



## **Brokenhead Ojibway Nation (BON)**

### **LAND MANAGEMENT CODE**

(Draft – July 2014)

(First Community Review Session – July 14, 2014)  
(Second Community Review Session – July 22, 2014)  
(Third Community Review Session – August 25, 2014)



**TABLE OF CONTENTS**

	Page(s)
PREAMBLE.....	4
<b>PART 1 – INTRODUCTORY MATTERS</b>	
1. Authority to Govern.....	5
2. Title.....	5
3. Definitions and Interpretation.....	5
4. Purpose.....	9
5. Description of Brokenhead Ojibway Nation Lands.....	9
<b>PART 2 – BROKENHEAD OJIBWAY NATION LEGISLATION AND LAW MAKING</b>	
6. Law-making Powers.....	11
7. Law-making Procedure.....	11
8. Publication and Security of Land Laws.....	13
9. Date a Land Law comes into effect.....	13
10. Enforceability of Land Laws.....	14
<b>PART 3 – COMMUNITY APPROVAL PROCESS</b>	
11. Participation of Members.....	15
12. Community Involvement and Input.....	15
13. Required Community Approval.....	16
14. Community Meeting of Members Procedure.....	17
15. Ratification (Approval) Votes.....	18
<b>PART 4 – LAND PROTECTION MEASURES</b>	
16. Expropriation.....	21
17. (Traditional) Heritage Sites.....	22
18. Land Exchange.....	23
<b>PART 5 – CONFLICT OF INTEREST</b>	
19. Application.....	25
20. Financial Management.....	26
21. Audit.....	29
22. Annual Land Report.....	29
23. Access to Information.....	30
<b>PART 6 – LAND ADMINISTRATION</b>	
24. Lands Staff.....	31
25. Land Committee.....	31
26. Land Committee Member Appointment Process.....	32
27. Chair of the Lands Committee.....	33
28. Registration of Interests and Licences.....	34
29. Brokenhead Ojibway Nation Land Register.....	35



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	Page(s)
<b>PART 7 – INTERESTS IN AND LICENCES TO USE</b>	
30. Formalities of Grants, Transfers and other Transactions.....	36
31. Existing Interests and Licences.....	36
32. New Interests and Licences.....	37
33. Interests of Non-Band Members.....	37
34. Allocation of Land.....	37
35. Transfer and Assignment of Interests.....	38
36. Limits on Mortgages and Seizures.....	39
37. Residency and Access Rights.....	39
38. Spousal Property Law.....	41
<b>PART 8 – DISPUTE RESOLUTION</b>	
39. Purpose & Intent.....	43
40. Establishing a Dispute Resolution Panel.....	43
41. Impartiality of Dispute Resolution Panel.....	44
42. Filing a Dispute.....	45
43. Arbitration of Dispute Resolution Panel.....	46
44. Authority of Dispute Resolution Panel.....	47
<b>PART 9 – OTHER MATTERS</b>	
45. Liability.....	49
46. Offences.....	49
47. Revisions of Land Code.....	49
48. Land Code comes into effect.....	50
Appendix I – Explanation of Ratification Process.....	51



## PREAMBLE

WHEREAS Brokenhead Ojibway Nation members are stewards of the land and are collectively responsible as a Nation in carrying out this duty with great sincerity, respect, and acknowledges the effort required to maintain its relationship established with the lands since time immemorial;

AND WHEREAS Brokenhead Ojibway Nation is a signatory of *Treaty One 1871* with Her Majesty the Queen in the Right of Great Britain in which Her Majesty has been entrusted with Brokenhead Ojibway Nation lands and to hold the lands for the benefit of Brokenhead Ojibway Nation;

AND WHEREAS Brokenhead Ojibway Nation lands and resources are currently managed through the *Indian Act* and Brokenhead Ojibway Nation has the option of withdrawing from the land provisions of the *Indian Act* in order to establish its own land management system with respect to its land and natural resources situated on lands that are for the use and benefit of the Brokenhead Ojibway Nation membership, by becoming a signatory of the *Framework Agreement on Brokenhead Ojibway Nation Land Management*;

AND WHEREAS the Chief and Council on behalf of Brokenhead Ojibway Nation became a signatory to the *Framework Agreement on Brokenhead Ojibway Nation Land Management* on March 18, 2013 with Canada as amended and as ratified by the *Brokenhead Ojibway Nations Land Management Act*, on a government to government basis, with the full and outright acknowledgement by both parties that this Land Management Code will not in any way infringe on the rights and obligations as promised in *Treaty One 1871*;

AND FURTHER WHEREAS the Chief and Council on behalf of Brokenhead Ojibway Nation has signed onto the *Framework Agreement on Brokenhead Ojibway Nation Land Management* with Canada with the full and outright acknowledgment by both parties that the Brokenhead Ojibway Nation will continue to be subject to certain provisions in the *Indian Act* with all its legal obligations;

NOW THEREFORE this Land Management Code is hereby enacted as law that governs the management of Brokenhead Ojibway Nation lands and natural resources.



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## **PART 1 – INTRODUCTORY MATTERS**

### **1. Authority to Govern**

#### **Stewardship**

- 1.1 The traditional teachings of the Brokenhead Ojibway Nation people originate from the Creator who placed the responsibility upon us to act as stewards of the land. The Brokenhead Ojibway Nation wishes to further act upon its obligation as steward and protector of its land by passing as law this *Land Management Code*.

#### **Governance System and Authority**

- 1.2 Authority is flowed through the Creator to the Membership of Brokenhead Ojibway Nation who appoints the Brokenhead Ojibway Nation Chief and Council who ensures there are measures in place to continue to administer, protect and preserve the lands held for the use and benefit of the Nation.

### **2. Title**

#### **Title**

- 2.1 This document shall be cited as the *Brokenhead Ojibway Nation Land Management Code*.

### **3. Definitions and Interpretation**

#### **Definitions**

- 3.1 Unless otherwise stated, the following definitions apply to this *Brokenhead Ojibway Nation Land Management Code* ("*Land Code*");

"Abrogate" means to do away with by authoritative action, annul;

"Allocate" means to grant the use of land for a specific purpose;

"Band Member" or "Member" means an Indian whose name is registered or is entitled to be registered on the Brokenhead Ojibway Nation Membership List;

"Brokenhead Ojibway Nation" means the Brokenhead Indian Band No. 4;

"Brokenhead Ojibway Nation Land" or "Land" means any reserve land that falls under this *Land Code*;

"Brokenhead Ojibway Nation Land Register" means, where established, the register maintained by Brokenhead Ojibway Nation pursuant to Part 6 of this *Land Code* will be used for the purpose of recording registered land interests;

"Canada" means her Majesty the Queen in the right of Canada;



**Brokenhead Ojibway Nation (BON)  
LAND MANAGEMENT CODE**

DRAFT  
August 2014

"Common-law Partner" means a person who is not legally married, who is in a relationship with another person and living with or cohabitating with the other person;

"Community Meeting of Members" means a meeting under Part 3 of this Land Code, that members are invited to attend;

"Community Lands" means any Brokenhead Ojibway Nation Land that all members collectively share a common interest;

"Council" means Chief and Council of the Brokenhead Ojibway Nation or government of the Brokenhead Ojibway Nation;

"Derogate" means to take away from, lessen, impair;

