



# **ANISHINAABEG OF NAONGASHIING LAND CODE**

**October 25, 2010**

## **MISSION STATEMENT**

**To ensure, enhance and protect the culture, traditions, land, language, resources, health, social and economic well being of the Anishinaabeg of Naongashiing.**

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## PRELIMINARY MATTERS

### **Responsibility**

The Anishinaabeg of Naongashiing will exercise their right to manage the Lands, Resources and Financial responsibilities of our First Nation.

### **Paramountcy**

If there is an inconsistency between this Land Code and any other enactment of the Anishinaabeg of Naongashiing, this Land Code will prevail to the extent of the inconsistency in all Land matters.

### **Culture and Traditions**

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 Anishinaabeg of Naongashiing.

### **Definitions**

For greater certainty, if context requires, Anishinaabeg of Naongashiing laws, policies and regulations may prescribe different definitions than is provided in this Land Code.

### **Language**

The traditional language of the Anishinaabeg of Naongashiing may be used to clarify the meaning of any provision in this Land Code, if the meaning of that provision is not clear in English.

### **Non- Abrogation**

This Land Code does not Abrogate or Derogate from any Aboriginal, treaty or other rights or freedoms that pertain to the Anishinaabeg of Naongashiing or its Members.

### **Fair Interpretation**

This Land Code shall be interpreted in a fair, large and liberal manner according to the customs and traditions of the Anishinaabeg of Naongashiing.

### **Special Relationship**

This Land Code does not Abrogate the special relationship between her majesty and the Anishinaabeg of Naongashiing and its Members.

### **Clarification**

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.

### Use of the word “*shall*”

The word “*shall*” signifies an obligation that, unless this Land Code provides to the contrary, *shall* be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation.

### Use of Masculine or Feminine

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.

### Titles and Headings

Titles and headings of Parts and provisions have been inserted in the Code for convenience of reference only, and are not interpretive aids.

## PART 1 INTERPRETATION

### 1 Title

#### TITLE

1.01 The title of this enactment is the *Anishinaabeg of Naongashiing Land Code*.

### 2 Definitions

#### DEFINITIONS IN LAWS

2.01 For greater certainty, if context requires, Anishinaabeg of Naongashiing laws, policies and regulations may prescribe different definitions than those provided in this Land Code.

2.02 The following definitions apply in this Land Code:

“**Abrogate**” means to abolish by authoritative action, annul;

“**Anishinaabeg of Naongashiing**” means the Anishinaabeg of Naongashiing and its Members;

“**Anishinaabeg of Naongashiing Land**” means any Reserve land that is subject to this Land Code;

“**Anishinaabeg of Naongashiing Lands Register**” means the register maintained by Anishinaabeg of Naongashiing pursuant to Part 6 of this Code for the purpose of registering Interests in First Nation land;

“**Canada**” means Her Majesty the Queen in right of Canada;

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

“**Community Lands**” means any Anishinaabeg of Naongashiing Land in which all Members have a common Interest;

“**Community Meeting**” means a meeting under Part 3 of this Code to which the Members are invited to attend.

“**Council**” means the Chief and Council of Anishinaabeg of Naongashiing or any successor elected government of the Anishinaabeg of Naongashiing;

“**Elders**” are those Members deemed as Elders by the membership for the purpose of advising on community issues:

“**Derogate**” means to take away a part so as to impair, detract;

“**Dispute Resolution**” means the process by which the Anishinaabeg of Naongashiing have chosen to resolve disputes:

“**Eligible Voter**” means a person whose name appears on the band list of Anishinaabeg of Naongashiing and who, at the time of voting, will have attained the age of eighteen years;

“**Extended Family**”, in respect of a person, means the person’s grandparent, 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 maintained by the Department of Indian Affairs and Northern Development pursuant to the *Framework Agreement* to register Interests in First Nation land;

“**Framework Agreement**” means the *Framework Agreement on First Nation Land Management* concluded between Her Majesty in right of Canada and certain First Nations on 12 February 1996, as amended, which was ratified by Canada by the *First Nations Land Management Act*, S.C. 1999 c. 24.

“**Immediate Relatives**”, in respect of a person, means the person’s parent, sister, brother, child, Spouse, and includes persons falling within such relationships by customary law including custom adoption;

“**Individual Agreement**” means the Individual Transfer Agreement or Transfer Agreement made between Anishinaabeg of Naongashiing and her Majesty in right of Canada, in accordance with section 6.1 of the *Framework Agreement*, as 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 á prendre*, but does not include title to that land.

“**Land Code**” means the Anishinaabeg of Naongashiing Land Code.

“**Lands Department**” includes the Lands Manager and staff.

“**Land Law**” means a law, and may also include, but not limited to, policies, regulations, standards, restricted to Anishinaabeg of Naongashiing Land, enacted by the Council of Anishinaabeg of Naongashiing in accordance with this Land Code;

“**Lands Committee**” means the committee established under Part 6 of this Code.

“**License**”, in relation to First Nation land, means any right of use or occupation of that land, other than an Interest in the land.

“**Member**” means a person whose name appears on the band list of Anishinaabeg of Naongashiing or who is entitled to have his or her name appear on that list.

“**Panel**” means the Dispute Resolution Panel / the Panel established under Part 8 of this Code.

“**Resolution**” means a resolution of the Council enacted under this Land Code;

“**Riparian Rights**” means the legal rights of owners of land bordering on a river or other body of water. Also, law that pertains to use of the water for that land;

“**Roster Panel**” means the list of Panelists established under section 43 of this Code from which the Panel is chosen.

“**Spousal Property**” means any Interest in First Nation Land belonging to one or both persons who are Spouses of one another.

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

### **3 Lands and Interests**

#### LANDS AND INTEREST AFFECTED

3.01 A reference to “Land” in this Land Code means all rights and resources in and of the Land, and includes:

- a) the water, beds underlying water, riparian rights, and renewable, and non-renewable and natural resources in and of that land, to the extent that these are under the jurisdiction of Canada; and
- b) all the Interests and Licenses granted to Anishinaabeg of Naongashiing by Canada listed in the Individual Agreement.

### **4 Lands that are subject to this Code**

#### LANDS AND INTERESTS TO WHICH CODE APPLIES

4.01 The Anishinaabeg of Naongashiing Land that is subject to this Land Code is that land known:

Saug-a-gaw-sing Indian Reserve No. 1 as shown on the CLSR plan # FB38329

Big Island Mainland Indian Reserve No. 93 as shown on the CLSR plan # FB38330

#### ADDITIONAL LANDS

4.02 Anishinaabeg of Naongashiing Land includes all Reserve lands listed in the Individual Agreement and such other lands as may be included in the Individual Agreement as amended from time to time.

