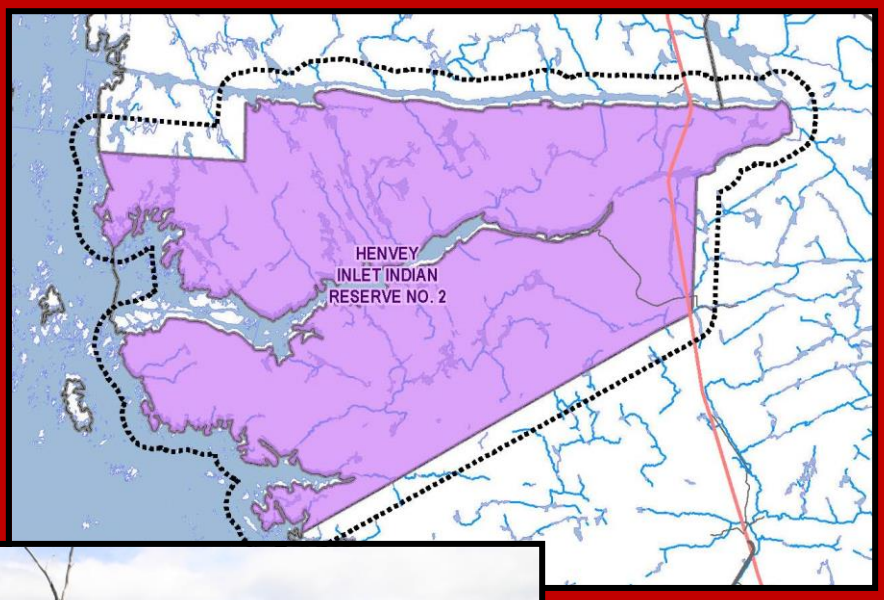
Henvey Inlet First Nation
LAND LAW 2015/16-010




**HENVEY INLET FIRST NATION ENVIRONMENTAL STEWARDSHIP REGIME FOR THE PROPOSED HIW ENERGY CENTRE ON HENVEY INLET RESERVE #2 LANDS:**

# EA GUIDANCE INSTRUMENT

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## OVERVIEW

This instrument provides guidance and binding direction on the environmental assessment of a proposed Henvey Inlet Wind LP Energy Generation Centre (the "Energy Centre") to be located on Henvey Inlet First Nation (HIFN) Reserve lands in Ontario, north of Parry Sound.

HIFN has broad authority to manage and protect its Reserve lands. This authority comes from the *First Nations Land Management Act* (FNLMA), related instruments, and the HIFN Land Code. This authority includes responsibility for environmental protection and the environmental assessment of projects on its lands.

Environmental assessment (EA) is a planning and decision-making tool to ensure good environmental stewardship. HIFN Band Council ("Council") is committed to requiring that an EA is conducted and considered before making any final decision to authorize construction or operation of the Energy Centre on its lands.

The proponent of the Energy Centre is Henvey Inlet Wind LP (HIW), a limited partnership between Pattern Renewable Holdings Canada ULC and Nigig Power Corporation.

The Energy Centre is to be located on HIFN Reserve #2. It is intended to produce 300 megawatts (MW) of electricity. Off-Reserve, there will be a new transmission line to deliver the electricity generated on-Reserve to the Ontario electricity grid.

This guidance instrument is based upon the HIFN Regime Land Law for the Energy Centre. It is intended to be consistent with this Land Law. Thus, it relies on the definitions, Principles, and requirements of the Regime Land Law in all respects. In case of inconsistency between this guidance instrument and the Regime Land Law, the terms of the Regime Land Law prevail to the extent of the inconsistency.

# PART ONE BACKGROUND AND PURPOSE

## 1.1 BACKGROUND

HIFN is an Indian band for the purposes of the *Indian Act*, governed by an elected Council consisting of a chief and six councillors.

Henvey Inlet Indian Reserve #2 ("I.R. #2") is a parcel of federal Crown land on the shore of Georgian Bay at Key River held by the Crown for the benefit of HIFN, and subject to the aboriginal title. This Reserve is used by HIFN members for hunting, fishing, and gathering activities. It has also been used by HIFN members for limited forestry.

Canada and HIFN have entered into agreements regarding the management of HIFN's Reserve lands pursuant to the FNLMA. In 2009, HIFN formally adopted a Land Code which was amended in 2012 to apply to I.R. #2. Pursuant to these instruments, Council is the decision-making authority with respect to the creation and granting of interests in lands within I.R. #2. These instruments also provide Council with the legislative, regulatory, and executive authority to ensure environmental management of the Reserve. This includes responsibility for EA, permitting, and environmental protection for projects on HIFN lands.

EA is a project planning and decision-making tool intended to ensure environmental stewardship. Council is committed to requiring that an EA is completed and considered before it decides whether to authorize a new Energy Centre on its lands.

The EA will inform HIFN decision making on the Energy Centre. If HIFN decides that the Energy Centre should proceed, it will also use the EA to assist in developing terms and conditions of approval for an Environmental Permit that addresses on-Reserve environmental protection standards.

## 1.2 PURPOSE AND ORGANIZATION OF THIS DOCUMENT

HIFN has developed two Land Laws to govern the EA of the Energy Centre:

Land Law 1: under the HIFN Environmental Stewardship Regime (the "Regime"), a Land Law entitled, "ENVIRONMENTAL ASSESSMENT AND PERMITTING," which sets out in Part 2 (of 5 Parts) the Principles guiding the EA of the Energy Centre and the process for this EA; and

Land Law 2: the present instrument which provides guidance and binding direction to HIW on how to carry out the Energy Centre EA.

The present Land Law sets out the specific guidance and binding direction required for HIW to carry out the EA of the Energy Centre. It has four parts:

Part One addresses the purpose of this instrument, what it provides, the governing EA Principles, who is responsible for particular aspects of the EA process, and the EA schedule.

Part Two provides guidance and binding direction on the fundamental components of the EA. It sets out the key terms, how they are related, and how the EA is to use these terms.

Part Three provides guidance and binding direction on the EA report. It describes how the report should be organized, required volumes, and required supporting documents.

Part Four provides guidance and binding direction on the consultation to be carried out on the EA.

## 1.3 GOVERNING EA PRINCIPLES

The Regime Land Law sets out, among other things, the governing Principles of the EA process for this Energy Centre. For convenience, these Principles are reproduced in Table 1.0, below:

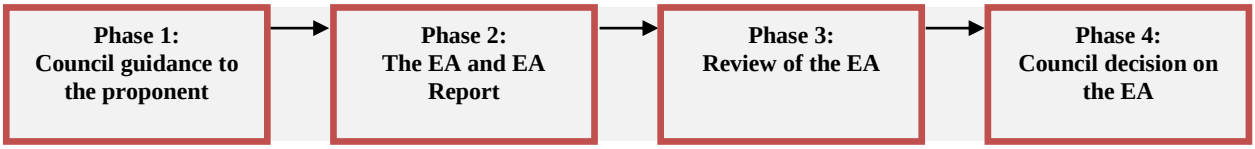
**Table 1.0**

| **HIFN Governing EA Principles** |
|---|
| Principle (1): The purpose of this environmental assessment is to assess and influence the design of the proposed construction, operation, and decommissioning of the Energy Centre to avoid or minimize and mitigate potential significant adverse environmental effects on Reserve lands. |
| Principle (2): To promote the avoidance or mitigation of adverse environmental effects, the EA will provide for protection of Nishshing Aki on Reserve lands and otherwise consider federal environmental protection laws and standards of environmental protection similar to those applied to wind energy generation facilities located in Ontario, not on Reserve lands. |

| HIFN Governing EA Principles |
|---|
| Principle (3): To promote community and public engagement, the EA process will include notice, information, and comment analogous to the process applicable to similar wind energy generation facilities located in Ontario, not on Reserve lands. |
| Principle (4): Council may delegate to any person the exercise of some or all powers, duties, or functions required to carry out and complete the Energy Centre EA other than Council decisions on the EA. |
| Principle (5): Council shall not accept the environmental assessment unless Council is satisfied that the EA process and EA report conform to this Land Law. |

## 1.4 THE HIFN EA PROCESS

The HIFN EA process will have four phases:




This guidance instrument is central to Phases 1, 2, and 3 of the EA.

## 1.5 RESPONSIBILITY FOR THE EA

The Regime Land Law and the present guidance instrument address Phase 1 of the EA process. For Phase 2, the Regime Land Law assigns to HIW the responsibility to conduct the EA and prepare the EA report in accordance with it and this guidance instrument. Phase 3 involves opportunities for review of the draft EA by the community and the public.

HIFN will consult with HIW during these stages and in advance of key actions or steps. To assist with its EA responsibilities throughout the EA process, HIFN expects to retain advisors and/or experts. Further, HIFN will require technical review of the draft EA report by advisors and/or experts before Council makes any decision on the EA.

## 1.6 EA SCHEDULE

Table 2.0, below, sets out the anticipated schedule for the EA and related events:[1]

**Table 2.0**

| EA Schedule | | |
|---|---|---|
| Phases of the EA Process | Description of the Phase | Anticipated Completion Date |

[1]This schedule is for information purposes only and does not constitute binding direction or guidance.

| **EA Schedule** | | |
|---|---|---|
| Phases of the EA Process | Description of the Phase | Anticipated Completion Date |
| 1 | HIFN enacts the Regime and Guidance Instrument as HIFN Land Laws | June 2015 |
| 2 | HIW completes EA fieldwork and studies and issues the draft EA report | August 2015 |
| 3 | Community, public, and technical review of the EA | September 2015 |
| 4 | HIFN decides on acceptability of the EA | November 2015 |

# PART TWO COMPONENTS OF THE EA

## 2.1 KEY CONCEPTS

### 2.1.1 Environment and Environmental Effects

For this environmental assessment, two key terms are "environment" and "environmental effect." The Regime Land Law defines both terms. For ease of reference, the Regime Land Law definitions that must be used for this EA are set out in Table 3.0, below.