"Dispute Resolution Panel" means a group of people appointed by Council, in which the group that make up the Panel is mandated to address disputes according to the provisions contained in this *Land Code*;

"Eligible Voter" means a registered Band Member who is eighteen (18) years of age before or on the day of the vote, whether or not resident on the Brokenhead Ojibway Nation, for the purpose of voting on matters under this *Land Code*;

"Eligible Registered Voter" means and Eligible Voter who has registered to vote at a Ratification Vote;

"Expropriation" means Brokenhead Ojibway Nation's right to take land for community use or benefit;

"Extended Family" means in a person whom an individual is related to in addition to a parent(s) and a sibling(s);

"*Brokenhead Ojibway Nations Land Management Act*" means the legislative document passed by the federal government as law that ratified (approved) the Framework Agreement on Brokenhead Ojibway Nations Land Management;

"Brokenhead Ojibway Nations Lands Register" means a register that records a listing of land interests that is maintained by Aboriginal Affairs and Northern Development Canada in accordance with Brokenhead Ojibway Nations Land Registry Regulations;

"Framework Agreement" means the *Framework Agreement on Brokenhead Ojibway Nation Land Management* entered into between the Minister of Indian Affairs and Northern Development and fourteen (14) Brokenhead Ojibway Nations on February 12, 1996 as amended to include Brokenhead Ojibway Nation;

"Immediate Family Relative" in regards to a person means that person's spouse, common-law spouse, parent, stepparent, siblings (sister or brother), child (foster or custom adopted child), grandparent, grandchild, father-in-law, mother-in-law, sister-in-law, son-in-law, or daughter-in-law;



"Individual Agreement" means the Individual Transfer Agreement entered into between Brokenhead Ojibway Nation and Canada in accordance with section 6.1 of the *Framework Agreement* dated February 12, 1996, as amended from time to time;

"Interest" in relation to Brokenhead Ojibway Nation Land, means any interest, rights, or estate of any nature in or to that land, including a lease, easement, right of way, servitude (the right of a benefit over the beneficial use of land owned by another), or profit a prende (the right of a person to share land owned by another), but does not include title to that land in accordance with Section 1 of the *Framework Agreement*;

"Land Committee" means the Land Advisory Committee established in accordance with section 25 of this *Land Code* to advise the Council on matters of Lands and Natural Resources;

"Land Code" means the Brokenhead Ojibway Nation Land Management Code as ratified (approved) by the Eligible Voters;

"Land Law" means, under the provisions of this *Land Code*, a Law created and passed by Brokenhead Ojibway Nation Council that is restricted to Brokenhead Ojibway Nation Land;

"Lease" means a written contract that sets out the specified time period and conditions of a right to use and possession of Land;

"Licence" means a formally approved right of use or occupation of Brokenhead Ojibway Nation Land, other than an interest in land;

"Mortgage" means property that is conveyed (transfer of title of land from one to another) or pledged (using land as security for a loan) as security for the payment of debt to the lender or creditor;

"Natural Resources" means any materials or substances on, above or under the Land in their natural state that may be used for but not limited to economic benefit;

"Panel" means the Dispute Resolution Panel established to resolve a dispute according to the established process in Part 8 of this *Land Code*;

"Permit" means an interest that is formally granted allowing the use or access to Land;

"Ratification Vote" means the approval process that is set out in Part 3 of this *Land Code*;

"Resolution" means a Band Council Resolution (BCR) passed by Council under this *Land Code*;



"Riparian Rights" means the legal rights of owners of land that borders on a river or other body of water and also, rights that pertain to the use of the water;

"Roster Panel" means the list of individuals (Panelists) who are appointed according to the Section 40 provisions of this *Land Code* that is used to form a Dispute Resolution Panel;

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

"Spousal Property" means any interest in Brokenhead Ojibway Nation Land or real property improvements belonging to one or both persons who are spouses of one another.

#### Paramountcy

- 3.2 If there is an inconsistency between a provision in this *Land Code* or other enactments passed by Council, including a by-law passed according to section 81 of the *Indian Act*, in regards to the management, administration or governance of Lands, this *Land Code* shall prevail or be followed as the standing authority to the extent of the inconsistency.

#### Definition in Laws

- 3.3 Brokenhead Ojibway Nation may establish different definitions if the context is required to be reflected in Brokenhead Ojibway Nation laws, policies and regulations than those provided in this *Land Code*.

#### Clarification

- 3.4 Words or terms in this *Land Code* shall carry the same meaning as the words defined in the *Framework Agreement* unless the context otherwise requires.

#### Use of the word "SHALL"

- 3.5 The word "shall" signifies that an obligation must be carried out as soon as practicable once this *Land Code* comes into effect.

#### Gender – Masculine or Feminine

- 3.6 Both genders are meant to be included interchangeably where only one gender is used in this *Land Code*.

#### Titles and Headings

- 3.7 Titles and headings are only inserted in this *Land Code* for convenience of reference and are not meant to be an interpretative aid.



#### Non-abrogation and Non-derogation

- 3.8 This Land Code is not meant to do away with or take away from:
- a) by-law powers of the Council of Brokenhead Ojibway Nation pursuant to the *Indian Act*;
  - b) Aboriginal title or Aboriginal Treaty Rights (Treaty 1 or inherent) rights of Brokenhead Ojibway Nation; or
  - c) the special relationship between Canada and Brokenhead Ojibway Nation and its Members.

#### Lands and Interests affected

- 3.9 References to Land in this Code means all rights and natural resources in and of the land, including:
- a) water, water beds, etc. to comply with section 2.2 of the Framework Agreement to the extent these resources are under the jurisdiction of Canada; and
  - b) all interests and licences transferred to Brokenhead Ojibway Nation by Canada as outlined in the *Individual Transfer Agreement*.

### 4. Purpose

#### Purpose

- 4.1 The purpose of this *Land Code* is to outline the process of full control and management of Brokenhead Ojibway Nation lands.

#### Ratification of Framework Agreement

- 4.2 The *Framework Agreement* is ratified and confirmed when this *Land Code* comes into effect.

### 5. Description of Brokenhead Ojibway Nation Lands

#### Lands subject to this Land Code and treatment of Other Land

- 5.1 Brokenhead Ojibway Nation Land includes all reserve land listed in the *Individual Agreement*, as amended from time to time, and such other Land as may be included as follows:

#### Brokenhead Indian Reserve No. 4

Total Lands containing 5335 hectares (13184 acres), more or less,



**Birch Landing Indian Reserve**

Total Lands containing 272 hectares (672 acres) more or less

**Na-sha-ke-penais Indian Reserve**

Total Lands containing 3.02 hectares, (7.46 acres) more or less.

- 5.2 Additional land may be added, subject to completion of a Band Council Resolution authorizing the addition of land and containing the land description.

**Community Consultation Required to Add Land to the Individual Agreement**

- 5.4 Council shall hold Community Meetings of Members for consultation or approval for the addition of Land to the *Individual Agreement* as may be required.



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## **PART 2 – BROKENHEAD OJIBWAY NATION LEGISLATION AND LAW MAKING**

### **6. Law-making Powers**

#### **Council may make Land Laws**

6.1 In accordance with this *Land Code*, Council may make laws respecting:

- a) development, conservation, protection, management, use and possession of Brokenhead Ojibway Nation Land;
- b) interests and licences in relation to Brokenhead Ojibway Nation Land; and
- c) any additional, ancillary or secondary matter that requires law creation in relation to Brokenhead Ojibway Nation Land.