#### ADDITIONAL RESERVES

4.03 For greater certainty, Anishinaabeg of Naongashiing may consider adding the following reserves to the Individual Agreement upon the approval by the First Nation of a completed Land Description Report:

Big Island Indian Reserve No. 31D

Big Island Indian Reserve No. 31E

Big Island Indian Reserve No. 31F

Lake of the Woods Indian Reserve no. 31B

Lake of the Woods Indian Reserve No. 31C

Lake of the Woods Indian Reserve No. 31G

Naongashiing Indian Reserve No. 31A

Sugar Point Indian Reserve No. 31H

Shoal Lake Indian Reserve No. 31J

## 5 Governance Structure

### ORIGIN OF AUTHORITY

5.01 The Anishinaabeg of Naongashiing elects representatives called Chief and Council, to represent and advocate on behalf of its membership, while protecting and adhering to the traditional customs, teachings and languages of our First Nation.

## 6 Conflict of Laws

### PARAMOUNTCY

6.01 This Land Code prevails over any inconsistent provision in any other enactment of Anishinaabeg of Naongashiing, to the extent of the inconsistency.

### NON-ABROGATION, NON-DEROGATION

6.02 Nothing in this Land Code Abrogates or Derogates from:

- a) the by-law powers of the Council of Anishinaabeg of Naongashiing pursuant to the *Indian Act*;
- b) the aboriginal title or the aboriginal, or treaty or inherent rights of Anishinaabeg of Naongashiing; or
- c) the special relationship between Canada and Anishinaabeg of Naongashiing and its Members.

## 7 Purpose

### PURPOSE

7.01 The purpose of this Land Code is to set out the principles, guidelines and administrative structures that apply to Anishinaabeg of Naongashiing Lands and by which Anishinaabeg of Naongashiing will exercise authority over its lands and resources.

### RATIFICATION

7.02 The *Framework Agreement* is ratified and confirmed when this Land Code takes effect.

## PART 2 FIRST NATION LEGISLATION AND LAW MAKING POWERS

## 8 Law-making Powers

### COUNCIL MAY MAKE LAND LAWS

8.01 The Council may, in accordance with this Land Code, make Land Laws respecting:

- a) the development, conservation, protection, management, use and possession of Anishinaabeg of Naongashiing Land;
- b) Interests and Licenses in relation to Anishinaabeg of Naongashiing Land; and
- c) any matter necessary or ancillary to the making of Land Laws in relation to Anishinaabeg of Naongashiing Land.

### EXAMPLES OF LAND LAWS

8.02 For greater certainty, Council, in consultation with the Members, may make Land Laws including, but not limited to:

- a) regulation, control and prohibition of zoning, land use, subdivision control and land development;
- b) creation, regulation and prohibition of Interests and Licenses in relation to Anishinaabeg of Naongashiing Land;



- c) environmental assessment and protection;
- d) provision of local services in relation to Anishinaabeg of Naongashiing Land and the imposition of equitable user charges;
- e) the provision of services for the resolution, outside the courts, of disputes in relation to Anishinaabeg of Naongashiing Land;
- f) enforcement of Anishinaabeg of Naongashiing Land Laws;
- g) spousal property;
- h) waste management;
- i) emergency measures; and
- j) property and construction standards.

8.03 For greater certainty, in addition to Land Laws and First Nation Laws, Council may also develop the following regulatory documents including, but not limited to, a regulation, a standard, a code, and a policy.

## 9 Law-making Procedure

### INTRODUCTION OF LAWS

9.01 A proposed law may be introduced at a duly convened meeting of the Council by:

- a) the Chief or a Councilor; or
- b) the representative of any body or authority composed of Members that may be authorized by Council to do so; or
- c) any Eligible Voter.

### CONTENT OF LAND LAW PROPOSAL

9.02 A Land Law proposal *shall* contain a statement of the purposes and benefits to the First Nation of the proposed law.

### COUNCIL PROCEDURE UPON RECEIPT OF LAND LAW PROPOSAL

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

- 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 law concerning matters raised in the Land Law proposal, for consideration by Council; or
- d) decline the Land Law proposal.

### LANDS COMMITTEE REVIEW AND REPORT

9.04 The Council *shall* provide the proposal to the Lands Committee. The Lands Committee *shall* review a Land Law proposal and produce a written report to Council, which *shall* be made available to the proposer and to the community generally.

### TABLING AND POSTING OF PROPOSED LAND LAWS

9.05 A proposed Land Law *shall* not be enacted by Council unless:

- a) a draft of the Land Law has been tabled at a meeting of the Council held at least 42 days before the Land Law is to be enacted;
- b) the draft Land Law has been posted in the administrative offices of Anishinaabeg of Naongashiing, in a location accessible to any Eligible Voter, at least 35 days before the Land Law is to be enacted; and

- c) the draft Land Law or summary of the draft Land Law has been distributed and made available to Eligible Voters, at least 35 days before the Land Law is to be enacted; and
- d) a notice of the Council meeting at which the Land Law will be considered for enactment, including a brief description of the purpose of the proposed Land Law, has been published in a newsletter having circulation to all Anishinaabeg of Naongashiing Members at least 35 days prior to the Council meeting.
- e) For greater certainty, Council may consider any additional method appropriate for posting notices and draft land laws including but not limited to newsletters, website, emails, etc...

#### APPROVAL OF LAW BY COUNCIL

9.06 A law is enacted if it is approved by a majority of the Council at a meeting of the Council open to the Members.

#### CERTIFICATION OF LAND LAWS

9.07 Two official true copies of any Land Law or land resolution concerning First Nation lands *shall* be signed and witnessed by a quorum of the Council present at the meeting at which it was enacted and delivered to the Lands Committee.

#### OFFICIAL TRUE COPIES OF LAND LAWS

9.08 An official true copy of a Land Law certified by and duly authorized by resolution of Council for such purpose *shall* be an official copy for all purposes of this Code.

#### EMERGENCY LAND LAWS

9.09 Notwithstanding any other provision of this Code, the Council may enact a law without the preliminary steps required under section 9.05, if the Council is of the opinion that the law is needed urgently to protect First Nation land or the Members, but the law expires 120 days after its enactment, unless re-enacted in accordance with section 9.05.

### **10 Commencement and Publication of Land Laws**

#### LAWS TAKING EFFECT

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

#### PUBLICATION

10.02 Land Laws enacted pursuant to this Code *shall* be published:

- a) in the minutes of the 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 offices of Anishinaabeg of Naongashiing accessible to all band Members, as soon as practical after enactment and for a period of not less than thirty days thereafter; and
- d) For greater certainty, Council may consider any additional method appropriate for posting land laws including but not limited to newsletters, website, emails, etc...

#### LAND LAW REGISTRY

10.03 Council *shall* cause to be established and maintained, at the administrative offices of Anishinaabeg of Naongashiing, a registry of official true copies of all laws and resolutions, including laws and resolutions that have been repealed or are no longer in force.

ACCESS TO LAND LAW REGISTRY

10.04 Any person may attend at the registry during normal business hours and may view or obtain a copy of any Land Law.

FEES

10.05 Council may from time to time by resolution set fees for viewing or obtaining copies of Land Laws.

**11 Enforceability of Land Laws**

ENFORCEABILITY OF LAND LAWS

11.01 To enforce its Land Code and its Land Laws, Anishinaabeg of Naongashiing *shall* have the power to:

- a) establish offences that are punishable on summary conviction;
- b) provide for fines, imprisonment, restitution, community service, 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.