**Table 3.0**

| **DIRECTION**<br>**"Environment" and "Environmental Effects"** |
|---|
| (1) "environment" means the components of the Earth, and includes:<br>(a) land, water, and air, including all layers of the atmosphere;<br>(b) all organic and inorganic matter and living organisms; and<br>(c) the interacting natural systems that include components referred to in paragraphs (a) and (b).<br>(2) "environmental effect" means, in respect of the proposed Energy Centre,<br>(a) any change that the Energy Centre may cause in the environment, 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, 2002*; and<br>(b) any effect of any change referred to in paragraph (a) on:<br>(i) health and socio-economic conditions,<br>(ii) physical and cultural heritage,<br>(iii) the current use of lands and resources for traditional purposes by the First Nation on-Reserve, and, if off-Reserve, other First Nations or aboriginal persons,<br>(iv) any structure, site or thing that is of historical, archaeological, paleontological, or architectural significance, or<br>(c) any change to the Energy Centre that may be caused by the environment,<br>whether any such change or effect occurs on or off Reserve lands. |

### 2.1.2 Nishshing Aki and Valued Ecosystem Components

Nishshing Aki refers to an existing social or cultural feature on I.R. #2 lands that has been identified as valued by HIFN or designated as valued by HIFN with Community Input as provided in the HIFN Land Code. Nishshing Aki must be protected. Nishshing Aki is identified in Appendix "B" to this guidance instrument.

Valued ecosystem components (VECs) are components of the environment that are determined to be valuable based on scientific, legal, or policy considerations.

The purpose of identifying Nishshing Aki and VECs is to focus the EA on what is most relevant in the environment. Table 4.0, below, provides direction on these two requirements.

**Table 4.0**

| **DIRECTION**<br>**Nishshing Aki and Valued Ecosystem Components (VECs)** |
|---|
| Nishshing Aki is an existing social or cultural feature on I.R. #2 lands that has been (i) identified as valued by HIFN, or (ii) designated as valued by HIFN with Community Input as provided in the Land Code.<br><br>A VEC is an existing component of the environment that has recognized ecological value in existing science, law, or policy. |

2.1.3 Significance (in relation to environmental effects)

As the focus of this EA is upon avoiding, minimizing, and mitigating significant adverse effects on the environment, it is essential to know what makes an effect "significant." There are five key criteria to consider in making this determination. Table 5.0, below, provides direction on the criteria for determining the "significance" of each adverse environmental effect.

**Table 5.0**

| **DIRECTION**<br>**Significance of Effects** |
|---|
| To assess whether or not an effect is significant, the EA shall consider the following criteria:<br>(1) Magnitude: is the effect inconsequential, minor, moderate, or major?<br>(2) Spatial extent: is the effect confined to a small area around a physical work or activity, a larger area within property boundaries, an area beyond property boundaries but confined to Crown land, or a larger area?<br>(3) Duration and frequency: is the effect short-term, medium-term, or long-term? Infrequent, frequent, or continuous?<br>(4) Permanence: is the effect reversible?<br>(5) Context: is the effect upon a common feature or a sensitive feature? |

Table 5.1, below, provides direction on the four options available to set out required conclusions on each adverse environmental effect.

**Table 5.1**

| **DIRECTION**<br>**Conclusions on the Significance of Effects** |
|---|
| In assessing significance, the EA Report shall identify one of the following conclusions for each adverse environmental effect:<br>(1) without any mitigation, the effect is not significant;<br>(2) after applying identified mitigation, the effect is not significant;<br>(3) after applying identified mitigation, the effect is significant; or<br>(4) the significance of the effect is uncertain.<br>In addressing conclusions (1) to (3), the standard is not certainty, but likelihood. The EA Report shall address the uncertainty of any adverse effect consistent with the precautionary principle.[2] |

### 2.1.4 Scope of the On-Reserve Physical Works and Activities for the Energy Centre

As the Energy Centre is proposed on Reserve lands, it is subject to the HIFN EA process under the FNLMA and Land Code. The proposed 300 MW Energy Centre is to be located on I.R. #2.

The EA must consider all proposed works, undertakings, and activities related to this Energy Centre, including its construction and operation. Table 6.0, below, provides direction on this requirement.

**Table 6.0**

| **DIRECTION**<br>**Energy Centre On-Reserve** |
|---|
| For assessment purposes, the Energy Centre on Reserve lands includes the following components and phases to the extent they are located on-Reserve:<br><br>(a) Components:<br>• Wind turbines<br>• Foundations<br>• Temporary storage facilities<br>• Collector system<br>• Substations or switching stations<br>• Transmission lines and systems<br>• Access roads<br>• Parking areas<br>• Any other on-Reserve building, structure, or physical work associated with the new Energy Centre<br><br>(b) Phases |

[2] Conclusion (4) arises only if, after applying mitigation, there is a likely effect but uncertainty whether that likely effect is or is not significant.

| **DIRECTION**<br>**Energy Centre On-Reserve** |
|---|
| • Construction Phase:[3] site preparation, excavation, construction or alteration of access roads, water crossings and temporary laydown area, transportation of materials, foundations construction, turbine installation, transformer installation, installation of collector lines, temporary storage of materials, construction, environmental monitoring, power connection, commissioning, site remediation, and demobilization of construction works<br>• Operating Phase: operation, maintenance and inspection of all on-Reserve components, MET tower data acquisition and environmental monitoring, expected lifetime, operation and maintenance plans or activities for all on-Reserve components of the Energy Centre<br>• Decommissioning Phase: decommissioning of Energy Centre components and site remediation |

### 2.1.5 Scope of the Off-Reserve Energy Transmission Physical Works and Activities

*Context*

The wind energy generated on Reserve lands requires new physical works off Reserve lands to transmit the energy generated on-Reserve to the Ontario electricity grid.

The new physical works and activities located off Reserve lands that are needed to provide this electricity transmission are not within the regulatory authority of Council powers and responsibilities set out in the FNLMA or the Land Code. These off-Reserve physical works and activities will be assessed through the applicable Ontario environmental assessment and/or approval regimes.

Nevertheless, the Energy Centre EA shall consider the new off-Reserve electricity transmission works and activities and their environmental effects so that HIFN may understand the full implications of approving what is proposed on Reserve lands.

Table 6.1, below, provides direction on this requirement.

[3] This guidance instrument does not require EA of any activities on Reserve lands by HIW that are necessary to carry out the EA of the Energy Centre. These activities include entering onto the I.R. #2 lands, bringing vehicles, works or instruments onto the Reserve lands to carry out work required for the EA, and clearing or disturbing lands to the extent necessary to carry out work required for the EA.

**Table 6.1**

| **DIRECTION**<br><br>**Off-Reserve Electricity Transmission** |
|---|
| For assessment purposes, the off-Reserve Electricity Transmission includes the following components and phases:<br><br>(a) Physical Works and Activities<br>• Transmission lines and poles<br>• Access roads<br>• Temporary storage facilities<br>• Substations (if off-Reserve)<br>• Any other off-Reserve building, structure, or physical work associated with the new Electricity Transmission line<br><br>(b) Phases<br>• Construction Phase:[4] site preparation, excavation, transportation of materials, line and pole installation, power connection, temporary storage of materials, environmental monitoring, site remediation, and demobilization of construction works<br>• Operating Phase: operation, maintenance, and inspection of all proposed physical works and activities and environmental monitoring<br>• Decommissioning Phase: decommissioning of all physical works and activities and site remediation |

### 2.1.6 Factors of the Assessment

#### 2.1.6.1 Energy Centre on Reserve lands

The focus of this HIFN EA is to assess and design the Energy Centre so as to avoid, minimize, or mitigate significant adverse effects on the environment. To address this focus, the EA will consider the following factors:

(1) potential environmental effects of the Energy Centre, on and off Reserve;

(2) the potential environmental effects of accidents and malfunctions from the Energy Centre, on and off Reserve; and

[4] Consistent with Footnote 2, above, this guidance instrument does not require that the off-Reserve information include an assessment of the environmental effects of any activities necessary to provide the requested information set out in Table 6.1.

(3) the significance of all environmental effects from the Energy Centre, whether on- or off-Reserve, taking into account mitigation measures.

Table 7.0, below, provides direction on these factors.

**Table 7.0**

| **DIRECTION**<br>**On-Reserve Energy Centre**<br>**Factors of Assessment** |
|---|
| The EA shall consider each of the following factors:<br><br>(1) the environmental effects of the on-Reserve Energy Centre, on and off Reserve, including the effects of malfunctions or accidents that may occur in connection with Energy Centre;<br><br>(2) measures that are technically and economically feasible that would mitigate important adverse environmental effects, and, in particular, any adverse environmental effects that may be significant;<br><br>(3) in reference to the effects and mitigation considered in paragraphs (1) and (2), the significance of the effects which are likely, taking into account proposed mitigation measures;<br><br>(4) the requirements of a follow-up program on-Reserve to verify the accuracy of the on-Reserve Energy Centre EA and determine the effectiveness of any mitigation measures; and<br><br>(5) comments from the HIFN community and the public on the on-Reserve Energy Centre EA that are received in accordance with the consultation processes identified in the Regime Land Law and this document. |

#### 2.1.6.2 Off-Reserve Electricity Transmission

The HIFN EA will include consideration of the off-Reserve Electricity Transmission, its effects, and the significance of those effects taking into account mitigation measures. To consider these effects, the EA needs to address the following factors:

(1) potential environmental effects of the off-Reserve Electricity Transmission, including any on-Reserve effects;

(2) the potential environmental effects of accidents and malfunctions from the off-Reserve Electricity Transmission, including any on-Reserve effects; and

(3) the significance of all environmental effects, taking into account mitigation measures.

Table 7.1, below, provides direction on these factors.