#### **Examples of Land Laws that can be made by Council**

6.2 Council may make Land Laws that are not limited to the following:

- a) regulation, zoning control, land use, subdivision control and land development;
- b) creation, regulation and prohibition of interests and licences in relation to Brokenhead Ojibway Nation Land;
- c) environmental assessment and protection;
- d) provision of local services in relation to Brokenhead Ojibway Nation and obligation of equitable user fees;
- e) enforcement of Brokenhead Ojibway Nation Land Laws; and
- f) provision of services to settle disputes outside of the courts in relation to Brokenhead Ojibway Nation Land.

#### **Regulatory Documents**

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

### **7. Law-making Procedure**

#### **Introduction of Laws**

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

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



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**Bringing Forward and Posting of Proposed laws**

- 7.2 Before a proposed law is enacted as a law by Council, the proposed law must first be
- a) brought forward by being tabled and deliberated at a meeting of Council at least twenty eight (28) days before the law is enacted as an applicable law on Brokenhead Ojibway Nation land; and
  - b) the proposed law is posted in public places on Brokenhead Ojibway Nation land at least twenty one (21) days before the law is to be enacted and applicable.

**Urgent Matters**

- 7.3 The Council may enact a law without the preliminary steps required under section 7.2, if the Council is of the opinion that the law is needed urgently to protect Brokenhead Ojibway Nation land, natural resources or Members, but, the law will expire one hundred and twenty (120) days after the law passed, unless the law is re-enacted and passed as law in accordance with section 7.2.

**Approval of Land Law by Council**

- 7.4 A law is enacted and if it is approved by a majority of Council at a meeting of the Council that is open to Members.

**Certification of Land Laws**

- 7.5 The original copy of any law or resolution concerning Brokenhead Ojibway Nation shall be signed by a quorum of Council present at the meeting at which the law was enacted.

**Repeal**

- 7.6 A Land Law may be repealed by a quorum of Council upon:
- a) Council passing the appropriate repealing law; and
  - b) Council giving notice to the Band Members that the Land Law is no longer required.

**Law making procedures**

- 7.7 Council may make laws respecting law-making procedures that are consistent with this *Land Code*.



## 8. Publication and Security of Land Laws

### Brokenhead Ojibway Nation Land Register

- 8.1 Council shall cause to be established and maintained, at the administrative offices of Brokenhead Ojibway Nation, the Brokenhead Ojibway Nation Land Register which shall contain copies of all Land Laws and resolutions, including Land Laws and resolutions that have been repealed or are no longer in force.
- 8.2 Council shall establish and maintain an electronic storage repository for purposes of storing electronic versions of certified copies of Land Laws. There must be one original certified copy on file.

### Publication of Land Laws

- 8.3 Land Laws enacted pursuant to this *Land Code* shall be published:
- in the minutes of the Council meeting at which it was enacted;
  - by the Land Committee in minutes of the Land Committee meeting at which an official true copy of the Land Law is noted as received;
  - by posting an official true copy of the Land Law in a location within the administrative offices of Brokenhead Ojibway Nation accessible to all Band Members, as soon as practicable after enactment and for a period of not less than thirty (30) days thereafter; and
  - any additional method as Council may consider appropriate including the *First Nation Gazette*.

### Access to Brokenhead Ojibway Nation Land Register

- 8.4 Any person may view the register during normal business hours and may view or obtain a copy of any Land Law or Resolution.

### Fees

- 8.5 Council may from time to time by band council resolution set fees for viewing or obtaining copies of Land Laws.

## 9. Date a Land Law comes into effect

### Effective Date

- 9.1 A Land Law passed by the Council takes effect on the date of its approval or at a later date as specified by or under the Land Law.



## 10. Enforceability of Land Laws

### Enforceability of Land Laws

10.1 To enforce its *Land Code* and its Land Laws, Brokenhead Ojibway Nation 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.



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## **PART 3: COMMUNITY APPROVAL PROCESS**

### **11. Participation of Members**

#### **Participation of Band Members**

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

#### **Participation of Eligible Voters**

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

### **12. Community Involvement and Input**

#### **Consultation with Band Members**

12.1 The Council shall consult with Band Members prior to the enactment of a Land Law regarding:

- a) a community plan or subdivision plan;
- b) any affects or impacts on a traditional or heritage site or an environmentally sensitive property;
- c) environmental assessment and protection;
- d) the transfer and assignment of rights and interests in Brokenhead Ojibway Nation Land;
- e) Spousal Property on Brokenhead Ojibway Nation Land under section 38;
- f) the rights and procedures on community expropriation; and
- g) any other matter, law or class of law that Council, by Resolution, declares to be subject to this section.

#### **No Quorum of Band Members**

12.2 For greater certainty, community consultation does not require a quorum of Band Members.

#### **Information to Band Members**

12.3 In fulfilling its obligation to consult with the community as required under section 12.1, Council in consultation with the Land Committee shall carry out efforts to ensure the Band Members are informed on the relevant policies, rules and procedures respecting the categories described in section 12.1, by mailing information to Band Members, by holding meetings with the Band Members or by carrying out any other form of consultation as the Council may consider appropriate in the circumstance.



### 13. Required Community Approval

#### Community Approval of Members

##### 13.1 Community approval must be obtained for the following:

- a) any master land use plan;
- b) any grant or disposition of an interest or licence to a non-Band Member in any Brokenhead Ojibway Nation Land exceeding a term of forty-five (45) years;
- c) any renewal of a grant or disposition of an interest or licence to a non-Band Member in any Brokenhead Ojibway Nation Land that extends the original term beyond forty-five (45) years;
- d) any grant or disposition of any non-renewable natural resources on any Brokenhead Ojibway Nation Land exceeding a term of five (5) years to be kept in good-standing where regular progress reports are provided to BON for membership review;
- e) a charge or mortgage of a leasehold interest exceeding a term of 25 years;
- f) any deletion of a traditional or heritage site referred to in section 17 of this *Land Code*;
- g) any law on spousal separation that may be enacted under section 38; and
- h) any law or class of law that Council, by resolution, declares to be subject to this section.

#### Utility Permits

13.2 Council may grant a right of way or permit in Community Lands for telecommunication, water, electricity, gas, sewer or other like utility purposes and purposes ancillary thereto for any length of term without first obtaining the approval of Eligible Voters provided for in subsection 13.1(c)

#### Method of Voting

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

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

#### Quorum

13.4 The Council may, by a Law or Resolution, establish a minimum number or percentage of Eligible Voters who are required to be present to constitute a quorum for the purposes of making decisions at a Meeting of Members.



**Other meetings**

- 13.5 The Council may schedule more than one meeting of members to discuss and decide on a matter that requires a meeting of members.

**Voting**

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

**14. Community Meeting of Members Procedure**

**Notice of Meeting for Community Meeting of Members**

- 14.1 The Council shall give written notice for a Community Meeting of Members that shall include:
- a) the date, time and place of the meeting;
  - b) a brief description of the matters to be discussed and decided on at the meeting;
  - c) the name and telephone number of a contact person;
  - d) a feedback form which any person entitled to participate may submit to the Land 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 Land Committee may consider appropriate.