PART 3  
COMMUNITY INVOLVEMENT

**12 Participation of Members**

PARTICIPATION OF MEMBERS

12.01 Every Member is entitled to participate in the community consultation processes set out in Part 3 of this Land Code.

PARTICIPATION OF ELIGIBLE VOTERS

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

**13 Community Input**

COMMUNITY INPUT OF MEMBERS

13.01 The Council *shall* consult with Members at a Community Meeting prior to the enactment of a Land Law:

- a) respecting a community plan or subdivision plan;
- b) affecting a heritage site or an environmentally sensitive property;
- c) respecting environmental assessment and protection;
- d) respecting the transfer and assignment of rights and Interests in Anishinaabeg of Naongashiing Land;
- e) respecting spousal real property on Anishinaabeg of Naongashiing Land under section 40;
- f) respecting the rate and criteria for the payment of fees or rent for Anishinaabeg of Naongashiing Land;
- g) respecting the rights and procedures on community expropriation; and
- h) respecting any other matter, law or class of law that Council, by Resolution, declares to be subject to this section.

NO QUORUM

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

PROCESS TO IMPLEMENT LAND LAWS

13.03 The Lands Committee, within a reasonable time after this Land Code takes effect, *shall* advise Council on establishing a community process to develop and implement the Land Laws referred to in section 13.01.

**14 Community Approval**

COMMUNITY APPROVAL OF MEMBERS

14.01 Community approval at a Community Meeting *shall* be obtained for the following:

- a) any Master Land use plan;
- b) any new grant or disposition of an Interest or License to a non-member in any Anishinaabeg of Naongashiing Land exceeding a term of thirty-five (35) years;
- c) any renewal of a grant or disposition of an Interest or License to a non-member in any Anishinaabeg of Naongashiing Land that extends the original term beyond thirty-five (35) years;
- d) any grant or disposition of any non-renewable natural resources on any Anishinaabeg of Naongashiing Land exceeding a term of five (5) years;
- e) any deletion of a heritage site referred to in section 18 of this Land Code;
- f) any voluntary exchange of Anishinaabeg of Naongashiing Land referred to in section 19 of this Land Code; and
- g) any law or class of law that Council, by Resolution, declares to be subject to this section.

METHOD OF VOTING

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

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

14.03 For greater certainty, Council may determine that the Community Approval vote may be achieved by calling for a Community Meeting, 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 14.02.

QUORUM

14.04 The quorum for Community Approvals under this Land Code is ten percent (10%) of all Eligible Voters, and 25% of the Eligible Voters casting a ballot must be Eligible Voters who resides off Anishinaabeg of Naongashiing Land.

VOTING

14.05 For Community Approvals, decisions may be made by a majority vote of fifty percent plus one (50% + 1) of the Eligible Voters casting a ballot, provided that there is a quorum of Eligible Voters participating in the vote.

SECOND COMMUNITY APPROVAL VOTE

14.06 If a quorum was not obtained pursuant to sections 14.04 a second Community Approval vote may be called.

SECOND ATTEMPT AT COMMUNITY APPROVAL VOTE QUORUM

14.07 The quorum for a second attempt at a Community Approval Vote under this Land Code is five percent (5%) of all Eligible Voters, and 25% of the Eligible Voters casting a ballot must be Eligible Voters who resides off Anishinaabeg of Naongashiing Land.

VOTING

14.08 For a quorum of Eligible Voters for a second attempt at a Community Approval Vote, decisions may be made by a majority vote of fifty percent plus one (50% + 1) of the Eligible Voters who cast a ballot.

THIRD COMMUNITY APPROVAL VOTE

14.09 If a quorum was not obtained pursuant to sections 14.07 a third Community Approval vote may be called without any quorum requirement.

VOTING

14.10 Decisions may be made by a majority vote of fifty percent plus one (50%+1) of the Eligible Voters who cast a ballot.

**15 Procedure for a Community Meeting**

NOTICE OF MEETING FOR COMMUNITY MEETING

15.01 The Council *shall* give written notice for a Community Meeting 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;
- d) a feedback form which any person entitled to participate may submit to the Lands Committee for review, and forwarded to Council in lieu of or in addition to attending at the meeting; or
- e) feedback by such additional methods, if any, as Council and Lands Committee may consider appropriate.

MANNER OF NOTICE

15.02 The notice for a Community Meeting *shall* be given to the Members by:

- a) posting the notice in public places on Anishinaabeg of Naongashiing Land at least forty two (42) working days before the meeting;
- b) 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) working days before the meeting;
- c) publishing the notice in the community newsletter, local newspaper or any other method Council deems appropriate, at least thirty five (35) working days before the meeting; and
- d) For greater certainty, Council may consider any additional method appropriate for posting notices including but not limited to newsletters, website, emails, etc...

PERMISSION OF COUNCIL

15.03 A person, other than a Member, may attend a Community Meeting only with permission of Council.

OTHER MEETINGS

15.04 The Council may schedule more than one Community Meeting to discuss and decide on a matter that requires a Community Meeting.

OTHER LAND LAWS

15.05 For greater certainty, the Council may make laws respecting Community Meeting.

## 16 Ratification Votes

### COMMUNITY APPROVAL BY RATIFICATION VOTE

16.01 Community approval by a Ratification Vote must be obtained for the following:

- a) any amendment to this Land Code; or
- b) any law or class of law that Council, by Resolution, declares to be subject to this section.

### INDIVIDUAL AGREEMENT WITH CANADA

16.02 For greater certainty, an amendment to, or renewal of, the Individual Agreement does not require community approval by a Ratification Vote.

### RATIFICATION PROCESS

16.03 Any Ratification Vote required under this Land Code *shall* be conducted in substantially the same manner as the Anishinaabeg of Naongashiing *Community Ratification Process*, which was used to ratify this Land Code.

### EXCEPTION

16.04 For greater certainty, revisions made pursuant to section 53.01 do not require community approval by a Ratification Vote.

### NO VERIFIER

16.05 A verifier is not needed in any Ratification Vote.

### QUORUM

16.06 In order to obtain a quorum for a community approval by Ratification Vote under this Land Code at least twenty five (25%) of Eligible Voters must register.

### MINIMUM REQUIREMENTS FOR APPROVAL

16.07 A matter *shall* be considered approved at a Ratification Vote if a majority of the registered Eligible Voters cast a vote in favour of the matter.

### PROPOSED LAW REJECTED BY MAJORITY VOTE

16.08 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 SECOND RATIFICATION VOTE IF LAW REJECTED

16.09 If the matter is rejected pursuant to section 16.08, the amendment to the Land Code *shall* not be executed, *shall* have no effect and *shall* not be submitted for a second Ratification Vote. The document may be re-submitted for a Ratification Vote under section 16.06 provided additional community consultation occurs, community direction is obtained to re-draft and the document is re-drafted accordingly.