**Table 7.1**

| **DIRECTION**<br>**Off-Reserve Electricity Transmission**<br>**Factors of Assessment** |
|---|
| The EA shall consider each of the following factors:<br><br>(1) the environmental effects of the off-Reserve Electricity Transmission, including on-Reserve effects and the effects of malfunctions or accidents that may occur in connection with the off-Reserve Electricity Transmission;<br><br>(2) measures that are technically and economically feasible that would mitigate significant adverse environmental effects;<br><br>(3) in reference to the effects considered in paragraphs (1) and (2), the significance of the effects which are likely, taking into account proposed mitigation measures;<br><br>(4) recommendations for monitoring and follow-up programs to verify the accuracy of the EA of the off-Reserve transmission line project and determine the effectiveness of any mitigation measures; and<br><br>(5) comments from the HIFN community and the public on the off-Reserve Electricity Transmission that are received in accordance with the consultation processes identified in this document. |

#### 2.1.6.3 On-Reserve and Off-Reserve Overlapping and Cumulative Effects

The HIFN EA will include consideration of the on-Reserve Energy Centre and off-Reserve Electricity Transmission. It will also consider:

(1) the overlapping environmental effects that arise from what is proposed on-Reserve and what is proposed off-Reserve; and

(2) the cumulative effects that are likely and arise from the combination of (i) the on-Reserve Energy Centre environmental effects, the off-Reserve Electricity Transmission environmental effects, and their overlapping environmental effects, and (ii) other projects and activities that have occurred or are reasonably foreseeable.

To address these two categories of effects, the EA needs to address additional factors. These include:

(1) potential environmental effects of the on-Reserve Energy Centre that may overlap with potential environmental effects of the off-Reserve Electricity Transmission;

(2) potential overlapping environmental effects of accidents and malfunctions from the on-Reserve Energy Centre and off-Reserve Electricity Transmission;

(3) cumulative environmental effects that are likely to arise from the combination of (i) the on-Reserve Energy Centre, the off-Reserve Electricity Transmission, and their overlapping effects, and (ii) other projects and activities that have occurred or are reasonably foreseeable; and

(4) the significance of all overlapping environmental effects from the on-Reserve Energy Generation and the off-Reserve Electricity Transmission, taking into account mitigation measures.

Table 7.2, below, provides direction on these factors.

**Table 7.2**

| **DIRECTION**<br>**On-Reserve and Off-Reserve Related and Cumulative Effects**<br>**Factors of Assessment** |
|---|
| The EA shall consider each of the following factors:<br><br>(1) potential environmental effects of the on-Reserve Energy Centre that may overlap with potential environmental effects of the off-Reserve Electricity Transmission;<br><br>(2) potential overlapping environmental effects of accidents and malfunctions from the on-Reserve Energy Centre and off-Reserve Electricity Transmission;<br><br>(3) cumulative environmental effects that are likely to arise from the combination of (i) the on-Reserve Energy Centre, the off-Reserve Electricity Transmission, and their overlapping effects, and (ii) other projects and activities that have occurred or are reasonably foreseeable;<br><br>(4) measures that are technically and economically feasible that would mitigate significant adverse cumulative environmental effects, and, in particular, any adverse cumulative environmental effects that may be significant;<br><br>(5) in reference to the effects considered in paragraphs (1)-(4), the significance of the cumulative effects which are likely, taking into account proposed mitigation measures;<br><br>(6) recommendations for monitoring and follow-up programs to verify the accuracy of the overlapping effects that are on-Reserve and determine the effectiveness, on-Reserve, of any mitigation measures proposed to address overlapping effects; and |

| DIRECTION<br>On-Reserve and Off-Reserve Related and Cumulative Effects<br>Factors of Assessment | |
|---|---|
| (7) | comments from the HIFN community and the public on overlapping or cumulative effects that are received in accordance with the consultation processes identified in this document. |

2.1.7 Steps to the EA Process

For the on-Reserve Energy Centre and the off-Reserve Transmission Line, the EA shall include separate or combined application of each required step set out in Table 8.0, below. Where the Table separates a step between the on-Reserve Energy Centre and the off-Reserve Electricity Transmission, the EA may carry out and complete the step at different times.

**Table 8.0**

| STEP | ON-RESERVE ENERGY CENTRE | OFF-RESERVE ELECTRICITY TRANSMISSION |
|---|---|---|
| 1 | Determine the location and scale of the on-Reserve Energy Centre and all on-Reserve related undertakings and activities | Determine the location and scale of the off-Reserve Electricity Transmission and all off-Reserve related undertakings and activities |
| 2 | Determine spatial and temporal boundaries (revise if necessary, as the EA process proceeds) | Determine spatial and temporal boundaries (revise if necessary, as the EA process proceeds) |
| 3 | Identify VECs that have the potential to be affected | Identify VECs that have the potential to be affected |
| 4 | Predict the potential environmental effects of the Energy Centre on the Nishshing Aki and VECs on and off Reserve and propose mitigation measures to address these effects | Predict the potential environmental effects of the Electricity Transmission on the Nishshing Aki and VECs on and off Reserve and propose mitigation measures to address these effects |
| 5 | Determine the significance of the residual effects of the Energy Centre on the Nishshing Aki and VECs after the implementation of the proposed mitigation measures | Determine the significance of the likely residual effects of the Electricity Transmission on Nishshing Aki and VECs after the implementation of the proposed mitigation measures |
| 6 | Predict the overlapping effects on Nishshing Aki and VECs of the on-Reserve Energy Centre and the off-Reserve Electricity Transmission, after the implementation of proposed mitigation measures | |
| 7 | Determine the significance of the overlapping effects on Nishshing Aki and VECs | |
| 8 | Predict the cumulative effects on Nishshing Aki and VECs that are likely to arise from the combination of (i) the on-Reserve Energy Centre, the off- | |

| STEP | ON-RESERVE ENERGY CENTRE | OFF-RESERVE ELECTRICITY TRANSMISSION |
|---|---|---|
| | Reserve Electricity Transmission, and their overlapping effects, and (ii) other projects and activities that have occurred or are reasonably foreseeable | |
| 9 | Determine the significance of the cumulative effects on Nishshing Aki and VECs | |
| 10 | Propose monitoring and follow-up plans: (a) required for the on-Reserve Energy Centre; and (b) recommended for the off-Reserve Electricity Transmission | |

#### 2.1.7.1 Step 1: Document the Location and Scale of what is Proposed on-Reserve and what is Proposed off-Reserve

In order to assess the environmental effects of what is proposed, it is necessary to understand the location and design of all related components. This step in the process involves separately finalizing these details for each of the on-Reserve Energy Generation and the off-Reserve Electricity Transmission.

#### 2.1.7.2 Step 2: Determine the Scope of Each Study Area

The spatial and temporal limits of the EA for on-Reserve and off-Reserve components and effects shall be determined by the proponent, HIW, and clearly identified in its EA reports.

*Spatial Limits*

Subject to the minimum study areas for the environmental effects set out below, the proponent shall establish appropriate study areas for the on-Reserve Energy Centre, the off-Reserve Electricity Transmission, and their overlapping effects. The study areas shall be sufficiently large to cover:

(1) all anticipated Energy Centre components, activities, and phases; and

(2) the potential biophysical changes and socio-economic effects of the Energy Centre.

Boundaries should be set at the point where there are no potential adverse environmental effects. Different boundaries may be set for different environmental effects. In setting study area boundaries, the proponent may have regard to relevant federal and provincial law or guidance. With respect to the on-Reserve Energy Centre, provincial guidance supports the following study areas for the following environmental effects:

| | |
|---|---|
| Biophysical Changes | Area within 120 m of Energy Centre components |
| Acoustic Changes | Area within 2000 m of a wind turbine |

The proponent should be prepared to adjust study area boundaries as the EA process proceeds, where new information supports a change. The proponent must justify study area boundaries and any subsequent changes.

#### 2.1.7.3 Step 3: Select Valued Ecosystem Components

Nishshing Aki that must be protected have been identified by HIFN. Areas set aside for their protection are set out in Appendix "B" to this document.

To identify VECs, the proponent shall have regard to:

(1) input from the HIFN;

(2) federal and provincial law and guidance; and

(3) any other source it considers relevant, such as scientific or academic publications or input from the public.

#### 2.1.7.4 Step 4: Potential Effects and Mitigation

Potential effects are assessed at this stage in order to develop mitigation strategies to address potential adverse environmental effects. Where the Energy Centre risks causing serious or irreversible harm, the EA shall apply the precautionary principle in its approach to mitigation that may prevent the harm. Nishshing Aki and VECs play an important role in this assessment process. Environmental effects, overlapping effects, and cumulative effects are to be evaluated in terms of their impacts on Nishshing Aki and VECs.

Mitigation is the elimination, reduction, or control of any adverse environmental effect of a project. It could also include restitution for any damage caused by such effects through replacement, restoration, compensation, or other means.

#### 2.1.7.5 Step 5: Residual Effects and Evaluation of Significance

Residual effects are those environmental effects that are likely to occur once mitigation measures are in place. Likely residual effects are to be evaluated through the EA process for their significance.

The main purpose of this EA is to assess and design the proposed on-Reserve Energy Centre and off-Reserve Electricity Transmission so as to avoid or minimize significant adverse environmental effects.

To assist in the evaluation of significance, the proponent may have regard to environmental standards, guidelines, and objectives established by federal or provincial departments, ministries, or agencies.

In assessing significance, the EA Report shall identify one of the following conclusions for each adverse environmental effect:

(1) without any mitigation, the effect is not significant;

(2) after applying identified mitigation, the effect is not significant;

(3) after applying identified mitigation, the effect is significant; or

(4) the significance of the effect is uncertain.[5]

#### 2.1.7.6 Steps 6-7: Overlapping Effects

After completing the separate assessment of environmental effects from the on-Reserve Energy Centre and the off-Reserve Electricity Transmission, the next step is to identify and assess their overlapping environmental effects for significance.

This involves assessing the residual adverse environmental effects of the combined impact of the Energy Centre and the Electricity Transmission where they are acting on the same Nishshing Aki and/or VEC.

