreement*, the following provisions of the *Indian Act*, as amended from time to time, continue to apply to the Shawanaga First Nation Land;

- (a) section 29;
- (b) section 87;
- (c) Sub-section 89(1); and
- (d) Sub-section 89(2).

**Mortgage of Allocated Land**

37.2 Subject to subsection 37.3, the holder of an allotment, leasehold or Licence may, in accordance with this section grant a Mortgage of that Interest.

**Mortgage of Interest to Member or Shawanaga First Nation**

37.3 The holder of an allotment may only grant a mortgage of that Interest to a Member or to Shawanaga First Nation.

**Mortgages of leasehold Interests**

37.4 For greater certainty:

- (a) the holder of an allotment who has been granted a leasehold Interest pursuant to subsection 36.3 may grant a mortgage of the leasehold Interest to any person;
- (b) a leasehold Interest held by a Member in Shawanaga First Nation Land, including allotted Land, is subject to a charge, pledge, mortgage, attachment, levy, seizure, distress, and execution, and the mortgagee has all the same legal and equitable rights as it would have if the leasehold Interest was held by a non-Member; and
- (c) a leasehold interest in Shawanaga First Nation Land may be charged, pledged or mortgaged, and is subject to any lender's remedies at law or specified in such charge,

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pledge or mortgage including, without limitation, attachment, levy, seizure, distress and the taking of possession of the leasehold interest.

**Mortgages of leasehold interests with consent**

37.5 A leasehold interest may be subject to charge or mortgage, but only with the express written consent of Council.

**Time limit**

37.6 The term of any charge or mortgage of a leasehold interest shall not exceed the term of the lease.

**Default in mortgage**

37.7 In the event of default in the terms of a charge or mortgage of a leasehold interest, the leasehold interest is not subject to possession by the chargee or mortgagee, foreclosure, power of sale or any other form of execution or seizure, unless:

- (a) the charge or mortgage received the written consent of Council;
- (b) the charge or mortgage was registered in the First Nation Lands Register; and
- (c) a reasonable opportunity to redeem the charge or mortgage is given to Council on behalf of Shawanaga First Nation.

**Power of redemption**

37.8 Subject to prior redemption by the lessee or Member, Council may redeem the charge or mortgage from the charger or mortgagor in possession and shall thereupon acquire all the rights and interests of the charger or mortgagor and of the lessee or Member for all purposes after the date of the redemption.

**Waiver of redemption**

37.9 Council may, by Resolution, waive the requirements of subsection 37.8 for any charge or mortgage of a leasehold interest or licence.

**Other Laws**

37.10 For greater certainty, Council may develop a policy, or enact Land Laws to further implement this section.

## 38. Transfers on Death

**Indian Act application**

38.1 Until Shawanaga First Nation exercises jurisdiction in relation to wills and estates, the provision of the *Indian Act* dealing with wills and estates shall continue to apply with respect to interests in Shawanaga First Nation Land.

**Registered of transfer**

38.2 A person who receives an interest in Shawanaga First Nation Land by testamentary disposition or succession in accordance with a written decision of the Minister, or his or her designate, pursuant to the *Indian Act*, is entitled to have that interest registered in the Shawanaga First Nation Lands Register.

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**Disposition of Interest**

38.3 If no provision has been made by the deceased Member of the disposition of the Interest to another Member, the following rules apply:

- (a) the Minister or his or her delegate may make application to Council requesting that an instrument evidencing lawful possession or occupation of Shawanaga First Nation Land be issued; or
- (b) a Certificate of Possession or other instrument may be issued in accordance with procedures established by Council, or application of the Minister or his or her delegate, if the beneficiary or purchaser is a Member of the Shawanaga First Nation.

**39. Matrimonial Real Property on Reserve Law**

**Development of rules and procedures**

39.1 Council shall enact a matrimonial real property on reserve law providing rules and procedures applicable on the breakdown of a marriage, to:

- (a) the use, occupancy and possession of Shawanaga First Nation Land;
- (b) the division of Interests in that Land; and
- (c) the division of the value of improvements in that Land.

**Enactment of rules and procedures**

39.2 The rules and procedures contained in the matrimonial real property on reserve law shall be developed by the Lands Committee in consultation with the community.

**Enactment deadline**

39.3 The matrimonial real property on reserve law must be enacted within twelve (12) months from the date this Land Code takes effect.