### SECOND RATIFICATION VOTE

16.10 If a quorum was not obtained pursuant to section 16.06 a second Ratification Vote may be called.

### REDUCED QUORUM FOR SECOND RATIFICATION VOTE

16.11 The quorum for community approval for a second Ratification Vote under this Land Code is ten percent (10%) of Eligible Voters.

#### VOTING

16.12 If a quorum of Eligible Voters is present for a second Ratification Vote, decisions may be made by a majority vote of fifty percent plus one (50% + 1) of the Eligible Voters who cast a ballot.

#### NO THIRD RATIFICATION VOTE

16.13 If the required quorum pursuant to section 16.11 is not obtained, the amendment to the Land Code *shall* not be executed, *shall* have no effect and *shall* not be submitted for a third Ratification Vote. The document may be re-submitted for a Ratification Vote under section 16.06 provided additional community consultation occurs, community direction is obtained to re-draft and the document is re-drafted accordingly.

#### OTHER LAWS

16.14 For greater certainty, the Council may make laws respecting Ratification Votes.

### PART 4 PROTECTION OF LAND

## 17 Expropriation

#### ACQUISITION BY MUTUAL AGREEMENT

17.01 The right of Anishinaabeg of Naongashiing to expropriate can only be exercised after a good faith effort to acquire, by mutual agreement, the Interest or License in Anishinaabeg of Naongashiing Land.

#### RIGHTS AND INTEREST THAT MAY BE EXPROPRIATED

17.02 An Interest or License in Anishinaabeg of Naongashiing Land, or in any building or other structure on those Lands, may only be expropriated by Anishinaabeg of Naongashiing 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

17.03 A community expropriation *shall* only be made for a necessary community purpose or works of Anishinaabeg of Naongashiing, including but not limited to: a fire hall, sewage or water treatment facility, community centre, public works, roads, schools, day-care facility, hospitals, health-care facility, and retirement home.

#### EXPROPRIATION LAWS

17.04 Before proceeding to make any community expropriations in accordance with this Land Code, the 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 License;
- b) transfer of the Interest or License;
- 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.

#### MEMBER NOTIFICATION

17.05 In the case of an expropriation of a Member's Interest in Anishinaabeg of Naongashiing 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 section 17.06.

#### PUBLIC REPORT

17.06 Before Anishinaabeg of Naongashiing decides to expropriate an Interest or License, it *shall* make a public report on the reasons justifying the expropriation.

#### COMPENSATION FOR RIGHTS AND INTERESTS

17.07 Anishinaabeg of Naongashiing *shall*, in accordance with its Laws and the *Framework Agreement*:

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

#### COMPENSATION CALCULATIONS

17.08 Anishinaabeg of Naongashiing *shall* calculate the total value of the compensation under this section based on the heads of compensation set out in the *Expropriation Act* (Canada).

#### MARKET VALUE

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

#### NEUTRAL EVALUATION TO RESOLVE DISPUTES

17.10 The resolution of disputes concerning the right of Anishinaabeg of Naongashiing 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 circumstances, by the neutral evaluator.

#### ARBITRATION TO RESOLVE DISPUTES

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

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

## 18 Heritage Sites

#### COMMUNITY INPUT ON DEVELOPMENT

18.01 No development *shall* be allowed on any site designated as a heritage site under the land use plan, unless the community is consulted on the development plan, provided however that no development *shall* be permitted on any site designated by Land Law as a permanently protected site.

#### COMMUNITY APPROVAL FOR AMENDMENT TO LAND USE PLAN

18.02 No amendment may be made to a land use plan to delete a heritage site unless the amendment receives confirmation by community approval.

## 19 Voluntary Land Exchanges and Protections

#### CONDITIONS TO A LAND EXCHANGE

19.01 Anishinaabeg of Naongashiing may agree with a third party to exchange a parcel of Anishinaabeg of Naongashiing Land for a parcel of land from that other party in accordance with this Land Code and the *Framework Agreement*.



NO EFFECT

19.02 A land exchange is of no effect unless it receives community approval at a Community Meeting.

LAND TO BE RECEIVED

19.03 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 Anishinaabeg of Naongashiing Land to be exchanged;
- b) it must be at least comparable to the appraised value of the Anishinaabeg of Naongashiing Land for which it is to be exchanged; and
- c) it must receive Reserve status and become Anishinaabeg of Naongashiing Reserve Land subject to this Land Code.

NEGOTIATORS

19.04 The person or persons who *shall* have authority to negotiate a land exchange agreement on behalf of Anishinaabeg of Naongashiing must be designated by Resolution.

ADDITIONAL LAND

19.05 Anishinaabeg of Naongashiing may negotiate to receive other compensation, such as money or one or more other parcels of land, in addition to the parcel referred to in section 19.03 above which is intended to become a Reserve. Such other parcels of land may be held by Anishinaabeg of Naongashiing in fee simple or some other manner.

FEDERAL CONSENT

19.06 Before Anishinaabeg of Naongashiing 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 the Council may specify by Resolution; and
- b) consents to the manner and form of the exchange as set out in the exchange agreement.

COMMUNITY NOTICE

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

- a) a description of the Anishinaabeg of Naongashiing 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 received;
- d) a report of a certified land appraiser setting out that the conditions in section 19.03 have been met;
- e) a copy or summary of the exchange agreement; and
- f) a copy of the consent referred to in section 19.06.

PROCESS OF LAND EXCHANGE

19.08 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) the Council must pass a Resolution authorizing Canada to transfer title to the Anishinaabeg of Naongashiing 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 Anishinaabeg of Naongashiing Lands Register and a copy sent to 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 provision has been made for such clearance or remediation at no cost to Anishinaabeg of Naongashiing and with full indemnification to Anishinaabeg of Naongashiing.

## PART 5 ACCOUNTABILITY

### 20 Conflict of Interest

#### APPLICATION OF RULES

20.01 The Conflict of Interest Rules and Guidelines apply to:

- a) each member of the Council who is dealing with any matter before Council that is related to Anishinaabeg of Naongashiing Land;
- b) each person who is an employee of Anishinaabeg of Naongashiing dealing with any matter that is related to Anishinaabeg of Naongashiing Land; and
- c) each person who is a member of a board, committee or other body of Anishinaabeg of Naongashiing dealing with any matter that is related to Anishinaabeg of Naongashiing Land.

#### DUTY TO REPORT AND ABSTAIN

20.02 If there is any financial, familial or personal conflict of Interest in the matter being dealt with, the person:

- a) *shall* disclose the Interest to the 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.

#### COMMON INTERESTS

20.03 Section 20.02 does not apply to any Interest that is held by a Member in common with every other Member.

#### INABILITY TO ACT

20.04 If the board, committee or other body is unable to act due to a conflict of Interest, the matter *shall* be referred to the Council.