#### 2.1.7.7 Steps 8-9: Cumulative Effects

Cumulative effects assessment involves combining the effects of (i) the on-Reserve Energy Centre, the off-Reserve Electricity Transmission, and their overlapping effects, and (ii) other projects and activities that have occurred or are reasonably foreseeable on the Nishshing Aki and VECs. The spatial and temporal boundaries are to be determined based on past, present, and future activities and projects that in combination with the on-Reserve Energy Centre and the off-Reserve Electricity Transmission would have adverse environmental effects.

The significance of the residual cumulative effects shall be assessed in order to determine whether any significant adverse environmental effects are likely, taking into account mitigation. In assessing significance, the EA Report shall identify one of the following conclusions for each adverse environmental effect:

(1) without any mitigation, the effect is not significant;

(2) after applying identified mitigation, the effect is not significant;

(3) after applying identified mitigation, the effect is significant; or

(4) the significance of the effect is uncertain.[6]

#### 2.1.7.8 Step 10: Monitoring and Follow-Up Plans

Monitoring and follow-up plans allow HIW and HIFN to determine the effectiveness of proposed mitigation measures, and verify the accuracy of the EA predictions. If adverse environmental effects are more severe than predicted or if mitigation is less effective than

[5] See Direction provided in Table 5.1, above.
[6] See Direction provided in Table 5.1, above.

planned, these measures serve as early warning signals that allow HIW and HIFN to implement remedial measures in a timely manner.

#### 2.1.8 Aboriginal Traditional Knowledge

Aboriginal traditional knowledge is the cumulative knowledge held by Aboriginal peoples through generations of living in close contact with nature. It encompasses cultural, environmental, economic, political, and spiritual inter-relationships.

The traditional knowledge of HIFN is taken into account in Nishshing Aki identified by the HIFN and set out in Appendix "B" to the present guidance instrument. As well, the traditional knowledge of HIFN that is made available to the proponent by HIFN shall be taken into account in selecting VECs, proposing mitigation, and assessing the impacts of the Energy Centre and Electricity Transmission.

# PART THREE PREPARATION OF THE EA REPORT

## 3.1 ORGANIZATION OF THE EA REPORT

The EA Report will be organized into three volumes as follows:

Volume 1: On-Reserve Energy Centre;
Volume 2: Off-Reserve Electricity Transmission; and
Volume 3: Overlapping and Cumulative Effects.

The Volume 1 of the EA Report shall address all stated EA requirements for the on-Reserve Energy Centre.

The Volume 2 of the EA Report shall address all stated EA requirements for the off-Reserve Electricity Transmission.

The Volume 3 of the EA Report shall address two EA requirements for the on-Reserve Energy Centre and the off-Reserve Electricity Transmission, namely, (1) their overlapping environmental effects; and (2) their cumulative effects on Nishshing Aki and VECs.

The EA Report will also include a summary report. This summary report will describe the on-Reserve Energy Centre, the off-Reserve Electricity Transmission, and their EA in clear, easily understood language, and include the following:

(1) Description of the on-Reserve Energy Centre and the off-Reserve Electricity Transmission, including their components and phases;

(2) Identification of the various study areas used in the EA;

(3) Description of the biophysical and socio-economic environment relevant to the EA;

(4) Summary of the assessment of the environmental effects, on-Reserve and off-Reserve;

(5) Summary of community and public consultation;

(6) Identification of any additional approvals required for either the on-Reserve Energy Centre or the off-Reserve Electricity Transmission; and

(7) Provision of maps that facilitate understanding of what exists and is proposed to occur on-Reserve and off-Reserve if HIFN approves the EA.

## 3.2 EA DESCRIPTION REPORTS

The proponent shall prepare an EA Description Report for the on-Reserve Energy Centre and a separate EA Description Report for the off-Reserve Electricity Transmission.

Each EA Description Report shall address the following topics:

(1) Description of what is proposed, distinguishing between what is proposed on Reserve lands and what is proposed off Reserve lands;

(2) Potential for adverse environmental effects arising from what is proposed; and

(3) Future steps in the EA process and the proposed schedule for these steps.

## 3.3 COMPONENTS OF VOLUMES 1 AND 2

Volumes 1 and 2 shall be organized to address each of the following topics.

### 3.3.1 Description of what is proposed, on and off Reserve

The purpose of this description is to assist the HIFN community and the public with understanding what is proposed and facilitating consultation. A separate EA Volume shall be prepared for the on-Reserve Energy Centre (Volume 1) and the off-Reserve Electricity Transmission (Volume 2). Each volume shall describe all components, activities, and phases.

Each description shall include the following:

(1) Proponent

(2) Components:

- Energy Centre: the name plate capacity, number, type and hub height of turbines, length of turbine blades, turbine foundations, substations, collection line, cabling, access roads, and any on-Reserve transmission lines (as further described in Table 6.0, above)

- Electricity Transmission: the transmission line, its length, type and height of poles, and any ancillary equipment or facilities (as further described in Table 6.1, above)

(3) Location:

- the location of all components, phases and activities
- maps that show the layout of components and activities, and the environmental or socio-economic features that may be affected
- site or route plans as appropriate

(4) Phases: all activities associated with each phase of what is proposed

- Construction Phase:
  - Energy Centre: see Table 6.0
  - Off-Reserve Electricity Transmission: see Table 6.1
- Operating Phase:
  - Energy Centre: see Table 6.0
  - Off-Reserve Electricity Transmission: see Table 6.1
- Decommissioning Phase:
  - Energy Centre: see Table 6.0
  - Off-Reserve Electricity Transmission: see Table 6.1
- Future Phases (if any):
  - Energy Centre: see Table 6.0
  - Off-Reserve Electricity Transmission: see Table 6.1

(5) Next Steps: describe the next steps in the EA process and provide a timeline for completion of the assessment

### 3.3.2 Existing Environment

Within each volume, the proponent must identify the spatial and temporal boundaries of what is proposed, identify Nishshing Aki and the VECs within these boundaries according to the

procedure described in section 2.1.7.3. As noted in this section, the proponent in identifying VECs shall have regard to the following three categories of information:

(1) input from the HIFN;

(2) federal and provincial law and guidance; and

(3) any other source it considers relevant, such as scientific or academic publications or input from the public.

With respect to assessing the terrestrial environment, category (2) shall include regard for the Ontario *Natural Heritage Reference Manual* and the *Ontario Wetland Evaluation System – Northern Manual*.

3.3.2.1 Biophysical Environment

Describe and map (where applicable) the following:

(1) Geophysical environment

- Physiographic and Topography
- Soils
- Geology
- Seismicity
- Hydrogeology

(2) Atmospheric environment

- Climate
- Air Quality

Describe, map (where applicable), and identify any VECs with respect to the following:

(3) Terrestrial environment

- Flora
- Wetlands
- Fauna
- Endangered Species as defined in the *Species At Risk Act*, where it applies or in the *Ontario Endangered Species Act*, where it applies

- Migratory Birds as defined in the *Migratory Birds Convention Act*

(4) Aquatic environment

- Water Bodies
- Surface Hydrology
- Surface Water
- Sediments
- Aquatic Vegetation
- Aquatic Fauna
- Fish and Fish Habitat, as defined in the *Fisheries Act*
- Endangered Species as defined in the *Species At Risk Act*, where it applies, or in the *Ontario Endangered Species Act*, where it applies

3.3.2.2 Socio-Economic Environment for Each Project

Describe, map, and identify any Nishshing Aki or VECs with respect to the following:

(1) Aboriginal peoples

- Land uses, including
  - Current use of land and resources for traditional purposes by the First Nation on-Reserve and, if off-Reserve, other First Nations or Aboriginal persons
  - Noise sensitive land uses/existing noise levels: in identifying noise sensitive land uses, the proponent shall apply the criteria in the Ontario's *Noise Guidelines* and have regard to the definition of "noise receptor" set out in this document
- Physical and cultural heritage, including
  - Structures, sites or things of historical, archaeological, paleontological, or architectural significance
  - Visual landscape

(2) Non-Aboriginal peoples

- Land uses, including
    - Current uses of land and resources
    - Noise sensitive land uses/existing noise levels: in identifying noise sensitive land uses, the proponent shall apply the criteria in Ontario's *Noise Guidelines*
- Physical and cultural heritage, including
    - Structures, sites, or things of historical, archaeological, paleontological, or architectural significance
    - Visual landscape

### 3.3.3 Assessment of Environmental Effects, Mitigation, and Residual Effects

#### 3.3.3.1 Nishshing Aki and VECs

Within each volume, for identified Nishshing Aki and each identified VEC this section should:

(1) Describe the potential environmental effects;

(2) Describe the potential environmental effects of accidents and malfunctions;

(3) Describe proposed mitigation measures. Consistent with the direction provided in Table 9.0, below, the proponent should identify whether the mitigation measures will:

(a) Eliminate the potential adverse environmental effect completely;

(b) Prevent/reduce the impact of the potential adverse environmental effect;

(c) Respond to/control the potential adverse environmental effect; or

(d) Restore/compensate or replace the impacted VEC;

(4) Determine the likely residual environmental effects after the implementation of mitigation measures; and

(5) Assess the significance of any likely adverse environmental effects. In determining significance, the proponent shall have regard for the approach set out in section 2.1.3.

**Table 9.0**

| **DIRECTION**<br>**Effects on Nishshing Aki** |
|---|

As set out in the Regime Land Law, Nishshing Aki requires specific attention and protection. Therefore:

1. The Energy Centre is to be designed to avoid the location of any Energy Centre component in Nishshing Aki.
2. In assessing effects on Nishshing Aki, the EA shall ensure the protection of Nishshing Aki such that no future effect is predicted likely to occur that requires restoration, compensation, or replacement of Nishshing Aki.

In evaluating these socio-economic effects, the EA shall consider the socio-economic effects of the biophysical changes caused by what is proposed, not the direct socio-economic effects of what is proposed.