**Manner of Notice**

- 14.2 The notice for a Community Meeting of Members must be given to the Members by:
- a) posting the notice in public places on Brokenhead Ojibway Nation Land at least twenty eight (28) 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 twenty eight (28) days before the meeting;
  - c) publishing the notice in the community newsletter or local newspaper at least twenty five (25) business days before the meeting; and
  - d) such additional method as Council may consider appropriate in the circumstances.

**Informed Decision**

- 14.3 The Council may schedule as many Community Meetings of Members as may be necessary to ensure that Members are well informed before making a decision on a proposed Land Law or land issue.



**Members to Attend**

14.4 All Band Members have a right to attend a Community Meeting of Members.

**Non-Band Member Attendance**

14.5 A person, other than a Band Member, may attend any meeting upon a prior approval of the Council, or upon the invitation of the Council.

**Rules of Conduct at Meetings**

14.6 The Council, upon the advice of the Land Committee, may establish rules of conduct to be followed at Community Meeting of Members.

**Other Land Laws**

14.7 For greater certainty, the Council may make laws respecting Community Meeting of Members.

**15. Ratification (Approval) Votes**

**Community Approval by Ratification Vote**

15.1 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**

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

**Ratification Process**

15.3 Any Ratification Vote required under this *Land Code* shall be conducted in substantially the same manner as the *Brokenhead Ojibway Nation Community Ratification Process*, which was used to ratify this *Land Code*.

**Exception**

15.4 For greater certainty, revisions made pursuant to section 47.1 do not require community approval by a Ratification Vote.



**Verifier**

- 15.5 A verifier must be obtained for any Ratification Vote, which changes the substance of this *Land Code*. For greater certainty, a Verifier is not required for revisions as set out in section 47.1 but may be required for purposes of section 15(1)(b) which determination will be at the discretion of Council.

**Ratification Vote Quorum**

- 15.6 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**

- 15.7 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, provided that at least 25% of the Eligible Voters have registered to vote in the Ratification Vote.

**Proposed Land Matter Rejected by Majority Vote**

- 15.8 A matter shall be considered not approved at a Ratification Vote if a majority of the registered Eligible Voters cast a vote in opposition of the matter.

**No Second Ratification Vote if Land Matter Rejected**

- 15.9 If the matter is rejected pursuant to section 15.8, 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 15.6 provided additional community consultation occurs.

**Second Ratification Vote**

- 15.10 If a quorum was not obtained pursuant to section 15.6 a second Ratification Vote may be called.

**Reduced Quorum for Second Ratification Vote**

- 15.11 In order to obtain a quorum for community approval for a second Ratification Vote under this *Land Code* at least ten percent (10%) of Eligible Voters must register.

**Voting**

- 15.12 A matter shall be considered approved at a second Ratification Vote if a majority of the registered Eligible Voters cast a vote in favor of the matter.



**No Third Ratification Vote**

15.13 If the required quorum pursuant to section 15.11 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 15.6 provided additional community consultation occurs, community direction is obtained to re-draft and the document is re-drafted accordingly.

**Other Laws**

15.14 For greater certainty, the Council may make laws respecting Ratification Votes not inconsistent with this *Land Code*.



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## **PART 4: PROTECTION OF LAND**

### **16. Expropriation**

#### **Acquisition by Mutual Agreement**

- 16.1 The right of Brokenhead Ojibway Nation to expropriate can only be exercised after a good faith effort to acquire, by mutual agreement, the interest or licence in Brokenhead Ojibway Nation Land.

#### **Rights and Interests That May be Expropriated**

- 16.2 An interest in or licence to use Brokenhead Ojibway Nation Land, or in any building or other structure on those Lands, may only be expropriated by Brokenhead Ojibway Nation in accordance with the *Framework Agreement* and any Land Law enacted for the purpose of establishing the rights and procedures for community expropriations.

#### **Community Purposes**

- 16.3 A community expropriation shall only be made for a necessary community purpose or public works of Brokenhead Ojibway Nation, 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**

- 16.4 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 licence;
  - b) transfer of the interest or licence;
  - c) notice of expropriation and service of the notice of expropriation;
  - d) entitlement to compensation;
  - e) determination of the amount of compensation; and
  - f) the method of payment of compensation.

#### **Member Notification**

- 16.5 In the case of an expropriation of a Member's interest or licence in Brokenhead Ojibway Nation Land, the affected Member or Members must receive notification of the expropriation within a reasonable time prior to the release of the public report referred to in section 16.6.

#### **Public Report**

- 16.6 Before Brokenhead Ojibway Nation decides to expropriate an interest or licence, it shall make a public report on the reasons justifying the expropriation.



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**Compensation For Rights and Interests**

- 16.7 Brokenhead Ojibway Nation 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 licence to be expropriated; and
  - b) pay fair and reasonable compensation to the holders of the interest or licence being expropriated.

**Compensation Calculations**

- 16.8 Brokenhead Ojibway Nation 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**

- 16.9 The "market value" of an expropriated interest or licence is equal to the amount that would have been paid for the interest or licence if it had been sold by a willing seller to a willing buyer under no duress (performing an action against own will).

**Neutral Evaluation to Resolve Disputes**

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

**Arbitration to Resolve Disputes**

- 16.11 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 licence to compensation; and
  - b) disputes concerning the amount of the compensation.

**17. Traditional or Heritage Sites**

**Community Input on Development**

- 17.1 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**

17.2 No amendment may be made to a land use plan to delete a heritage site unless the amendment is approved by the community through the community approval process as set out in this Code.

**18. Voluntary Land Exchange**

**Conditions for a land exchange**

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

**No effect**

18.2 A land exchange is of not effect unless it receives community approval by a ratification vote.

**Land to be received**

18.3 No land exchange may occur unless the land to be received in the exchange meets the following conditions:

- (a) it must be equal to or greater than the area of the Brokenhead Ojibway Nation land to be exchanged;
- (b) it must be at least comparable to the appraised value of the Brokenhead Ojibway Nation land; and
- (c) it must become a reserve and Brokenhead Ojibway Nation land subject to this *Land Code*.

**Negotiators**

18.4 The persons who will have authority to negotiate a land exchange agreement on behalf of the Brokenhead Ojibway Nation must be designated by resolution.

**Additional land**

18.5 The Brokenhead Ojibway Nation may negotiate to receive other compensation, such as money or one or more other parcels of land, in addition to the parcel referred to above which is intended to become a reserve. Such other parcels of land may be held by the Brokenhead Ojibway Nation in fee simple or some other manner.



**Federal Consent**

- 18.6 Before the Brokenhead Ojibway Nation concludes a land exchange agreement, it must receive a written statement from Canada clearly stating that Her Majesty in right of 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 or as provided by an agreement with Canada; and
  - (b) consents to the manner and form of the exchange as set out in the exchange agreement.

**Community notice**

- 18.7 Once negotiations on the land exchange agreement are concluded, the Council shall provide the following information to eligible voters at least 21 days before the vote:
- (a) a description of the Brokenhead Ojibway Nation land to be exchanged;
  - (b) a description of the land to be received in the exchange;
  - (c) a description of any other compensation to be exchanged;
  - (d) a report of a certified land appraiser setting out that the conditions in section 18.3 have been met;
  - (e) a copy or summary of the exchange agreement; and
  - (f) a copy of the consent referred to in section 18.6

**Process of land exchange**

- 18.8 The land exchange agreement shall provide that
- (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;
  - (b) the Council must pass a resolution authorizing Canada to transfer title to the Brokenhead Ojibway Nation land being exchanged, in accordance with the exchange agreement; and
  - (c) a copy of the instruments transferring title to the relevant parcels of land must be registered in the Brokenhead Ojibway Nation Lands Register and the First Nations Land Register.