#### MEETING OF ELIGIBLE VOTERS

20.05 If the Council is unable to vote on a proposed Law or Resolution due to a conflict of Interest, the Council may refer the matter to a Community Meeting and, if a quorum of Eligible Voters is present, a majority of the Eligible Voters present at the meeting may enact the Land Law or Land Resolution.

#### SPECIFIC CONFLICT SITUATIONS

20.06 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 Anishinaabeg of Naongashiing Land.

#### ELECTED BODY/PANEL

20.07 For greater certainty, the Council or any other elected board, committee or body, or the roster panel or panel is not included under the rule set out in 20.06.

DISPUTES

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

OTHER LAWS

20.09 For greater certainty, the Council may enact laws to further implement this section.

**21 Financial Management**

APPLICATION

21.01 This section applies only to financial matters relating to Anishinaabeg of Naongashiing Land.

ADOPTION OF BUDGET

21.02 The Council *shall*, by Resolution, prior to the beginning of each fiscal year, adopt a Land management budget for that fiscal year and may, if the Council deems it necessary in the course of the fiscal year, adopt supplementary budgets for that fiscal year.

PROCEDURE

21.03 After adopting the Land Management budget or supplementary budget, the Council *shall*, without undue delay:

- a) explain the budget or supplementary budget to the Members at an annual Community Meeting; and
- b) make a copy of the budget or supplementary budget available at the administrative offices of Anishinaabeg of Naongashiing for inspection by Members at reasonable hours.

IF NO BUDGET

21.04 If the Council fails to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year, the budget and any supplementary budgets of the previous fiscal year apply until a new budget is adopted.

BUDGET RULES

21.05 The Council may make rules respecting the preparation and implementation of Land management budgets.

EXPENDITURES

21.06 The Council *shall* not expend monies related to Land or commit itself, by contract or otherwise, to expend monies related to Land, unless the expenditure is authorized by or under a Land Law or an approved budget.

FINANCIAL POLICY

21.07 The Anishinaabeg of Naongashiing may, in accordance with this Land Code, adopt a financial policy to further manage monies related to Anishinaabeg of Naongashiing Land.

**22 Audit**

HOLDING OFFICE

22.01 The auditor appointed under this section holds office until reappointed, or replaced by resolution of Council.

VACANCY IN OFFICE

22.02 Where a vacancy occurs during the term of an auditor, the Council *shall*, without delay, appoint a new auditor for the remainder of the former auditor's term.

REMUNERATION

22.03 The auditor's remuneration *shall* be fixed by the Council.

ACCESS TO RECORDS

22.04 The auditor may at all reasonable times inspect any financial records of Anishinaabeg of Naongashiing and any person or body who administers money on behalf of Anishinaabeg of Naongashiing.

## 23 Annual Report

CONTENTS

23.01 The annual report will include:

- a) an annual review of land management;
- b) a financial statement and the most recent auditor's report;
- c) a copy and explanation of the audit as it applies to lands; and
- d) any other matter which Council or the Lands Committee deems relevant to Members in relation to the Code.

PRESENTATION OF ANNUAL REPORT TO MEMBERS

23.02 Within 90 days of publication of the annual report, Council *shall* convene a Community Meeting for the purpose of presenting the annual report, including the auditor's report, to the Members, for information purposes.

## 24 Access to information

ACCESS

24.01 Any Member may, during normal business hours at the main administrative office of Anishinaabeg of Naongashiing, have reasonable access to:

- a) the register of Land Laws;
- b) the most-recent auditor's report;
- c) the most-recent annual report; and
- d) the auditor's report and annual reports for each of the previous six years.

COPIES FOR MEMBERS

24.02 Any Member, upon written request and proof of membership, may obtain a copy of the auditor's report or annual report, subject to such reasonable fees for retrieval and copying as may be set by resolution of Council.

ACCESS TO RECORDS

24.03 Any person who is not a Member, with the authorization of Council, may at any reasonable time inspect the financial records of Anishinaabeg of Naongashiing related to Anishinaabeg of Naongashiing Land.

PART 6  
LAND ADMINISTRATION

**25 Lands Staff**

ADMINISTRATION

25.01 Council may delegate administrative authority to staff to carry out functions necessary for day to day administrative operations of lands and resources.

**26 Lands Committee**

LANDS COMMITTEE ESTABLISHED

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

- a) assist with the development of the land administration system;
- b) advise the Council and its staff on matters respecting Anishinaabeg of Naongashiing Land;
- c) to recommend laws, resolutions, policies and practices respecting First Nation land to the Council;
- d) to consult with the individuals and the community on land issues, and to make recommendations on the resolution of those issues to Council;
- e) to assist in the flow of information on land issues between Members and Council;
- f) to manage and oversee ratification votes, community approvals, and community input meetings; and
- g) to perform such other duties as may be assigned to the Lands Committee by Resolution or Land Law enacted under this Code;

NUMBER OF MEMBERS

26.02 The Lands Committee *shall* be composed of 3 Eligible Voters, and at least one member shall be an Eligible Voter who resides off Anishinaabeg of Naongashiing Land.

26.03 Any Eligible Voter, whether resident on or off the Anishinaabeg of Naongashiing Land, is eligible for appointment or election to the Lands Committee, except for a person who:

- a) is found to be of unsound mind by a court in Canada or elsewhere;
- b) has the status of a bankrupt;
- c) has been convicted of an offence that was prosecuted by way of indictment;
- d) has been convicted of a corrupt practice in connection with an election, including accepting a bribe, dishonesty, or wrongful conduct; or
- e) any member of Council who has been removed from office by the community, will not be eligible to sit on the Lands Committee for a term of 8 years from the time of his/her removal.

CHAIR AND DEPUTY CHAIR

26.04 The Lands Committee *shall* appoint one of the committee members to be Chair of the Lands Committee, for such term as the committee deems appropriate, and one or more Deputy Chairs who may perform the duties of the Chair in his/her absence.

DUTY TO REPORT APPOINTMENT TO COUNCIL

26.05 The appointment the Lands Committee Chair and Deputy Chairs *shall* be duly accepted and noted by Council.

FUNCTIONS OF THE CHAIR

26.06 The Chair *shall*:

- a) chair meetings of the Lands Committee;
- b) may present the information to the Members at a meetings of Members under Part 3 of this Code;
- c) provide quarterly written reports to Anishinaabeg of Naongashiing on the activities of the Lands Committee; and
- d) *shall* have such other powers and duties as may from time to time be assigned by resolution of the Lands Committee or Council.

## **27 Implementation of Lands Committee**

### TERM OF OFFICE

27.01 The length of the term of office for members of the Lands Committee is the same as Council.

### FIRST LANDS COMMITTEE

27.02 Immediately upon the coming into effect of this Code, Council *shall* select a Lands Committee to serve for a term of three years until a Land Law governing elections or appointments to the Lands Committee comes into force.