#### 3.3.3.2 Noise

To evaluate the likelihood of significant adverse environmental effects from noise caused by the Energy Centre, a noise study shall be completed in accordance with Ontario's *Noise Guidelines*. The results of the study shall be used to assess the likelihood of significant adverse environmental effects from noise.

#### 3.3.3.3 Summary of Environmental Effects and Overall Conclusions on Likelihood of Significant Adverse Environmental Effects

In each volume, the proponent shall provide a summary of environmental effects and an overall conclusion on the likelihood of significant adverse environmental effects.

### 3.3.4 Follow-up Programs and Environmental Effects Monitoring on-Reserve and off-Reserve

After the completion of the EA, follow-up programs and monitoring should be implemented to verify the accuracy of the EA and to determine the effectiveness of any mitigation measures.

The follow-up program or monitoring descriptions should include the following:

- the environmental effects and mitigation measures that will be evaluated;
- the criteria for evaluation;
- methods, timing, and duration of the program; and
- any actions that may be taken as a result of the program or monitoring to ensure that the predictions of the EA's conclusions and effects evaluation will be met.

### 3.3.5 Community and Public Consultation

The proponent shall consult with HIFN Council and the community at key stages in the EA process for the on-Reserve Energy Centre and off-Reserve Electricity Transmission.

Separately, the proponent shall also consult with the public who reside within the zone of potential impacts from the on-Reserve Energy Centre and the off-Reserve Electricity Transmission.

In addition, the proponent shall establish and maintain a website that provides direct electronic access to a registry of Designated Environmental Assessment Records and a complete index of such Records. The proponent shall also establish and maintain an repository of all relevant environmental assessment records received by the proponent. On request, the proponent shall provide reasonable access to any record in the repository.

For the purposes of community and public consultation on the on-Reserve Energy Centre, the proponent shall provide community notice, community meetings on-Reserve, and community opportunities for comment as well as separate public notice, meetings, and opportunity to comment. In developing a consultation plan, the proponent shall consider the steps set out in Table 10.0, below.

**Table 10.0**

| **DIRECTION**<br>**Energy Centre Consultation Steps** | |
|---|---|
| **Step** | **Action** |
| 1 | Distribute a Notice to Engage, briefly describing the Energy Centre and mapping its location. Post Notice to the electronic registry within 10 days of distribution. |
| 2 | Distribute a Notice of First Community Meeting and a Notice of First Public Meeting. Post the notice and the EA Description Report to the electronic registry within 10 days of distribution. A community meeting shall be held on the HIFN Reserve after these documents are distributed. A meeting of members of the public who are within the zone of potential impacts of the Energy Centre shall be held off-Reserve also within a reasonable time after these documents are distributed. |
| 3 | Distribute the Notice of a Second Community Meeting and a Notice of a Second Public Meeting. Post this Notice and any available preliminary draft of some or all parts of the draft EA report and supporting documents to the electronic registry and shall provide a period of not less than 30 days for the community and public to provide written comments on the available preliminary draft documents. Hold a second community meeting on the HIFN Reserve no earlier than a reasonable time after these documents are distributed. Host a second public meeting off-Reserve no earlier than a similar reasonable time after these documents are distributed. |
| 4 | At or around the time of submitting the draft EA report (including supporting documents) to Council, post some or all completed documents on the electronic registry as soon as they are completed. Prepare a report to Council summarizing the community and public comments and post this report to the electronic registry. |
| 5 | On submission to Council, post the final EA report (and supporting |

| DIRECTION<br>Energy Centre Consultation Steps | |
|---|---|
| **Step** | **Action** |
| | documents) to the electronic registry. |

The proponent shall carry out community consultation for the off-Reserve Electricity Transmission that will include community notice, community meetings on-Reserve, and community opportunities for comment. There shall also be public consultation on the off-Reserve Electricity Transmission that is at least equivalent to the requirements for public engagement under provincial processes for similar projects.

## 3.4 COMPONENTS OF VOLUME 3

The proponent shall separately assess (1) the overlapping effects of the on-Reserve Energy Centre and the off-Reserve Electricity Transmission; and (2) the cumulative effects of what is proposed by HIW in combination with the other projects and activities as follows:

### 3.4.1 Overlapping Effects

(1) Describe the potential overlapping environmental effects of the on-Reserve Energy Centre and the off-Reserve Electricity Transmission;

(2) Describe proposed mitigation measures for the overlapping environmental effects;

(3) Determine the likely residual environmental effects after the implementation of mitigation measures; and

(4) Assess the significance of any adverse environmental effects that are likely to occur. In determining significance, the proponent shall have regard for the approach set out in section 2.1.3.

### 3.4.2 Cumulative Effects

(1) Taking into account mitigation proposed by the proponent on-Reserve and off-Reserve, describe the potential cumulative effects on Nishshing Aki and the selected VECs of (i) the on-Reserve Energy Centre, the off-Reserve Electricity Transmission, and their overlapping effects, and (ii) other projects and activities that have occurred or are reasonably foreseeable; and

(2) Assess the significance of any cumulative adverse environmental effects that are likely to occur. In determining significance, the proponent shall have regard for the approach set out in section 2.1.3.

Summary:

The proponent should provide a summary of the environmental effects and its overall conclusions on the likelihood of significant adverse environmental effects.

## ADMINISTRATION OF THE EA

The Regime Land Law makes provision for HIFN Council to appoint an EA coordinator to assist with the administration of the Energy Centre EA.

The Regime Land Law also makes provision for the proponent to discuss the interpretation of this guidance instrument with HIFN Council or an appointed EA coordinator.

## APPENDIX "A"
## LIST OF SUPPORTING DOCUMENTS FOR ENERGY CENTRE

Volume 1 shall include as supporting documents the following reports to be provided in relation to the Energy Centre:

### 1.0 Energy Centre Description Report

Describe the following:

(1) The energy sources to be used to generate electricity.

(2) The facilities, equipment, or technology that will be used to convert the energy source to electricity.

(3) The class of wind energy project in accordance with the Table 1, below:

**Table 1**

| Column 1 | Column 2 | Column 3 | Column4 |
|---|---|---|---|
| **Class of wind energy project** | **Location of wind turbines** | **Name plate capacity of the facility (expressed in kW)** | **Greatest sound power level (expressed in dBA)** |
| Class 1 | At a location where no part of a wind turbine is located in direct contact with surface water other than in a wetland. | ≤ 3 | Any. |
| Class 2 | At a location where no part of a wind turbine is located in direct contact with surface water other than in a wetland. | > 3 and < 50 | Any. |
| Class 3 | At a location where no part of a wind turbine is located in direct contact with surface water other than in a wetland. | ≥ 50 | < 102 |
| Class 4 | At a location where no part of a wind turbine is located in direct contact with surface water other than in a wetland. | ≥ 50 | ≥ 102 |

| Column 1 | Column 2 | Column 3 | Column4 |
|---|---|---|---|
| **Class of wind energy project** | **Location of wind turbines** | **Name plate capacity of the facility (expressed in kW)** | **Greatest sound power level (expressed in dBA)** |
| Class 5 | At a location where one or more parts of a wind turbine is located in direct contact with surface water other than in a wetland. | Any. | Any. |

(4) The activities that will be engaged in as part of the Energy Centre.

(5) The name plate capacity of the Energy Centre.

(6) A description of the permissions that are required to access and use the land on which the Energy Centre is to be located and whether they have been obtained.

(7) Any negative environmental effects that may result from engaging in the Energy Centre.

(8) An unbound, well-marked, legible, and reproducible map that is an appropriate size to fit on a 215 millimetre by 280 millimetre page, showing the Energy Centre location and the land within 300 metres of the Energy Centre location.

**2.0 Construction Plan Report**

Set out a description of the following in respect of the Energy Centre, including:

(1) Details of any construction or installation activities.

(2) The location and timing of any construction or installation activities for the duration of the construction or installation.

(3) Any negative environmental effects that may result from construction or installation activities.

(4) Mitigation measures in respect of any negative environmental effects mentioned in item 3, above.

**3.0 Design and Operations Report**

(1) Set out a site plan of the location at which the Energy Centre will be engaged in, including:

(a) one or more maps or diagrams of,

(i) all buildings, structures, roads, utility corridors, rights of way and easements required in respect of the Energy Centre and situated within 300 metres of the Energy Centre;

(ii) any ground water and surface water supplies used at the Energy Centre;

(iii) any things from which contaminants are discharged into the air;

(iv) any works for the collection, transmission, treatment, and disposal of sewage; and

(v) any noise receptors as defined in this document;

(b) a description of each item diagrammed under subparagraph (a);

(c) one or more maps or diagrams of land contours, surface water drainage, and any of the following: protected heritage properties, heritage resources, archaeological resources, water bodies, and any important natural features;

(d) a description, map, or diagram of the distance between the base of any wind turbine and any public road right of way or railway right of way that is within a distance equivalent to the length of any blade of the wind turbine, plus 10 metres;

(e) a description, map, or diagram of the distance between the base of any wind turbine and all legal boundaries of the parcel of land on which the wind turbine is constructed, installed, or expanded that is within a distance equivalent to the height of the wind turbine, excluding the length of any blades; and

(f) a description, map, or diagram of the distance between the base of each wind turbine and the nearest noise receptor.

(2) Set out conceptual plans, specifications, and descriptions related to the design of the Energy Centre, including a description of:

(a) any works for the collection, transmission, treatment, and disposal of sewage, including details of any sediment control features and storm water management facilities;

(b) any things from which contaminants are discharged into the air; and

(c) if the Energy Centre includes a transformer station, the works, facilities, and equipment for secondary spill containment.