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## **PART 5: CONFLICT OF INTEREST**

### **19. Application**

#### **Application**

19.1 This section applies to the following persons with respect to a conflict of interest:

- a) a Council member who is dealing with any matter before Council pertaining to the management or administration of Brokenhead Ojibway Nation Land;
- b) a Land Committee member;
- c) each Brokenhead Ojibway Nation employee whose responsibilities are land related;
- d) a member of the Dispute Resolution Panel; or
- e) a member of a decision-making body dealing with Land related matters.

#### **Parameters of Conflict**

19.2 A person mentioned in section 19.1 has a conflict of interest or an apparent conflict of interest:

- a) when that member is to decide on an issue where there is an opportunity to advance his or her private interest, or the private interest of an Immediate Family Relative; or
- b) when there is a reasonable perception, which a reasonably well-informed person could properly have, that the person's ability to decide on an issue may have been affected by his or her private interest, or the private interest of an Immediate Family Relative.

#### **Conflict of Interest Prohibition**

19.3 For greater certainty, a person mentioned in section 19.1 shall not exercise his or her authority, or dispose of his or her responsibility provided for in this *Land Code*, if that member has a conflict of interest or an apparent conflict of interest.

#### **Duty to Report and Abstain**

19.4 If there is any financial, family 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**

19.5 Section 19.4 does not apply to an interest that is held by a Band Member in common with every other Band Member.



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**Record of Absence**

- 19.6 When a person withdraws from a matter pursuant to section 19.4, the minutes of the meeting shall record the disclosure, general nature of the conflict and withdrawal of the person from the meeting.

**Inability to Act**

- 19.7 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**

- 19.8 If the Council is unable to vote on a Land Law proposal or resolution due to a conflict of interest, the Council may refer the matter to a Community Meeting of Members and, if a quorum of Eligible Voters is present, a majority of the Eligible Voters present at the meeting may enact the Land Law or Land Resolution.

**Specific Conflict Situations**

- 19.9 No Immediate Relatives and not more than two (2) Band Members from the same Extended Family shall be concurrent Band Members of an appointed board, committee or other body dealing with any matter that is related to Brokenhead Ojibway Nation Land.

**Elected Body**

- 19.10 For greater certainty, the Council or any other elected board, committee or body is not included under the rule set out in 19.9.

**Disputes**

- 19.11 Any person may file a complaint as to whether a person has been in breach of the conflict of interest provisions of this *Land Code* with the Panel.

**Other Laws**

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

**20. Financial Management**

**Application**

- 20.1 This section applies only to the financial matters relating to Brokenhead Ojibway Nation Land.

**Financial records**

- 20.2 Brokenhead Ojibway Nation shall keep financial records related to land in accordance with generally accepted accounting principles.



**Establishment of Bank accounts**

- 20.3 The Council shall maintain one or more financial accounts at a financial institution, that is a member institution to which the Canada Deposit Insurance Corporation has a duty to insure deposits pursuant to the *Canada Deposit Insurance Corporation Act*, R.S.C. 1985, c. C-3, as amended, and shall deposit in those account(s)
- 20.4 The Council shall maintain one or more financial accounts in a financial institution and shall deposit in those accounts
- (a) transfer payments received from Canada for the management and administration of Brokenhead Ojibway Nation land;
  - (b) moneys received by Brokenhead Ojibway Nation from the grant or disposition of any interests or licences in Brokenhead Ojibway Nation land;
  - (c) all fees, fines, charges and levies collected under a land law or land resolution;
  - (d) all capital and revenue moneys received from Canada from the grant or disposition of any interests and licences in Brokenhead Ojibway Nation land; and
  - (e) any other land revenue received by Brokenhead Ojibway Nation.

**Signing officers**

- 20.5 The Council shall authorize at least three persons, one of whom shall be a member of the Council, to sign cheques and other bills of exchange or transfer drawn on the account.

**Two signatures**

- 20.6 To be valid, a cheque or other bill of exchange or transfer drawn on the account must be signed by two signing officers.

**Fiscal year**

- 20.7 The fiscal year of the Brokenhead Ojibway Nation begins on April 1 of each year and ends on March 31 of the following year.

**Offences**

- 20.8 A person is guilty of an offence if the person
- (a) impedes or obstructs anyone from exercising their right to inspect the financial records of First Nation; or
  - (b) has control of the books or account or financial records of Brokenhead Ojibway Nation and fails to give all reasonable assistance to anyone exercising their right to inspect the financial records.



**Preparation of financial statement:**

- 20.9 Within 90 days after the end of each fiscal year, the Council on behalf of the Brokenhead Ojibway Nation shall prepare a financial statement in comparative form, containing at a minimum
- (a) a balance sheet;
  - (b) a statement of revenues and expenditures and a comparison of these with the amounts stated in the land management budget and any supplementary budget; and
  - (c) any other information necessary for a fair presentation of the financial position of Brokenhead Ojibway Nation.

**Consolidated Accounts, etc.**

- 20.10 The accounting, auditing and reporting requirements of this *Land Code* may be done together with, and consolidated with, the other accounts, audits and reports of Brokenhead Ojibway Nation.

**Adoption of Budget**

- 20.6 Prior to the beginning of each fiscal year the Council shall, by resolution, adopt a land management budget for the following fiscal year and may, if it is required, adopt supplementary budgets during that fiscal year.

**Availability of Budget**

- 20.7 The Council shall ensure that the adopted land management budget or supplementary budget *shall* be presented at the next Annual Meeting and that a copy is available at the Brokenhead Ojibway Nation Administration Office for review by Band Members during office hours.

**If No Budget**

- 20.8 If the Council is unable to adopt a land management budget for a fiscal year prior to the beginning of that fiscal year, the land management budget and any supplementary budget of the previous fiscal year shall apply until a new budget is adopted.

**Budget Policy**

- 20.9 The Council may develop and adopt policies and procedures with respect to the preparation and implementation of land management budgets.

**Expenditures**

- 20.10 The Council shall not expend moneys or commit itself by contract or otherwise, to expend moneys related to Land and derived from Land transactions, unless such an expenditure is authorized by or under a Land Law, an approved budget or a resolution.



#### Financial Policy

20.11 The Brokenhead Ojibway Nation may, in accordance with this *Land Code*, adopt a financial policy to further manage monies related to Brokenhead Ojibway Nation Land.

#### 21. Audit

##### Appointment of Auditor

21.1 For each fiscal year, a duly accredited auditor shall be appointed to audit the Land related financial records of the Brokenhead Ojibway Nation. The duly accredited appointed auditor may be the auditor who is appointed to audit other Brokenhead Ojibway Nation program accounts.

##### Access to Records

21.2 In order to prepare a report on Brokenhead Ojibway Nation's financial statement, the auditor may at all reasonable times review the financial records, accounts, minutes, vouchers and receipts, or request such information from any person or body who administers moneys on behalf of Brokenhead Ojibway Nation's Lands Department.