### LAW GOVERNING SUCCESSORS TO THE FIRST LANDS COMMITTEE

27.03 As soon as possible after the coming into force of this Code, Council, in consultation with the Lands Committee, *shall* develop a Land Law 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 term of office, remuneration, conditions of service, termination of committee membership, vacancies arising during term and such other matters as Council deems appropriate to the operation of the Lands Committee.

### LANDS COMMITTEE WORK-PLAN

27.04 Within a reasonable time after this Land Code takes effect, the Lands Committee *shall*, in consultation with Council and the community, ensure that rules and procedures are developed that address the following matters:

- a) Terms of Reference for the procedure for meetings of the Lands Committee, and generally for the conduct of its affairs, not inconsistent with those established by the Council;
- b) the process for determining the fees and royalties for the taking of natural resources on First Nation Land;
- c) environmental protection and assessment in relation to First Nation land;
- d) any outstanding disputes in relation to First Nation land;
- e) land use planning and zoning;
- f) respecting spousal real property policy and whether any change should be made to the policy upon which that section is based;
- g) risk management issues as they relate to Anishinaabeg of Naongashiing Land; and
- h) any other matter referred by Council.

### HOW POLICIES WILL BE GIVEN EFFECT

27.05 Rules and procedures developed by the Lands Committee *shall* be presented to Council for consideration and implementation as policies, laws or amendments to this Land Code, whichever is most appropriate.

## **28 Revenues From Lands**

### DETERMINATION OF FEES AND RENT

28.01 The Lands Committee shall, subject to the approval of Council, establish the process for determining:

- a) the fees and rent for Interests and Licenses in Anishinaabeg of Naongashiing Land; and
- b) for fees for services provided in relation to any Anishinaabeg of Naongashiing Land.

## 29 Registration of Interests and Licenses

### ENFORCEMENT OF INTERESTS AND LICENSES

29.01 An Interest or License in First Nation land created or granted after this Land Code takes effect is not enforceable unless it is registered in the First Nation Lands Register.

### REGISTRATION OF CONSENT OR APPROVAL

29.02 No instrument that requires the consent of the Council, or community approval, *shall* be registered unless a certified copy of the document that indicates the consent or approval is attached.

### DUTY TO DEPOSIT

29.03 The Council *shall* ensure that an original copy of the following instruments is deposited in the First Nation Lands Register:

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

## 30 Anishinaabeg of Naongashiing Lands Register

### ANISHINAABEG OF NAONGASHIING LANDS REGISTER

30.01 The Council *shall* establish and maintain the Anishinaabeg of Naongashiing Lands Register and make laws with respect to the Lands Register and the effect of registering documents in the register.

### DUTY TO DEPOSIT

30.02 Every person who receives an interest in or a license to use Anishinaabeg of Naongashiing Land *shall* deposit an original copy of the relevant instrument in the Anishinaabeg of Naongashiing Lands Register.

### PRIORITY

30.03 In the event of an inconsistency or a conflict between the Anishinaabeg of Naongashiing Lands Register and the First Nation Lands Register, the Anishinaabeg of Naongashiing Lands Register prevails to the extend of the inconsistency or conflict.

## PART 7 INTERESTS AND LICENSES IN LAND

## 31 Formalities of Grants, Transfers, and other Transactions

### ALL DISPOSITIONS IN WRITING

31.01 An Interest in, or License to use, Anishinaabeg of Naongashiing Land *shall* only be created, granted, disposed of, assigned, transferred or otherwise affected only by an instrument in writing in accordance with this Land Code.

STANDARDS

31.02 Council will establish mandatory standards, criteria and forms for Interests and Licenses in Anishinaabeg of Naongashiing Land.

IMPROPER TRANSACTIONS VOID

31.03 After the date that this Land Code takes effect, any deed, lease, contract, instrument, document, or agreement of any kind, whether written or oral, by which Anishinaabeg of Naongashiing, a Member or any other person purports to grant, dispose of, transfer or assign an Interest or License in Anishinaabeg of Naongashiing Land is void unless it complies with this Land Code.

**32 Existing Interests**

CONTINUATION OF EXISTING INTERESTS

32.01 Interests and Licenses in relation to Anishinaabeg of Naongashiing Land that exist on the coming into force of this Land Code continue in accordance with their terms and conditions.

CERTIFICATES OF POSSESSION OR OTHER INTERESTS

32.02 For greater certainty, certificates of possessions 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 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.

UNREGISTERED INTERESTS

32.03 A policy *shall* be established as soon as practical after the coming into force of the Land Code to accommodate unregistered land Interests.

**33 New Interests and Licenses**

AUTHORITY TO MAKE DISPOSITIONS

33.01 Subject to the provisions of this Code, Council on behalf of Anishinaabeg of Naongashiing may grant:

- a) Interests and Licenses in Community Lands, including, but not limited to, certificates of allocation, leases, permits, easements, rights-of-ways, etcetera; and
- b) permits to take resources from Community Lands, including, but not limited to, cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances.

CONDITIONAL GRANT

33.02 The grant of an Interest, License or permit may be made subject to the satisfaction of written conditions.

**34 Interests of non-members**

NON-MEMBERS

34.01 A person who is not a Member of Anishinaabeg of Naongashiing *shall* not hold any Interest in Anishinaabeg of Naongashiing Land except a lease, License, or permit.

GRANTS TO NON-MEMBERS

34.02 The written consent of Council *shall* be obtained for all succession rights, any grants or disposition of leases, Licenses or permits on Anishinaabeg of Naongashiing Land to a person who is not a Member.



### **35 Certificates of Possession or other Interests**

#### APPLICATION

35.01 For greater certainty, Certificates of possessions 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 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.

### **36 Allocation of Lots to Members**

#### POLICIES AND PROCEDURES FOR ALLOCATION OF LOTS

36.01 Subject to the provisions of this Code, Council in consultation with the Lands Committee may establish policies and procedures for the allocation of lots to Members.

#### ALLOCATION

36.02 Council may, in accordance with this Code:

- a) allocate lots to Members; or
- b) issue a certificate of entitlement to a Member for a lot allocated to that Member.

#### NATURE OF INTEREST IN CP OR CE

36.03 Subject to this Land Code and First Nation laws, a certificate of possession or certificate of entitlement in respect of a parcel of land is an Interest that **shall** entitle the Member holding it to:

- a) exclusive possession of the land in perpetuity;
- b) benefit from the resources arising from the land;
- c) transfer, devise or otherwise dispose of the CP or CE to another Member;
- d) any other rights consistent with this Land Code that Council may grant by way of Land Law or Resolution.

#### NO ALLOCATION OF LOTS TO NON-MEMBERS

36.04 A person who is not a Member is not entitled to be allocated a lot or to hold a permanent Interest in First Nation land.