(3) Set out conceptual plans, specifications, and descriptions related to the operation of the Energy Centre, including:

(a) in respect of any water takings,

(i) a description of the time period and duration of water takings expected to be associated with the operation of the Energy Centre,

(ii) a description of the expected water takings, including rates, amounts, and an assessment of the availability of water to meet the expected demand, and

(iii) an assessment of and documentation showing the potential for the Energy Centre to interfere with existing uses of the water expected to be taken;

(b) if the Energy Centre includes a transformer substation,

(i) a description of the works, facilities, and equipment for secondary spill containment,

(ii) a description of the processes in place to prevent spills,

(iii) a description of the processes to prevent, eliminate, or ameliorate any adverse effects in the event of a spill, and

(iv) a description of the processes to restore the natural environment in the event of a spill.

(4) Include an environmental effects monitoring plan in respect of any negative environmental effects that may result from engaging in the Energy Centre, setting out:

(a) performance objectives in respect of the negative environmental effects;

(b) mitigation measures to assist in achieving the performance objectives mentioned in subparagraph (a); and

(c) a program for monitoring negative environmental effects for the duration of the time that the Energy Centre is engaged in, including a contingency plan to be implemented if any mitigation measures fail.

(5) Include a response plan setting out a description of the actions to be taken while engaging in the Energy Centre project to inform the community, the public, municipalities, local roads boards, and local services boards with respect to the Energy Centre, including:

(a) measures to provide information regarding the activities occurring at the Energy Centre location, including emergencies;

(b) means by which persons responsible for engaging in the Energy Centre project may be contacted; and

(c) means by which correspondence directed to the persons responsible for engaging in the Energy Centre will be recorded and addressed.

(6) A brief summary of the determinations made regarding the presence of protected properties in the Protected Properties report.

(7) A brief summary of the determinations made regarding the presence of archaeological resources in the Archaeological Assessment report.

(8) A brief summary of the determinations made regarding the presence of heritage resources in the Heritage Assessment report.

## 4.0 Wind Turbine Specifications Report

Provide specifications of each wind turbine, including:

(1) The make, model, name plate capacity, hub height above grade, and rotational speeds.

(2) The acoustic emissions data, determined and reported in accordance with standard CAN/CSA-C61400-11-07, "Wind Turbine Generator Systems — Part 11: Acoustic Noise Measurement Techniques", dated October 2007, including the overall sound power level, measurement uncertainty value, octave-band sound power levels (linear weighted), and tonality and tonal audibility.

## 5.0 Decommissioning Plan Report

Set out a description of plans for the decommissioning of the Energy Centre, including:

(1) Procedures for dismantling or demolishing the Energy Centre.

(2) Activities related to the restoration of any land and water negatively affected by the Energy Centre.

(3) Procedures for managing excess materials and waste.

## 6.0 Natural Heritage Assessment Report

The Natural Heritage Assessment Report shall contain the following three components:

1. A records review in respect to the Energy Centre location.

2. A site investigation in respect to natural features in and/or around the Energy Centre location.

3. An evaluation of the importance of each natural feature recorded.

(1) Records Review

(a) Conduct a search for and analysis of the records set out in Column 1 of Table 2, below, in respect of the Energy Centre location for the purpose of making the determinations set out opposite the records in Column 2 of the Table.

(b) Prepare a report setting out a summary of the records searched and the results of the analysis conducted above.

**Table 2**

| **Column 1** | **Column 2** |
|---|---|
| **Records to be searched and analyzed:** | **Determination to be made:** |
| 1. Records that relate to federal or provincial parks and conservation reserves and that are maintained by Parks Canada or the Ontario Ministry of Natural Resources. | 1. Whether the Energy Centre location is within 120 metres of a federal or provincial park or conservation reserve. |
| 2. Records that relate to natural features within 120 metres of the Energy Centre location that are maintained by,<br>i. the HIFN<br>ii. the Crown in right of Canada, and<br>iii. any other public body or agency the proponent considers likely to have relevant records. | 1. Whether the Energy Centre location is,<br>a) in a natural feature, or<br>b) within 120 metres of a natural feature. |

(2) Site Investigation

(a) Conduct the investigation set out in Column 2 of Table 3, below, for activities described in Column 1 either by visiting the site or by an alternative investigation of the site, for the purpose of making all of the determinations set out opposite the description in Column 3 of the Table.

(b) An alternative to a site investigation may be conducted only if the proponent determines that it is not reasonable to conduct a site investigation by visiting the site.

**Table 3**

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| **Description of activity** | **Investigation** | **Determinations to be made** |
| **Item 1:** Any of the following activities: | Investigation of the air, land, and water within 50 metres of any part of the Energy Centre location on which the activities described in Item 1 of Column 1 are engaged in. | 1. Whether the results of the Records Review Report are correct or require correction, and identifying any required corrections. |
| 1. The construction, installation or expansion of a transmission line. | | 2. Whether any additional natural features exist, other than those identified in the Records Review Report. |
| 2. The expansion of an existing transformer station or transportation system. | | 3. The boundaries, located within 50 metres of the Energy Centre location, of any natural feature that was identified in the Records Review Report or the site investigation. |
| | | 4. The distance from the Energy Centre location to the boundaries defined under Determination 3, above. |
| **Item 2:** Any activity other than the activities described in Item 1. | Investigation of the air, land, and water within 120 metres of any part of the Energy Centre location on which the activity described in Item 2 of Column 1 is engaged in. | 1. Whether the results of the Records Review Report are correct or require correction, and identifying any required corrections. |
| | | 2. Whether any additional natural features exist, other than those identified in the Records Review Report. |

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| **Description of activity** | **Investigation** | **Determinations to be made** |
| | | 3. The boundaries, located within 120 metres of the Energy Centre location, of any natural feature that was identified in the Records Review Report or the site investigation. |
| | | 4. The distance from the Energy Centre location to the boundaries defined under Determination 3, above. |

(c) Prepare a report setting out the following with respect to the air, land, and water in respect of which any site investigation was conducted,

(i) a summary of any corrections to the Records Review Report and the determinations made as a result of conducting the site investigation,

(ii) information establishing the type of each natural feature identified in the records review and in the site investigation,

(iii) a map showing,

a. all boundaries required to be determined under Column 3 of Table 3 above;

b. the location and type of each natural feature identified in relation to the Energy Centre location; and

c. all distances required to be determined under Column 3 of Table 3 above.

(iv) A summary of methods used to make observations for the purposes of the site investigation,

(v) The name and qualifications of the person conducting the site investigation,

(vi) If an investigation was conducted by visiting the site, include:

a. the dates and times of the beginning and completion of the site investigation,

b. the duration of the site investigation,

c. the weather conditions during the site investigation, and

d. field notes kept by the person conducting the site investigation,

(vii) If an alternative investigation of the site was conducted, include:

a. The dates of the generation of the data used in the site investigation, and

b. An explanation of why the person who conducted the alternative investigation determined that it was not reasonable to conduct the site investigation by visiting the site.

(3) Evaluation of Importance

(a) For each natural feature shown on the map mentioned in clause 2(c)(iii) above, a determination of whether the natural feature is ecologically important having regard to:

(i) whether a natural feature is a VEC,

(ii) any additional input from the HIFN,

(iii) federal and provincial law and guidance including the Ontario *Natural Heritage Reference Manual* and the *Ontario Wetland Evaluation System – Northern Manual,* and

(iv) any other source it considers relevant, such as scientific or academic publications or input from the public;

(b) A summary of the evaluation criteria or procedures used to make the determinations mentioned in paragraph (a);

(c) The name and qualifications of any person who applied the evaluation criteria or procedures mentioned in paragraph (b);

(d) The dates of the beginning and completion of the evaluation; and

(e) In evaluating the importance of a natural feature, the person conducting the evaluation shall take into account any information available to the person relating to the natural feature, including:

(i) all information obtained through the records review,

(ii) all information obtained through the site investigation or alternative to the site investigation, and

(iii) all information received from the community, the public, and public bodies or agencies.

## 7.0 Environmental Impact Study (EIS)

If the Energy Centre includes an activity described in Column 1 of Table 4, below, in respect of any of the locations described opposite the activity in Column 2 of the table, one or more Environmental Impact Studies shall be conducted that:

(1) Identify and assess the negative environmental effects of the Energy Centre on:

(a) the natural feature, provincial park, or conservation reserve referred to in the table; and

(b) the water body referred to in Table 4 and on land within 30 metres of the water body;

(2) Identify mitigation measures in respect of any negative environmental effects.

(3) Describe how the environmental effects monitoring plan set out in s. 3.0(4) addresses any negative environmental effects.

(4) Describe how the Construction Plan Report (s.2.0) addresses any negative environmental effects.

**Table 4**

| Column 1 | Column 2 |
|---|---|
| **Activity** | **Location in which activity requires an EIS** |
| 1. The construction, installation, or expansion of a transmission line.<br><br>2. The expansion of an existing transformer station, distribution station, or transportation system. | 1. An important wetland or within 50 metres of an important wetland.<br>2. An important woodland or within 50 metres of an important woodland.<br>3. An important wildlife habitat or within 50 metres important wildlife habitat.<br>4. Within 50 metres of a provincial or federal park.<br>5. Within 50 metres of a conservation reserve.<br>6. Within 120 metres of the average annual high water mark of a lake, other than a lake trout lake that is at or above development capacity.<br>7. Within 300 metres of the average annual high water mark of a lake trout lake that is at or above development capacity.<br>8. Within 120 metres of the average annual high water mark of a permanent or intermittent stream.<br>9. Within 120 metres of a seepage area. |
| 3. Any construction, installation, or expansion other than construction, installation, or expansion described in Item 1. | 1. An important wetland or within 120 metres of an important wetland.<br>2. An important woodland or within 120 metres of an important woodland.<br>3. An important wildlife habitat or within 120 metres of an important wildlife habitat.<br>4. Within 120 metres of a provincial park.<br>5. Within 120 metres of a conservation reserve.<br>6. Within 120 metres of the average annual high water mark of a lake, other than a lake trout lake that is at or above development capacity.<br>7. Within 300 metres of the average annual high water mark of a lake trout lake that is at or above development capacity.<br>8. Within 120 metres of the average annual high water mark of a permanent or intermittent stream.<br>9. Within 120 metres of a seepage area. |

## 8.0 Environmental Effects Monitoring Plan Report for Birds and Bats

Prepare an environmental effects monitoring plan in respect of birds and bats. In preparing the report, the proponent shall have regard for the following publications:

(1) Ontario Ministry of Natural Resources, "Bird and Bird Habitats: Guidelines for Wind Power Projects" dated December 2011, as amended from time to time.