**General principles**

39.4 For greater certainty, the rules and procedures developed by the Lands Committee under this section must respect the following general principles:

- (a) each Spouse should have an equal right to possession of their matrimonial home;
- (b) each Spouse should be entitled to an undivided half Interest in their matrimonial home, as a tenant in common;
- (c) the rules and procedures shall not discriminate on the basis of sex; and
- (d) only Members are entitled to hold a permanent Interest in Shawanaga First Nation Land or a charge against a permanent Interest in Shawanaga First Nation Land.

**Immediate rules**

39.5 In order that Members benefit immediately from the legislative authority of Council to address the issue of spousal property under this Land Code, Council may enact an interim matrimonial real property on reserve law as soon as this Land Code comes into force.



**Expiration**

39.6 As this law would be enacted before the work of the Lands Committee and the community consultation is complete, the law will expire at the end of the twelve (12) month period after the coming into force of this Land Code, unless re-enacted, replaced or amended.

**PART 8  
DISPUTE RESOLUTION**

**40. Purpose**

**Intent**

40.1 The intent of this part is to ensure that all persons entitled to possess, reside upon, use or otherwise occupy Shawanaga First Nation Land to do so harmoniously with due respect to the rights of others and of Shawanaga First Nation and with access to Shawanaga First Nation procedures to resolve disputes.

**Purpose**

40.2 The purpose of these rules is to enable the parties to a dispute to achieve a just, speedy and inexpensive determination of matter in dispute, taking into account the values which distinguish dispute resolution from litigation.

**41. Disputes**

**Dispute Prevention**

41.1 The parties shall use best efforts to prevent disputes from arising and shall consider the use of dispute resolution processes at the earliest possible stage of any conflict.

**Disputes Prior to Land Code**

41.2 Disputes that arose before the Land Code takes effect could also be referred to this Part.

**Decision of Council or Lands Committee**

41.3 If a Member, or a non-Member with an Interest in Shawanaga First Nation Land, has a dispute with respect to a decision of Council or the Lands Committee, the person must first attempt to resolve that dispute with Council or the Lands Committee, before referring the dispute to the Panel.

**Other dispute resolution methods**

41.4 Nothing in this Part shall be construed to prevail over the dispute resolution provisions of a written agreement or to limit the ability of any person to reach agreement to settle a dispute without recourse to this Part.

**Settlement Agreement**

41.5 Any settlement reached through dispute resolution shall not be legally binding until it has been reduced to writing and properly executed by, or on behalf of, the parties.

**Mandatory Application**

41.6 Council may establish a Land Law that sets out the mandatory application of this Part in certain circumstances.

**Contractual Agreement**

41.7 Subject to any Land Law enacted under subsection 41.6, a contractual agreement made under this Land Code may establish that the dispute resolution outlined in this Land Code and its Land Laws may be mandatory or may to some degree prescribe for alternate dispute resolution process if there is consensual agreement by the parties involved in that agreement. The dispute resolution clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

**Variation of Rules**

41.8 Subject to any Land Law enacted under subsection 41.6, the parties to a dispute to which these rules apply may to some degree modify, vary or amend these rules by consensual agreement in writing, and notify the Panel in writing.

**Civil Remedies**

41.9 Notwithstanding subsections 41.6 and 41.7, nothing in this Part shall be construed to prevent a party to a dispute from, at any stage of dispute resolution, applying to have the dispute resolved in a court of competent jurisdiction.

**Challenge to Validity of Law**

41.10 For greater certainty, nothing in this Part shall be construed to prevent a party to a dispute from challenging the validity of a Land Law, but such a challenge may be heard only in a court of competent jurisdiction.

**42. Processes**

**Staged Processes**

42.1 Shawanaga First Nation intends that a dispute in relation to Shawanaga First Nation Land, except as otherwise provided, may progress through the following stages provided for in this Part:

- (a) negotiation;
- (b) facilitated discussions;
- (c) mediation; and
- (d) final arbitration by the Dispute Resolution Panel.

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**Procedure to File a Dispute**

42.2 A person who wishes to resolve a dispute with another person or Shawanaga First Nation in relation to the use or occupation of Shawanaga First Nation Land may file a written notice of dispute setting out:

- (a) the nature of the dispute;
- (b) a statement outlining the facts and supporting arguments of the dispute claim; and
- (c) the relief that is sought.