##### Review of Audit

21.3 Prior to an annual meeting, the auditor shall meet with the Council and Land Committee to review the audit report of the Lands Department.

#### 22. Annual Land Report

##### Publish Annual Report

22.1 The Council, on behalf of the Land Committee, shall publish the Annual Land Report within forty-five (45) days of receipt of the audit report. The Annual Land Report will include:

- a) an annual review of land management;
- b) a copy and explanation of the audit as it applies to Brokenhead Ojibway Nation Land; and
- c) any other matter as determined by the Council or Land Committee.

##### Presentation of Annual Land Report

22.2 Council shall convene a Community Meeting of Members where the Land Committee and if by request, the auditor, shall present the Annual Audit Report and Annual Land Report to community members.



**23. Access to Information**

**Access**

23.1 Any Band Member may, during normal business hours of the Land Office, have reasonable access to:

- a) the Brokenhead Ojibway Nation Land Register;
- b) a copy and explanation of the audit as it applies to Brokenhead Ojibway Nation Land;
- c) the most recent Annual Land Report;
- d) the auditor's reports and annual land reports for each of the previous six years; and
- e) any other matter considered, as determined by the Council or Land Committee.

**Copies for Members**

23.2 Any Member may obtain a copy of the auditor's report of the Annual Land Report on payment of a reasonable fee set by a resolution of the Council.

**Access to Records**

23.3 Any person who is not a Band Member, with the authorization of Council, may at any reasonable time inspect the financial records of Brokenhead Ojibway Nation related to Brokenhead Ojibway Nation Land.



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## **PART 6: LAND ADMINISTRATION**

### **24. Lands Staff**

#### **Administration**

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

### **25. Land Committee**

#### **Committee Established**

25.1 The Council shall establish by resolution a Land Committee, which will be responsible for the following:

- a) assist with the development of the land administration system;
- b) advise Council and its staff on matters respecting Brokenhead Ojibway Nation Land;
- c) recommend Land Laws, resolutions, policies and practices respecting Brokenhead Ojibway Nation Land to the Council;
- d) hold regular and special Community Meetings of Members to discuss land issues and make recommendations to Council on the resolution of these land issues;
- e) to assist in the communication of land issues between Band Members and the Council;
- f) to oversee community approvals under this *Land Code*; and
- g) any other duties delegated by resolution or Land Law.

#### **Number of Members**

25.2 The Land Committee *shall* be comprised of five (5) to seven (7) Band Members who are Eligible Voters. At least one such Band Member shall reside off the Brokenhead Ojibway Nation.

#### **Internal Procedures**

25.3 The Land Committee may establish its own rules of procedure generally for the conduct of its affairs which are not to be inconsistent with the policies and procedures of the Council.



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**Development of Land Related Rules and Procedures**

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

- a) terms of reference for the procedure for meetings of the Land 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 rent for interests, rights and licences in Community Lands, and the fees for services provided in relation to Brokenhead Ojibway Nation Land;
- c) the process for determining the fees and royalties for the taking of natural resources on Brokenhead Ojibway Nation Land;
- d) environmental protection and assessment in relation to Brokenhead Ojibway Nation Land;
- e) any outstanding disputes in relation to Brokenhead Ojibway Nation Land;
- f) land use planning and zoning;
- g) respecting spousal and real property policy and whether any changes should be made to the policy upon which that section is based; and
- h) any other matter referred by Council.

**26. Land Committee Member Appointment Process**

**Eligibility**

26.1 Any Eligible Voter, is eligible for appointment to the Land Committee upon the completion and submission of the "request for membership" application, except for the following persons:

- a) any person who has been declared by an appropriate court as a bankrupt or who is under the supervision of a Trustee;
- b) any person who has been convicted of an indictable offence during the past 5 years; or
- c) any person who has been convicted, or is pending a trial or disposition, of corrupt practice including the acceptance of a bribe, extortion, dishonesty or wrongful conduct.

**Term of Office**

26.2 The term of office for a Land Committee member shall be two (2) years, commencing from the date of appointment by the Council.



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**Vacancy**

26.3 The office of a Land Committee member becomes vacant if, while holding office, the member:

- a) resigns;
- b) becomes ineligible to hold office pursuant to section 26.1;
- c) ceases to be a Band Member of the Brokenhead Ojibway Nation;
- d) fails to disclose a conflict of interest pursuant to section 19;
- e) is absent for 3 consecutive meetings of the Committee without a due acknowledgement to the Land Committee members; or
- f) fails to fulfill his or her obligations and responsibilities required as a Land Committee member, upon the determination of the Council.

**Vacancy in Term**

26.4 Where an office becomes vacant for more than ninety (90) days before the date when another appointment would ordinarily be held, a special appointment may be made in accordance with this *Land Code* to fill the vacancy for the balance of the term in respect of which the vacancy occurred.

**27. Chair of the Land Committee**

**Chairperson**

27.1 The Chairperson of the Land Committee will be determined at the beginning of each new term of the Land Committee by vote of the members of the Land Committee. The Chairperson will only exercise a vote in the event that a consensus cannot be reached by the Land Committee.

**Alternate Chairperson**

27.2 If the Chairperson is unable to perform the functions of office, either temporarily or on a long term basis, the Land Committee shall appoint one of the other Land Committee members to act as or be the Chairperson.

**Functions**

27.3 The functions of the Chairperson may include:

- a) chairing meetings of the Land Committee
- b) presenting the information to the members at meetings of members under Part 3 of this *Land Code*;
- c) providing quarterly written reports to Council on the activities of the Land Committee; and
- d) performing such other duties as may from time to time be assigned by resolution of the Land Committee or Council.



## 28. Registration of Interests and Licences

### Enforcement

28.1 An interest in or a licence to use Brokenhead Ojibway Nation Land created or granted after this *Land Code* comes into effect, is not enforceable unless it is registered in the Brokenhead Ojibway Nation Lands Register.

### Certificate of Consent or Approval

28.2 An instrument granting an interest in or a licence to use Brokenhead Ojibway Nation Land that requires the consent of Council or by community approval, is void unless the original or a certified true copy of the document evidences that the applicable approval has been obtained which shall be attached to the instrument.

### Duty to Deposit

28.3 The Council shall ensure that an original copy of the following instruments are deposited in the Brokenhead Ojibway Nation Lands Register, as established by Canada, in accordance with section 51.1 of the *Framework Agreement*:

- a) any grant of an interest in or a licence to use Brokenhead Ojibway Nation Land; and
- b) any transfer or assignment of an interest in Brokenhead Ojibway Nation Land.

### Forms and Procedures

28.4 The Land Committee may prescribe forms and procedures to create evidence of applicable approvals referred to in this section.

### Instrument Void

28.5 An instrument registered in the Brokenhead Ojibway Nation Lands Register which does not include the original or certified true copy referred to in section 28.2 is void.

### Paramountcy of Brokenhead Ojibway Nation Land Register

28.6 If there is a discrepancy between an instrument registered in the Brokenhead Ojibway Nation Lands Register and the Brokenhead Ojibway Nation Land Register, the registration in the Brokenhead Ojibway Nation Land Register shall prevail to the extent of the discrepancy.