(2) Ontario Ministry of Natural Resources, "Bats and Bat Habitats: Guidelines for Wind Power Projects" dated July 2011, as amended from time to time.

## 9.0 Water Assessment Report

(1) Records Review

(a) Search for and analyse the records set out in Column 1 of Table 5, below, in respect of the Energy Centre location for the purpose of making the determinations set out in Column 2 of the Table.

**Table 5**

| Column 1 | Column 2 |
|---|---|
| **Records to be searched and analyzed** | **Determination to be made** |
| Records that relate to water bodies within 300 metres of the Energy Centre location that are maintained by,<br>1. the HIFN,<br>2. the Crown in right of Canada, and<br>3. any other public body or agency the proponent considers likely to have relevant records. | Whether the Energy Centre location is,<br><br>1. in a water body,<br>2. within 120 metres of the average annual high water mark of a lake, other than a lake trout lake that is at or above development capacity,<br>3. within 300 metres of the average annual high water mark of a lake trout lake that is at or above development capacity,<br>4. within 120 metres of the average annual high water mark of a permanent or intermittent stream, or<br>5. within 120 metres of a seepage area. |

(b) Prepare a report summarizing the records searched and the results of the analysis conducted above.

(2) Site Investigation

(a) Conduct an investigation of the land and water located within 120 metres of the Energy Centre location, either by visiting the site or by an alternative investigation of the site, in order to determine,

(i) whether the results of the analysis summarized in the records review report are correct or require correction, and identifying any required corrections,

(ii) whether any additional water bodies exist, other than those identified in the records review,

(iii) the boundaries located within 120 metres of the Energy Centre location of any water body that was identified in the records review or the site investigation, and

(iv) the distance from the Energy Centre location to the boundaries determined under clause (iii);

(b) An alternative to a site investigation may be conducted only if the proponent determines that it is not reasonable to conduct a site investigation by visiting the site.

(c) If, as a result of the records review, the average annual high water mark of a lake trout lake that is at or above development capacity is identified within 300 metres of the Energy Centre location, conduct an investigation of the land and water located between the Energy Centre location and the lake trout lake, either by visiting the site or by an alternative investigation of the site, for the purpose of determining,

(i) the boundaries of any lake trout lake that is at or above development capacity, if, (a) the lake was identified in the records review, and (b) the boundaries are within 300 metres of the Energy Centre location, and

(ii) the distance from the Energy Centre location to the boundaries determined under clause (i).

(d) Prepare a report setting out the following with respect to the land and water in respect of which any site investigation was conducted,

(i) a summary of any corrections to the records review report and the determinations made as a result of conducting the site investigation;

(ii) information relating to each water body identified in the records review and in the site investigation, including the type of water body, plant and animal composition, and the ecosystem of the land and water investigated;

(iii) a map showing,

a. all boundaries mentioned in clauses (a)(iii) and (c)(i),

b. the location and type of each water body identified in relation to the Energy Centre location, and

c. the distances mentioned in clauses (a)(iv) and (c)(ii),

(iv) a summary of methods used to make observations for the purposes of the site investigation;

(v) the name and qualifications of any person conducting the site investigation;

(vi) if an investigation was conducted by visiting the site:

a. the dates and times of the beginning and completion of the site investigation,

b. the duration of the site investigation,

c. the weather conditions during the site investigation, and

d. field notes kept by the person conducting the site investigation;

(vii) if an alternative investigation of the site was conducted:

a. the dates of the generation of data used in the site investigation,

b. an explanation of why the person who conducted the alternative investigation determined that it was not reasonable to conduct the site investigation by visiting the site.

## 10.0 Noise Study

Report to be prepared in accordance with Ontario Ministry of the Environment and Climate Change publication entitled, *Noise Guidelines for Wind Farms. Interpretation for Applying MOE NPC Publications to. Wind Power Generation Facilities*, October 2008, as amended from time to time.

## 11.0 Protected Properties Report

Determine if the Energy Centre location is on a property or site designated:

(1) as Nishshing Aki;

(2) by law for the purposes of heritage protection.

If the Energy Centre location is designated, provide:

(1) a copy of any written authorization by the designating authority required to use the property or site; or

(2) written confirmation from the designating authority that authorization is not required.

## 12.0 Archaeological Assessment Report

(1) Subject to paragraph (2) include an archaeological assessment report by a consultant archaeologist following applicable federal standards and guidelines, or where no federal standards and guidelines apply, provincial standards and guidelines.

(2) An archaeological assessment report is not required if the lands on which the Energy Centre will be located have a low potential for the presence of an archaeological resource at the Energy Centre location after considering the potential, having regard to

(a) the presence of Nishshing Aki in or near the Energy Centre location; and

(b) federal and provincial standards and guidelines.

## 13.0 Heritage Assessment Report

(1) Conduct an investigation, including historical research and visual inspection, to determine whether:

(a) there is potential for the presence of a heritage resource on any part of the Energy Centre location;

(b) any properties or sites designated by law for the purposes of heritage protection protected abut the land on which the Energy Centre is situated;

(c) if it is determined under (a) that there is potential for the presence of a heritage resource, the presence or absence of a heritage resource should be confirmed by applying the following criteria:

(i) the presence of Nishshing Aki; and

(ii) criteria set out in Historic Sites and Monuments Board of Canada document *Criteria and Guidelines for Evaluating Subjects of Potential National Historic Significance* as amended;

(d) evaluate the impact of engaging in the Energy Centre, on the heritage attributes of any heritage resources at the Energy Centre location and on any abutting properties, and make recommendations for measures to avoid, eliminate, or mitigate the impact, if:

(i) it was determined under (b) above that there are protected abutting properties, or

(ii) the presence of a heritage resource at the Energy Centre location was confirmed under (c) above.

(2) Provide a Heritage Assessment Report, consisting of:

(a) a summary of the qualifications and experience of the persons who conducted the assessment and prepared the Report;

(b) a summary of the process followed in each applicable step of the heritage assessment and the conclusions reached at the end of each step;

(c) a description of any documents used to conduct the assessment;

(d) a statement of cultural heritage value or interest for each confirmed heritage resource, including a description of the heritage attributes;

(e) maps or diagrams depicting the Energy Centre location, the Energy Centre, and any heritage resources and protected properties identified as a result of assessment; and

(f) the recommendations of the persons who conducted the assessment for measures to avoid, eliminate, or mitigate the impact on heritage resources.

## 14.0 Consultation Report

Set out information relating to consultations conducted in respect of the Energy Centre, including the following:

(1) A summary of communication with any members the HIFN community, other aboriginal communities, the public, or municipalities regarding the Energy Centre;

(2) Evidence that the following information was distributed to the HIFN community and any other aboriginal communities that have or may have constitutionally-protected aboriginal or treaty rights that could be adversely impacted by the Energy Centre or otherwise may be interested in any negative environmental effects of the Energy Centre:

(a) a draft of the Energy Centre Description Report,

(b) any information the proponent has regarding any adverse impacts that the Energy Centre may have on constitutionally-protected aboriginal or treaty rights that the community may have identified as being adversely impacted by the Energy Centre,

(c) a summary of each of the following documents in respect of which information is being requested under paragraph (d):

(i) all documents listed in this Appendix as required, other than the consultation report,

(d) a written request that the HIFN and any other aboriginal community that has been consulted provide in writing any information available to the community that, in its opinion, should be considered in preparing a document summarized under paragraph (c)(i), and, in particular, any information the community may have about any adverse impacts that the Energy Centre may have on constitutionally-protected aboriginal or treaty rights and any measures for mitigating those adverse impacts;

(3) Any information provided by the HIFN community or other aboriginal communities in response to a request made under paragraph 2(d).

(4) Evidence that the following information was distributed to the HIFN community, the public, and neighbouring local and upper-tier municipalities, and posted to the electronic registry:

(a) Notice to Engage,

(b) a draft Energy Centre EA Description Report and Notice of First Community Meeting (hosted on-Reserve) distributed at least 30 days before the date of the meeting,

(c) a draft Energy Centre EA Description Report and Notice of First Public Meeting (hosted off-Reserve) distributed at least 31 days before the date of the meeting,

(d) drafts of all Energy Centre reports (other than the Consultation Report) posted to the electronic registry before the Second Community and Public Meetings and:

(i) Notice of a Second Community Meeting (hosted on-Reserve) was distributed least 30 days before the date of the meeting, and

(ii) Notice of a Second Public Meeting (hosted off-Reserve) was distributed at least 30 days before the date of the meeting; and

(e) all Energy Centre reports (other than the Consultation Report) posted to the electronic registry following completion;

(5) A description of whether and how,

(a) comments from the HIFN community, other aboriginal communities, members of the public and municipalities, were considered,