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**Termination of Processes**

42.3 Negotiations, facilitated discussions and mediations may be suspended upon any of the following occurrences:

- (a) the parties reach an agreement;
- (b) one of the parties refuses to continue with the negotiation, facilitated discussion or mediation;
- (c) the mediator assesses that nothing meaningful is to be gained in continuing the process; or
- (d) upon the request of both parties.

**Notice of Termination**

42.4 A notice of termination is required when further facilitated discussions or mediation shall not resolve the dispute. The dispute may progress to the next stage of the dispute resolution process or to final arbitration.

**Dispute resolution not available**

42.5 Dispute resolution is not available under this Part for disputes in relation to:

- (a) administration or distribution of an estate;
- (b) decisions relating to housing allocations;
- (c) decisions of Council to grant or refuse to grant an Interest or Licence in Shawanaga First Nation Land to a non-Member;
- (d) decisions on expropriation under section 17 of this Land Code; and
- (e) prosecution or conviction of an offence under a Land Law or under criminal law.

**Duty of Fairness**

42.6 All persons involved in a dispute under this Part shall be:

- (a) treated fairly;
- (b) given a full opportunity to present their case; and
- (c) given reasons for a decision made under this Part.

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**Rules and Procedures**

42.7 Council may prescribe such laws, Resolutions, rules, policies, procedures, forms and reasonable fees not inconsistent with this Land Code, as may be necessary to give effect to this Part including but not limited to:

- (a) negotiations, facilitated discussions, mediations and arbitrations;
- (b) terms of office for panelists;



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- (c) remuneration of facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part;
- (d) code of conduct for facilitators, mediators, arbitrators, panelists, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part;
- (e) disclosure and confidentiality;
- (f) imposition of time limitations for submitting a notice of dispute and referring a matter or dispute to the Panel;
- (g) implementing recommendations of the Dispute Resolution Panel made under subsection 46.2; and
- (h) any other matter necessary to give effect to this Part.

**Waiver of Liability**

42.8 By participating in this dispute resolution process, the parties agree that the facilitators, mediators, arbitrators and panelists shall not be liable to the parties for any act or omission in connection with the services provided by them in, or in relation to, the dispute resolution processes, unless the act or omission is fraudulent or involves willful misconduct.

**43. Roster Panel Established**

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**Appointment to Roster Panel**

43.1 The Roster Panel shall be composed of a maximum of twenty (20) panelists.

**Ineligible**

43.2 Notwithstanding section 20, in order to avoid conflict of interest, no Council member, or employee of Shawanaga First Nation or person already serving on another board, body, or committee related to Shawanaga First Nation Land shall sit on the Roster Panel.

**Representation**

43.3 Council shall appoint the Roster panelists, and shall ensure that, where possible, the Roster panelists represent the various elements of the community.

**Rules of Roster Panel**

43.4 The Roster Panel may establish rules for the procedure at its hearings and generally for the conduct of its affairs.

**44. Impartiality of the Dispute Resolution Panel****Duty to Act Impartially**

44.1 The Panel shall act impartially and without bias or favour to any party in a dispute.

**Offence**

44.2 It is an offence for a person to act, or attempt to act, in a way to improperly influence a decision of the Panel.

**Rejection of Application**

44.3 In addition to any other sanction, the Panel may reject an application without hearing it if the Panel believes that the applicant acted, or attempted to act, in a way to improperly influence its decision.

**Rules of Conduct for Parties to a Dispute**

44.4 The Roster Panel shall establish rules of conduct for the parties to a dispute.

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**45. Arbitration by the Dispute Resolution Panel**

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**Disputes**

45.1 Any matter or dispute related to Shawanaga First Nation Land shall be submitted to the Lands Staff but that such matter or dispute shall then be referred to the Roster Panel for resolution.

**Panel of Three Chosen From Roster Panel**

45.2 Disputes referred to the Roster Panel are to be heard by five (5) panelists chosen as follows:

- (a) two (2) panelists are to be chosen by each of the two (2) parties to the dispute;
- (b) one (1) panelist, who is to be the chairperson, shall be chosen by the rest of the Panel; and
- (c) in the case of situations not adequately covered by section (a) or (b), all five (5) panelists shall to be chosen by the Roster Panel as a whole.