**Duty to Deposit Instruments**

28.7 The Land Committee shall ensure that an original copy of the following instruments is deposited in the Brokenhead Ojibway Nation Lands Register:

- a) any grant of an interest in or a licence to use Brokenhead Ojibway Nation Land;
- b) any transfer or assignment of an interest in or a licence to use;
- c) every land use plan, subdivision plan or resource use plan;
- d) a charge or mortgage (in accordance with section 36.5);
- e) and Land law; and
- f) this *Land Code* and any amendment to this *Land Code*.

**29. Brokenhead Ojibway Nation Land Register**

**Brokenhead Ojibway Nation Land Register**

29.1 The Council shall establish and maintain the Brokenhead Ojibway Nation Land Register and make laws with respect to the land register and the effect of registering documents in the register.

**Duty to Deposit**

29.2 Every person who receives an interest in or a licence to use Brokenhead Ojibway Nation Land shall deposit an original copy of the relevant instrument in the Brokenhead Ojibway Nation Land Register.

**Priority**

29.3 In the event of an inconsistency or a conflict between the Brokenhead Ojibway Nation Land Register and the Brokenhead Ojibway Nation Lands Register, the Brokenhead Ojibway Nation Land Register prevails to the extent of the inconsistency or conflict.



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## **PART 7: INTERESTS IN AND LICENCES TO USE**

### **30. Formalities of Grants, Transfers and other Transactions**

#### **Dispositions In Writing**

30.1 An interest in or a licence to use Brokenhead Ojibway Nation Land may only be created, granted, disposed of, assigned, transferred by an instrument in writing in accordance with this *Land Code* and any relevant Land Law.

#### **Standards**

30.2 The Council may establish mandatory standards, criteria and forms for transactions relating to interests in and licences to use Brokenhead Ojibway Nation Land.

#### **Non-Conforming Transactions Void**

30.3 A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which the Brokenhead Ojibway Nation, any Band Member or any non-Band Member purports to grant, dispose of, transfer, or assign an interest in or a licence to use Brokenhead Ojibway Nation Land after this *Land Code* comes into affect is void if it contravenes this *Land Code*.

### **31. Existing Interests and Licences**

#### **Continuation of Existing Interests and Licences**

31.1 Any interest in or a licence to use Brokenhead Ojibway Nation Land that existed when this *Land Code* comes into effect shall, subject to this *Land Code*, continue in force in accordance with its terms and conditions.

#### **Nature or Interest in a Certificate of Possession**

31.2 Subject to this *Land Code* and Brokenhead Ojibway Nation laws, a certificate of possession in respect of a parcel of land is an interest that entitles the member holding it to:

- (a) permanent possession of the land;
- (b) benefit from the resources arising from the land;
- (c) grant subsidiary interests and licences in the land, including leases, permits, easements and rights-of-ways;
- (d) transfer, devise or otherwise dispose of the land to another member;
- (e) grant licences to take resources from the land, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances;
- (f) any other rights, consistent with this *Land Code*, that are attached to certificates of possession under the *Indian Act*.



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**Unregistered Interests**

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

**32. New Interests and Licences**

**Authority to make dispositions**

32.1 Subject to section 12.1, the Council may, on behalf of the Brokenhead Ojibway Nation, grant:

- a) interests in and licences to use Brokenhead Ojibway Nation Land including leases, permits, easements and rights-of-way; and
- b) permits to take natural resources from Brokenhead Ojibway Nation Land, including cutting timber, or removing minerals, stone, gravel, clay, soil, or other substances.

**Conditional grant**

32.2 The grant of an interest in or a licence to use Brokenhead Ojibway Nation Land may be made subject to the satisfaction of written terms and conditions.

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

**Non-Members**

33.1 A person who is not a Member of Brokenhead Ojibway Nation may not hold any interest in Brokenhead Ojibway Nation Land except a lease, licence to use, or a permit.

**Grants to Non-Members**

33.2 A transfer or other disposition of all or any part of a lease, a licence to use or a permit in Brokenhead Ojibway Nation Land to a person who is not a Band Member shall not be effective unless and until it is confirmed by a resolution of Council.

**34. Allocation of Land**

**Policies and Procedures for Allocation of Lots**

34.1 Subject to the provisions of this *Land Code*, Council in consultation with the Land Committee may establish policies and procedures for the allocation of lots to members.

**No Allocation of Lots to Non-Band Members**

34.2 A person who is not a Band Member is not entitled to be allocated a lot or to hold a permanent interest in Brokenhead Ojibway Nation Land.



## 35. Transfer and Assignments of Interests

### Consent of Council and Exceptions

- 35.1 No interest in Brokenhead Ojibway Nation Land may be transferred or assigned without the consent in writing of Council, except:
- a) a transfer or assignment of an interest from one Member to another in accordance with this *Land Code*;
  - b) a transfer that occurs by operation of law, including transfer of estate by a will;
  - c) a transfer pursuant to the interim Spousal Property Rules in section 38 of this *Land Code*, or pursuant to a Spousal Property Law enacted by Brokenhead Ojibway Nation as provided in this *Land Code*; and
  - d) every grant of an interest in or a licence to use Brokenhead Ojibway 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.

### Transfers on Death

- 35.2 A member who claims to be entitled to an allotment [or certificate of possession] by testamentary disposition or succession pursuant to the *Indian Act* is not entitled to such allotment until:
- (a) such member has filed with Council, or such person or body as may be designated by Council, an instrument in a form prescribed by Council, duly executed by the personal representative of the estate of the deceased member transferring such allotment to the member; and
  - (b) the instrument referred to in subsection (a) is registered in the First Nation Land Register and the Brokenhead Ojibway Nation Land Register, if one is established.
- 35.3 A member who purchases an allotment[or certificate of possession] pursuant to subsection 50(2) of the *Indian Act* is not entitled to such allotment until:
- (a) the purchaser has filed with Council , or such person or body as may be designated by Council, an instrument in a form prescribed by Council, duly executed by the person authorized under the *Indian Act* to execute a transfer of an Allotment acquired pursuant to section 50(2) of the *Indian Act*; and
  - (b) the instrument referred to in subsection (a) is registered in the First Nation Land Register and the *First Nation Duplicate Land Register*, if one is established.

## 36. Limits on Mortgages and Seizures

### Indian Act Protection

- 36.1 In accordance with the *Framework Agreement*, section 29, section 87 and sub sections 89 (1) and (2) of the *Indian Act* continue to apply to Brokenhead Ojibway Nation Land.



**Mortgage of an Interest**

36.2 The interest of a Member in Brokenhead Ojibway Nation Land may be subject to a mortgage or charge to Council or to a Band Member, where authorized by a resolution of Council.

**Mortgage of Leasehold Interest with Consent**

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

**Time Limit**

36.4 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) forty five (45) years, or such longer period as may receive community approval.

**Default in Mortgage**

36.5 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 Brokenhead Ojibway Nation Land Register and the Brokenhead Ojibway Nation Land Register; and
- d) a reasonable opportunity to redeem the charge or mortgage is given to the Council on behalf of Brokenhead Ojibway Nation.

**Power of Redemption**

36.6 Subject to prior redemption by the lessee, Council on behalf of Brokenhead Ojibway Nation 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.

**37. Residency and Access Rights**

**Right of Residency**

37.1 Subject to sections 37.3, the following persons have a right to reside on Brokenhead Ojibway Nation Land:

- a) Members, who have been allocated a residential lot by Council, and their spouses and children;
- b) Members with a registered interest in Brokenhead Ojibway 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, the Land Committee or by a Brokenhead Ojibway Nation law.