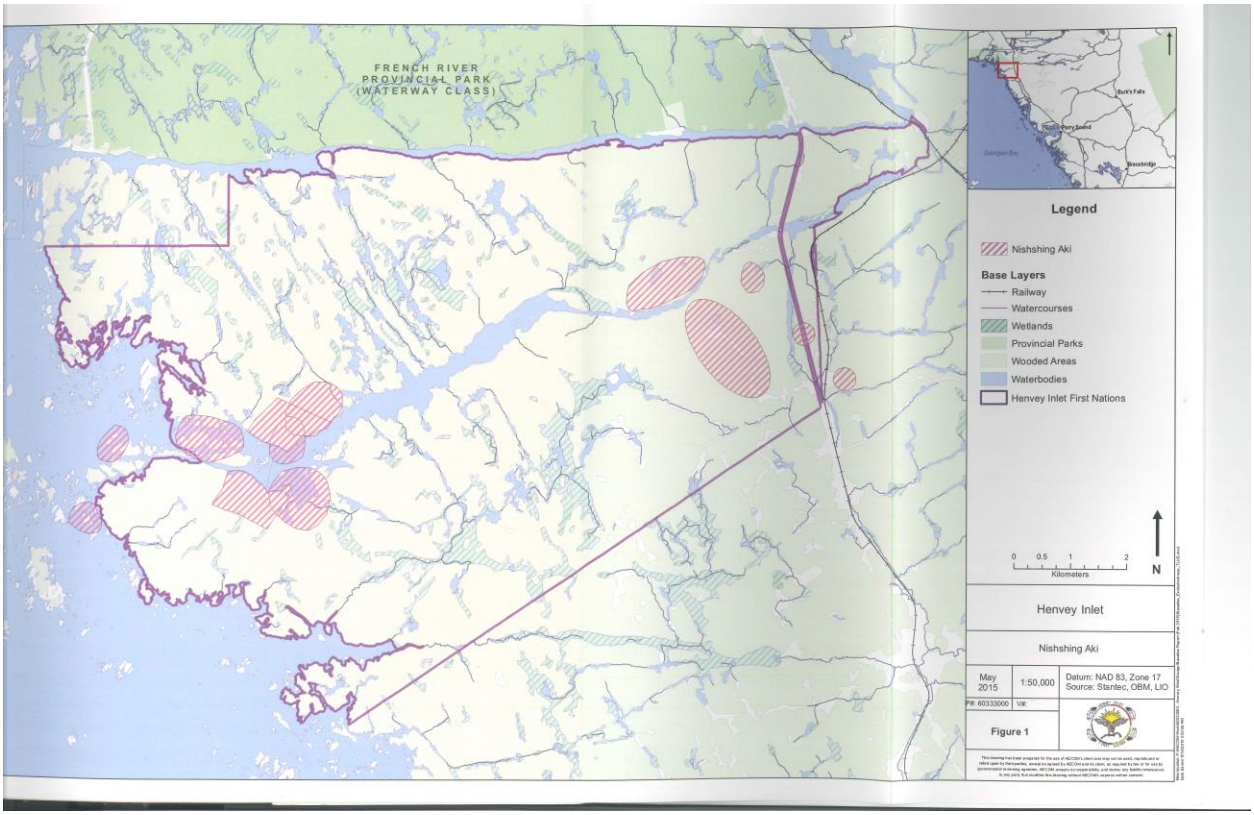
(b) the draft documents that were made available to the public in advance of the final public meeting were amended after the final public meeting was held, and

(c) the proposal to engage in the Energy Centre was altered in response to comments mentioned in subparagraph (a);

(6) A description of the manner in which the location of the wind turbines was made available to the HIFN community, other aboriginal communities, members of the public and municipalities; and

(7) The date on which the location of the wind turbines referred was made available to the HIFN community, other aboriginal communities, members of the public, and municipalities.

# APPENDIX "B"
# NISHSHING AKI



# APPENDIX "C"
# GLOSSARY

This document relies on the definitions set out in the Henvey Inlet First Nation Land Code and the Land Law on ENVIRONMENTAL ASSESSMENT AND PERMITTING within the HIFN Environmental Stewardship Regime. For ease of use of this document, the present Glossary includes terms defined in these documents; however, in the case of inconsistency between a definition in the present Glossary and either of these documents, the definition in the other documents prevails.

"Aboriginal traditional knowledge" means the cumulative knowledge held by aboriginal peoples through generations of living in close contact with nature. It encompasses cultural, environmental, economic, political, and spiritual inter-relationships;

"community" means the membership from time to time of HIFN;

"Council" means the band council for HIFN elected under the *Indian Act*;

"EA coordinator" means a qualified person retained by Council to assist with carrying out the Energy Centre environmental assessment;

"cumulative effects" means the combined effects on selected Valued Ecosystem Components of (i) the on-Reserve Energy Centre, the off-Reserve Electricity Transmission, and their overlapping effects, and (ii) other projects and activities that have occurred or are reasonably foreseeable. Cumulative effects are assessed in order to determine whether any significant adverse environmental effects are likely, taking into account mitigation;

"Designated Environmental Assessment Records" means those records designated pursuant to section 5 of Part 2 in the Regime Land Law;

"Energy Centre" means the 300 megawatt (MW) wind energy generation centre and related physical works and activities proposed on Reserve No.2 lands by HIW pursuant to the 2011 Feed-in-Tariff (FIT) Contract issued by Ontario Power Authority to Nigig Power Corporation with reference FIT – FG0U0GS;

"environment" means the components of the Earth, and includes:

(1) land, water and air, including all layers of the atmosphere,
(2) all organic and inorganic matter and living organisms, and
(3) the interacting natural systems that include components referred to in paragraphs (a) and (b);

"environmental assessment" and "EA" mean an assessment carried out in accordance with the direction provided in this guidance instrument. EA is a project planning and decision-making tool intended to ensure environmental stewardship;

"environmental effect" means, in respect of the proposed Energy Centre,

(a) any change that the Energy Centre may cause in the environment, 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 subsection2(1) of the *Species at Risk Act, 2002*;
(b) any effect of any change referred to in paragraph (a) on:
    i) health and socio-economic conditions,
    ii) physical and cultural heritage,
    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; or
(c) any change to the Energy Centre that may be caused by the environment,

whether any such change or effect occurs on or off Reserve lands;

"Environmental Permit" means a permit that may be issued by HIFN Council to HIW for the Energy Centre under Part 3 of the Regime Land Law;

"HIFN" means Henvey Inlet First Nation;

"HIW" means the Henvey Inlet Wind LP;

"intermittent stream" means a natural or artificial channel, other than a dam, that carries water intermittently and does not have established vegetation within the bed of the channel, except vegetation dominated by plant communities that require or prefer the continuous presence of water or continuously saturated soil for their survival;

"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 caused by such effects through replacement, restoration, compensation, or other means;

"monitoring and follow-up plans " means plans to provide for the evaluation of the effectiveness of proposed mitigation measures, and verify the accuracy of the environmental assessment predictions. If adverse environmental effects are more severe than predicted or if mitigation is less effective than planned, these measures serve as early warning signals that allow remedial measures to be implemented in a timely manner;

"natural feature" means, all or part of,
(1) a wetland,
(2) wildlife habitat, or
(3) a woodland;

"Nishshing Aki" means an existing social or cultural feature or condition that has been (i) identified as valued by HIFN, or (ii) designated as valued by HIFN with Community Input as provided in the Land Code;

"*Noise Guidelines*" means the *Noise Guidelines for Wind Farms*, Ontario Ministry of the Environment, October 2008;

"noise receptor" means one of the following locations at which noise discharged from the Energy Centre is received but does not include a location on a parcel of land if any part of the Energy Centre will be located on that parcel of land:

(1) the centre of a building or structure that contains one or more dwellings;

(2) the centre of a building used for an institutional purpose, including an educational facility, a day nursery, a health care facility, a community centre or a place of worship;

(3) the centre of a proposed building or structure mentioned in paragraph (1) or (2) where building has not commenced but a land use planning or building permit approval for the building or structure has been issued by an authority with jurisdiction to issue the approval;

(4) a location on a vacant lot, other than an inaccessible vacant lot, that has been zoned to permit a building mentioned in paragraph (1) or (2) and in respect of which no approval or building permit mentioned in paragraph (3) has been issued and at which a building would reasonably be expected to be located, having regard to the existing zoning by-law and the typical building pattern in the area; or

(5) a portion of property that is used as a campsite or campground at which overnight accommodation is provided by or on behalf of a public agency or as part of a commercial operation;

"permanent stream" means a stream that continually flows in an average year;

"precautionary principle" means where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;

"Principles" means the principles set out in section 2 of the Regime Land Law;

"proponent" means Henvey Inlet Wind LP and includes agents appointed in writing by it;

"public" means persons who are not members of HIFN;

"Regime Land Law" means the Land Law passed by HIFN Council on ENVIRONMENTAL ASSESSMENT AND PERMITTING within the HIFN Environmental Stewardship Regime;

"Reserve" or "Reserve lands" means lands under the administration of HIFN and, in particular, (a) French River Indian Reserve #13, and (b) Reserve #2 of the Henvey Inlet First Nation;

"residual effects" means those environmental effects that are likely to occur once mitigation measures are in place. Likely residual effects are evaluated through the environmental assessment process for their significance;

"seepage area" means a site of emergence of ground water where the water table is present at the ground surface, including a spring;

"sound power level" means the rating that,

(1) is given to a wind turbine by the manufacturer of the wind turbine, calculated in accordance with standard CAN/CSA-C61400-11-07, "Wind Turbine Generator Systems – Part 11: Acoustic Noise Measurement Techniques", dated October 2007, rounded to the nearest whole number, and

(2) applies in respect of the wind turbine when the wind turbine is operating at 95 per cent of its name plate capacity;

"valued ecosystem component" or VEC means an existing component of the environment that has recognized ecological value in existing science, law, or policy;

"water body" includes a lake, a permanent stream, an intermittent stream, and a seepage area but does not include,

(1) grassed waterways,

(2) temporary channels for surface drainage, such as furrows or shallow channels that can be tilled and driven through,

(3) rock chutes and spillways,

(4) roadside ditches that do not contain a permanent or intermittent stream,

(5) temporarily ponded areas that are normally farmed,

(6) dugout ponds, or

(7) artificial bodies of water intended for the storage, treatment, or recirculation of runoff from farm animal yards, manure storage facilities, and sites and outdoor confinement areas;

"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,

(1) is seasonally or permanently covered by shallow water or has the water table close to or at the surface, and

(2) has hydric soils and vegetation dominated by hydrophytic or water-tolerant plants;

"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;

"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

"valued ecosystem component" means an existing component of the environment that has recognized ecological value in existing science, law, or policy.

[Enacted in open Council on 04 August 2015.]