**Panel Established**

45.3 The Panel is hereby established with jurisdiction to resolve disputes in relation to Shawanaga First Nation Land. For greater certainty, disputes outlined in subsection 42.5 shall not be heard by the Panel.

**46. Authority of the Dispute Resolution Panel**

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**Authority of the Panel**

46.1 The Panel may, after hearing a dispute:

- (a) confirm or reverse the decision, in whole or in part;
- (b) substitute its own decision for the decision in dispute;
- (c) direct that an action be taken or ceased;
- (d) refer the matter or dispute back for a new decision; or
- (e) make an order to give effect to its decision, including any necessary order for the survey of an Interest in Shawanaga First Nation Land, the registration of an Interest in Shawanaga First Nation Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order.

**Recommendations by Panel**

46.2 In addition to making a determination under subsection 46.1, the Panel may:

- (a) recommend to Council the suspension of any Land Law or decision made by Council for such period as is necessary for Council to reconsider, amend or repeal such Land Law or decision, provided that any amendment or repeal of a Land Law is made in a manner consistent with this Land Code; or
- (b) make any other recommendation to Council that it deems reasonable and necessary in the circumstances.

**Interim Decisions**

46.3 The Panel may, in relation to a dispute over which it has jurisdiction under this Part, make any interim order it considers to be necessary as a matter of urgency to preserve the rights of the parties to the dispute or to preserve or protect an interest in Shawanaga First Nation Land.

**Professional Services**

46.4 The Panel may obtain the service of professionals to assist it in fulfilling its functions, in which case it shall make best efforts to use professional services available in the community. The Council shall determine the expense limit for any professional services, after consulting with the Land Staff. The limit will be applied consistently and evenly to each dispute.

**Written Decisions**

46.5 Decisions of the Panel must be in writing, signed by the person chairing the Panel or by an officer designated by the Panel to do so. Where requested, the written decision shall be provided to a party to the proceeding within fourteen (14) days after the date of the decision.

**Appeal of Decision**

46.6 A decision of the Panel is binding and may be, subject to review by the Federal Court (Trial Division).

**PART 9  
OTHER MATTERS**

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**47. Liability**

**Liability Coverage**

47.1 Council shall arrange, maintain and pay insurance coverage for its officers and employees engaged in carrying out any matter related to Shawanaga First Nation Land to indemnify them against personal liability arising from the performance of those duties.

**Extent of coverage**

47.2 The extent of the insurance coverage shall be determined by Council.

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**48. Offences**

**Application of the Criminal Code**

48.1 Unless some other procedure is provided for by a Shawanaga First Nation Land Law, the summary conviction procedures of Part XXVII of the Criminal Code, as amended from time to time, apply to offences under this Land Code or under a First Nation Land Law.

**Fines & Imprisonment**

48.2 Any person who commits an offence under this Land Code or a Shawanaga First Nation Land Law is liable to a fine not to exceed \$5,000 and to a term of imprisonment not to exceed six months or to both fine and imprisonment, provided however, that offences related to Shawanaga First Nation environmental protection laws may carry penalties consistent with similar environmental protection laws in force in Canada.

**Penalties In Laws**

48.3 A Shawanaga First Nation Land Law may provide for a penalty, which is different than the penalties referred to in subsections 48.1 and 48.2.

**49. Revisions to Land Code**

**Revisions**

49.1 A ratification vote is not required for revisions made to this Land Code that do not change the substance of this Land Code. Council may, from time to time, arrange and revise this Land Code. Revisions may be made as a result of, but are not limited to:

- (a) an amendment of the description of Shawanaga First Nation Land subject to the Land Code and Individual Agreement as amended from time to time;
- (b) a reference in this Land Code to a clause in another act or document that was amended and resulted in clause renumbering;
- (c) a reference in this Land Code to an Act or parts thereof that have expired, have been repealed or suspended;
- (d) changes in this Land Code as are required to reconcile seeming inconsistencies with other acts;
- (e) minor improvements in the language as may be required to bring out more clearly the intention of the Shawanaga First Nation without changing the substance of the Land Code; and
- (f) correct editing, grammatical or typographical errors.

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**50. Commencement**

**Preconditions**

50.1 This Land Code shall take effect if the community approves this Land Code and the Individual Agreement with Canada and this Land Code has been certified by the verifier pursuant to the *Framework Agreement*.

**Commencement date**

50.2 This Land Code shall take effect on the first day of the month following the certification of this Land Code by the Verifier.

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