#### Right of Access

37.2 The following persons have a right of access to Brokenhead Ojibway Nations Land:

- 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) Members, their spouses and their minor or dependent children 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 Brokenhead Ojibway Nation, 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 or the Land Committee or by a Brokenhead Ojibway Nation law.

#### Public Access

37.3 Any person who is not a Member may have access to Brokenhead Ojibway 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; or
- c) no resolution has been enacted barring that person.

#### Use of Roads

37.4 Any person having a right of access to Brokenhead Ojibway Nation Land may have the right to access such Land over Brokenhead Ojibway Nation roads, subject to this *Land Code* and Brokenhead Ojibway Nation laws.

#### Trespass

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

#### Civil Remedies

37.6 All civil remedies for trespass are preserved.



### 38. Spousal Property Law

#### Enactment of Rules and Procedures

38.1 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 and occupation of Brokenhead Ojibway Nation Land; and
- b) the division of real property improvements.

#### Development of Rules and Procedures

38.2 The rules and procedures contained in the spousal property law shall be developed by the Land Committee in consultation with the community.

#### Enactment Deadline

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

#### General Principles

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

- a) each spouse should have an equal right to use and occupation of their spousal home;
- b) each spouse should be entitled to a 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 Brokenhead Ojibway Nation Land or a charge against a permanent interest in Brokenhead Ojibway Nation Land.

#### Interim Spousal Property Rules

38.5 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 Brokenhead Ojibway Nation 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 *Land 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 *Land 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,



**Brokenhead Ojibway Nation (BON)  
LAND MANAGEMENT CODE**

DRAFT  
August 2014

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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 Land Committee and the community consultation process relating to the development of a Spousal Property Law.



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## **PART 8: DISPUTE RESOLUTION**

### **39. Purpose and Intent**

#### **Intent**

39.1 The intent of this Part is to ensure that all persons entitled to reside upon, use or otherwise occupy Brokenhead Ojibway Nation Land do so harmoniously with due respect to the rights of others and of Brokenhead Ojibway Nation and with access to Brokenhead Ojibway Nation procedures to resolve disputes.

#### **Purpose**

39.2 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 that distinguish dispute resolution from litigation.

#### **Dispute Prevention**

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

#### **Disputes Prior to the Land Code**

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

#### **Settle a Dispute**

39.5 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**

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

### **40. Establishing a Dispute Resolution Panel**

#### **Appointment to Roster Panel**

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

#### **Ineligible**

40.2 Notwithstanding section 19, in order to avoid conflict of interest, no Council member, or employee of Brokenhead Ojibway Nation or person already serving on another board, body, or committee related to Brokenhead Ojibway Nation Land shall sit on the Roster Panel.



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**Representation**

40.3 Council shall appoint the Roster Panelists, and *shall* ensure that, where possible, the Roster Panelists represent the various elements of the community.

**Term of Office**

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

**No Remuneration**

40.5 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**

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

**41. Impartiality of the Dispute Resolution Panel**

**Duty to Act Impartially**

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

**Offence**

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

**Rejection of Application**

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

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

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



## 42. Filing a Dispute

### Procedure to File a Dispute

42.1 A person who wishes to resolve a dispute with another person or Brokenhead Ojibway Nation in relation to the use or occupation of Brokenhead Ojibway Nation 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.

### Dispute Resolution Not Available

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

- a) the administration or distribution of an estate;
- b) decisions relating to housing allocations;
- c) decisions of Council to grant or refuse to grant an interest in or a licence to use Brokenhead Ojibway Nation Land to a non-Member;
- d) decisions on expropriation under section 16 of this *Land Code*;
- e) prosecution or conviction of an offence under a Land Law or under criminal law; and
- f) challenges to the validity of any Land Law.

### Duty of Fairness

42.3 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

42.4 Council may prescribe such laws, resolutions, rules, policies, procedures, guidelines, 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) mandatory application of the dispute resolution process;
- b) remuneration of facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part;
- c) code of conduct for facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part;
- d) disclosure and confidentiality;
- e) limitation period;



- f) implementing recommendations of the Dispute Resolution Panel made under section 44.2; and
- g) any other matter necessary to give effect to this Part.

**Waiver of Liability**

42.5 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 wilful misconduct.

**Mandatory Application**

42.6 Council may establish a Land Law that sets out the mandatory application of this Part of the Brokenhead Ojibway Nation Land Code in certain circumstances.

**Civil Remedies**

42.7 Notwithstanding section 42.6, 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**

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

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

**Disputes**

43.1 Any matter or dispute related to Brokenhead Ojibway Nation Land shall be submitted to the Lands Department and that such matter or dispute shall then be referred to the Roster Panel for resolution.

**Panel of Three Chosen From Roster Panel**

43.2 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 be chosen by the Roster Panel as a whole.



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**Panel Established**

43.3 The Panel is hereby established with jurisdiction to resolve disputes in relation to Brokenhead Ojibway Nation Land. For greater certainty, disputes outlined in section 42.2 shall not be heard by the Panel.

**44. Authority and Mandate of the Dispute Resolution Panel**

**Power of the Panel**

44.1 The Panel may, after hearing a dispute:

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

**Recommendations by Panel**

44.2 In addition to making a determination under section 44.1, the Panel may:

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

**Interim Decisions**

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

**Professional Services**

44.4 The Panel may obtain the service of professionals to assist it in fulfilling its functions, in which case it shall make best efforts to use professional services available in the community.



**Written Decisions**

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

**Appeal of Decision**

- 44.6 A decision of the Panel is binding but, subject to any exception established by a law, may be appealed to the appropriate court of competent jurisdiction.



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## **PART 9: OTHER MATTERS**

### **45. Liability**

#### **Liability Coverage**

- 45.1 The Council shall arrange, maintain and pay for insurance coverage for its officers and employees engaged in carrying out any matter related to Brokenhead Ojibway Nation Land to indemnify them against personal liability arising from the performance of those duties.
- 45.2 Members of the Council, the Lands Committee, a dispute resolution body and officers and employees engaged in carrying out any matter related to the administration of Brokenhead Ojibway Nation lands are indemnified and saved harmless from all claims, liabilities and demands of any kind or nature whatsoever arising from the performance of their obligations and duties under this *Land Code*, a land law or a land resolution, provided they have not acted fraudulently or negligently in the performance of their obligations and duties.

#### **Extent of Coverage**

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

### **46. Offences**

#### **Application of the Criminal Code**

- 46.1 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 law.

### **47. Revisions of Land Code**

#### **Revisions**

- 47.1 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 5.1, 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 Brokenhead Ojibway Nation 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.

#### **48. Land Code comes into effect**

##### **Preconditions**

48.1 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*.

##### **Date Land Code comes into effect**

48.2 Subject to section 48.1, this *Land Code* shall take effect on the first day of the month following the certification of this *Land Code* by the verifier.

-end-



**Appendix I**

*Part 3, Section 13, Pages 16 and 17*

**BON Land Management Code Ratification Vote**

1. 50+1% majority of registered voters are required to pass the Land Code
2. A minimum of 25+1% of eligible voters must register and vote in favor (i.e. 800 voters, 401 register, 201 registered yes votes are required to approve the Land Code (as per s. 12(2) of the FNLMA and s. 7.4 of the FA)