### **37 Transfer and Assignment of Interests**

#### CONSENT OF COUNCIL AND EXCEPTIONS

37.01 No Interest in First Nation land may be transferred or assigned without the consent in writing of Council, except:

- a) a transfer or assignment of a certificate of possession or certificate of entitlement from one Member to another in accordance with this Code;
- b) a transfer that occurs by operation of law, including transfer of estate by testamentary disposition;
- c) a transfer pursuant to the interim spousal property rules in section 40 of this Code, or pursuant to a spousal property law enacted by Anishinaabeg of Naongashiing as provided in this Code; and
- d) every grant of an Interest or License in First Nation land, other than those stated herein to be an exception, **shall** be deemed to include such consent as a condition of subsequent transfers or assignments.

### 38 Limits on Mortgages and Seizures

#### PROTECTIONS

38.01 In accordance with the *Framework Agreement*, section 29, section 87 and subsections 89(1) and (2) of the *Indian Act* continue to apply to First Nation land.

#### MORTGAGE OF CERTIFICATE OF POSSESSION OR CERTIFICATE OF ENTITLEMENT

38.02 The Interest of a Member in First Nation land may be subject to a mortgage or charge, but only to Anishinaabeg of Naongashiing with the written consent of the Council.

#### MORTGAGES OF LEASEHOLD INTERESTS WITH CONSENT

38.03 A leasehold Interest may be subject to charge or mortgage, but only where authorized by a resolution of Council with the advice of the Lands Committee.

#### TIME LIMIT

38.04 The term of any charge or mortgage of a leasehold Interest *shall* not exceed the lesser of:

- a) the term of the lease; or
- b) 35 years, or such longer period as may receive community approval.

#### DEFAULT IN MORTGAGE

38.05 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 the Council;
- b) the charge or mortgage received community approval where required;
- c) the charge or mortgage was registered in the First Nation Lands Register; and
- d) a reasonable opportunity to redeem the charge or mortgage is given to the Council on behalf of Anishinaabeg of Naongashiing.

#### POWER OF REDEMPTION

38.06 Subject to prior redemption by the lessee, Council on behalf of Anishinaabeg of Naongashiing may redeem the charge or mortgage from the chargee or mortgagee in possession and *shall* thereupon acquire all the rights and Interests of the chargee or mortgagee and of the lessee.

### 39 Residency and Access Rights

#### RIGHTS OF RESIDENCE

39.01 The following persons have a right to reside on First Nation lands:

- a) Members, who have been allocated a residential lot by Council, and their spouses and children;
- b) Members with a registered Interest in First Nation land;
- c) any invitee of a Member referred to in clause a) or b);
- d) lessees and permittees, in accordance with the provisions of the instrument granting the lease or permit;  
and
- e) a person authorized in writing by the Council/Lands Committee or by a Anishinaabeg of Naongashiing Land Law.

#### RIGHT OF ACCESS

39.02 The following persons have a right of access to First Nation lands:

- a) a lessee and his or her invitees to a leasehold;
- b) permittees and those granted a right of access under a permit, to the lands subject to the permit;
- c) Anishinaabeg of Naongashiing Members, their spouses and their minor or dependent children entitled to reside on the lands of Anishinaabeg of Naongashiing for residential, educational, social and employment or business purposes;
- d) a Member's invited guests;
- e) a person who authorized by a government body or any other public body, established by or under an enactment of Anishinaabeg of Naongashiing, Parliament or the province to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey; or
- f) a person authorized in writing by the Council/Lands Committee or by a Anishinaabeg of Naongashiing Land Law.

#### PUBLIC ACCESS

39.03 Any person who is not a Member may have access to First Nation land for any social or business purposes, if:

- a) the person does not trespass on occupied land and does not interfere with any Interest in land;
- b) the person complies with all applicable laws including any restrictions contained in written authorization from Council; and
- c) no resolution has been enacted barring that person.

#### USE OF ROADS

39.04 Any person having a right of access to First Nation land may have the right to access such land over First Nation roads, subject to this Code and Anishinaabeg of Naongashiing Land Law.

#### TRESPASS

39.05 Any person who resides on, enters or remains on First Nation land other than in accordance with a residence or access right under this Land Code is guilty of an offence.

#### CIVIL REMEDIES

39.06 All civil remedies for trespass are preserved.

### **40 Spousal Property Law**

#### ENACTMENT OF RULES AND PROCEDURES

40.01 The Council *shall* enact a spousal property law providing rules and procedures applicable on the breakdown of a marriage and spousal relationships concerning:

- a) the use, occupancy and possession of Anishinaabeg of Naongashiing Land; and
- b) the division of Interests in that land.

#### DEVELOPMENT OF RULES AND PROCEDURES

40.02 The rules and procedures contained in the spousal property law *shall* be developed by the Lands Committee in consultation with the community.

ENACTMENT DEADLINE

40.03 The spousal property law *shall* be drafted and enacted 12 months from the date this Land Code takes effect.

GENERAL PRINCIPLES

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

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

INTERIM SPOUSAL PROPERTY RULES

40.05 In order that Members benefit immediately from the legislative authority of the Council to address the issue of spousal property:

- a) Council may enact Interim Spousal Property Rules to govern the rights of Spouses in relation to Anishinaabeg of Naongashiing Land in event of a breakdown of marriage or spousal relationships.
- b) The Interim Spousal Property Rules *shall* be consistent with the principles provided in this Code to govern the development of a spousal property law.
- c) Interim Spousal Property Rules enacted by Council *shall* come into force as a Land Law pursuant to this Code immediately upon enactment by Council, or on the later effective date provided therein, and *shall* remain in force for not more than 12 months or such shorter period of effect as may be stated therein, unless re-enacted, amended or replaced by new Interim Spousal Property Rules, in each case to remain in force for not more than 12 months.
- d) Council's authority to enact Interim Spousal Property Rules *shall* be independent of the state of completion of the work of the Lands Committee and the community consultation process relating to the development of a spousal property law.

PART 8  
DISPUTE RESOLUTION

**41 Purpose**

INTENT

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

PURPOSE

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

## 42 Processes

### DISPUTE PREVENTION

42.01 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.

### DISPUTE PRIOR TO THE LAND CODE

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

### SETTLE A DISPUTE

42.03 Nothing in this Part *shall* be construed to limit the ability of any person to reach agreement to settle a dispute without recourse to this Part.

### SETTLEMENT AGREEMENT

42.04 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.

### STAGED PROCESSES

42.05 Anishinaabeg of Naongashiing intends that a dispute in relation to Anishinaabeg of Naongashiing Land, except as otherwise provided, progress in sequence 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.

### TERMINATION OF PROCESSES

42.06 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

42.07 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

42.08 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 License in Anishinaabeg of Naongashiing 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

42.09 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.

#### RULES AND PROCEDURES

42.10 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) remuneration of facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part;
- b) disclosure and confidentiality;
- c) implementing recommendations of the Dispute Resolution Panel made under section 50.02; and
- d) any other matter necessary to give effect to this Part.

#### CODE OF CONDUCT

42.11 Council *shall* establish a code of conduct for facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part.

#### WAIVER OF LIABILITY

42.12 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.

#### MANDATORY APPLICATION

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

#### CONTRACTUAL AGREEMENT

42.14 Subject to any Land Law enacted under section 42.13, 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 arbitration 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

42.15 Subject to any Land Law enacted under section 42.13, 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 Roster Panel in writing.

#### CIVIL REMEDIES

42.16 Notwithstanding section 42.13 and 42.14, 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

42.17 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.

**43 Roster Panel Established**

APPOINTMENTS TO ROSTER PANEL

43.01 The Roster Panel *shall* be composed of a maximum of twenty (20) Panelists.

INELIGIBLE

43.02 Notwithstanding section 20, in order to avoid conflict of interest, no Council member, or employee of Anishinaabeg of Naongashiing or person already serving on another board, body, or committee of Anishinaabeg of Naongashiing *shall* sit on the Roster Panel.

REPRESENTATION

43.03 The Lands Committee *shall* appoint the Roster Panelists, and *shall* ensure that the Roster Panelists represent the various elements of the community, including, but not limited to, resident and non-resident Eligible Voters, Elders, professionals, and non-members.

TERM OF OFFICE

43.04 The Roster Panelists hold office for a term of three (3) years, at which time the term of office may be renewed.

NO REMUNERATION

43.05 Unless Council by Resolution or law provides otherwise, the Panelists are to act on a volunteer basis and receive no remuneration for their services.

RULES OF ROSTER PANEL

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

**44 Negotiation**

INFORMAL DISCUSSIONS

44.01 Anishinaabeg of Naongashiing intends that wherever possible, a dispute in relation to Anishinaabeg of Naongashiing Land *shall* be resolved by negotiation through informal discussion by the parties to the dispute prior to entering the dispute resolution process by filing a notice of dispute.

**45 Procedure to File a Dispute**

PROCEDURE TO FILE A DISPUTE

45.01 A person who wishes to resolve a dispute with another person or Anishinaabeg of Naongashiing in relation to the use or occupation of Anishinaabeg of Naongashiing Land may file a written notice of dispute with the Lands Department 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.

#### LIMITATION PERIOD

45.02 The limitation period for submitting a notice of dispute and referring a matter or dispute to the Roster Panel is:

- a) 6 months after the day the decision, act or omission being referred was made;
- b) thirty (30) consecutive days after the breakdown of negotiation; or
- c) in the case of a breakdown and termination of facilitated discussions or mediation, thirty (30) consecutive days after the notice of termination.

### **46 Facilitated Discussions**

#### PROCEDURE

46.01 Within thirty (30) consecutive days of receiving a notice of dispute under section 45.01, the Lands Department *shall* prepare and deliver a report on the dispute and a copy of the notice of dispute to the Chair of the Roster Panel.

#### NOTICE OF DISPUTE

46.02 As soon as practicable after receiving a report and notice of dispute under section 46.01 the Chair of the Roster Panel or another person not affected by the dispute and designated by the Anishinaabeg of Naongashiing Lands Committee for that purpose, *shall* make best efforts to meet with the parties and attempt to resolve the dispute through facilitated discussions.

#### SET MEETING DATE AND TIME

46.03 In setting the date and time of the meeting referred to in section 46.02 the Chair of the Roster Panel or other person appointed for the purposes of section 46.02 may consider any need to:

- a) obtain further information;
- b) give notice of the dispute to others who have or may have an Interest in it; or
- c) obtain professional advice in relation to the dispute.

#### OTHER MECHANISMS

46.04 Where the Chair of the Roster Panel or other person appointed for the purposes of section 46.02 concludes that the dispute cannot be resolved through facilitated discussions, he/she may in his/her sole discretion direct that the dispute proceed to mediation or final arbitration hearing by the Dispute Resolution Panel.

### **47 Mediation**

#### APPOINTMENT

47.01 A mediator *shall* be selected jointly by the parties to the dispute and the Roster Panel.

#### UNABLE TO AGREE

47.02 If the parties to the dispute and the Roster Panel are unable to agree on a mediator, the Dispute Resolution Panel *shall* hear the dispute.

#### AUTHORITIES

47.03 The mediator has no authority to decide the dispute without the agreement of the parties to the dispute.



## REPORT

47.04 At the conclusion of mediation, the mediator *shall* submit a written report on the mediation proceedings to the parties to the dispute and the Roster Panel.

## 48 Final Arbitration by the Dispute Resolution Panel

### DISPUTES

48.01 Any matter or dispute related to Anishinaabeg of Naongashiing Land may be referred to the Roster Panel for resolution.

### PANEL OF THREE CHOSEN FROM ROSTER PANEL

48.02 Disputes referred to the Roster Panel are to be heard by three (3) Panelists chosen as follows:

- a) one (1) panelist is 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 three (3) panelists *shall* to be chosen by the Roster Panel as a whole.

### PANEL ESTABLISHED

48.03 The Dispute Resolution Panel is hereby established with jurisdiction to resolve disputes in relation to Anishinaabeg of Naongashiing Land.

## 49 Impartiality of the Dispute Resolution Panel

### DUTY TO ACT IMPARTIALLY

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

### OFFENCE

49.02 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

49.03 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.

## 50 Powers of the Dispute Resolution Panel

### POWERS OF PANEL

50.01 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 affect to its decision, including any necessary order for the survey of an Interest in Anishinaabeg of Naongashiing Land, the registration of an Interest in Anishinaabeg of Naongashiing Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order.

### RECOMMENDATIONS BY PANEL

50.02 In addition to making a determination under section 50.01, the Dispute Resolution 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 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

50.03 The Dispute Resolution 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 Anishinaabeg of Naongashiing Land.

#### PROFESSIONAL SERVICES

50.04 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.

#### WRITTEN DECISIONS

50.05 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.

#### REASONS

50.06 The Panel *shall* give reasons for its decision, and *shall* do so in writing if a party to the proceedings requests them before, or within fourteen (14) consecutive days after, the date of the decision.

#### APPEAL OF DECISION

50.07 A decision of the Panel is binding but, subject to any exception established by a law, may be appealed to the Federal Court (Trial Division).

## PART 9 OTHER MATTERS

### 51 Liability

#### LIABILITY COVERAGE

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

#### EXTENT OF COVERAGE

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

### 52 Offences

#### APPLICATION OF THE CRIMINAL CODE

52.01 Unless some other procedure is provided for by a 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 Land Law.

### 53 Revisions to Land Code

#### REVISIONS

53.01 A Ratification Vote is not required for revisions made to this Land Code that do not change the substance of this Land Code. The Council *shall*, 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 addition of land under section 4.01, pursuant to the addition of other lands in the 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) minor improvements in the language as may be required to bring out more clearly the intention of Anishinaabeg of Naongashiing without changing the substance of the Land Code;
- e) changes in this Land Code as are required to reconcile seeming inconsistencies with other acts; and
- f) correct editing, grammatical or typographical errors.

### 54 Commencement

#### PRECONDITIONS

54.01 This Land Code *shall* not take effect unless 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

54.02 Subject to section 54.01, this Land Code *shall* take effect on the first day of the month following the certification of this Land Code by the verifier.