

Wasauksing First Nation Land Code

[October 13, 2016 - DRAFT]

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PREAMBLE

Whereas Mother Earth, her plants, her animals, and the Anishnabe were created in that order, with the Earth, plants and animals being created first to sustain the Anishnabe;

And Whereas the Anishnabe have a continuous responsibility to maintain that balance of life seven generations into the future;

And Whereas Nation to Nation, the Anishnabe entered into treaties to share that bounty provided by Mother Earth at Niagara in 1764 and at Sault Sainte Marie in 1850; and our Treaty partners guaranteed that sharing relationship initially in 1867 and further in 1982.

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

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

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

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

And Whereas Wasauksing First Nation became a signatory to the *Framework Agreement on First Nation Land Management* on December 12, 2013, as Wasauksing First Nation wishes to govern its Land and Resources under the *Wasauksing First Nation Land Code*, rather than having its Land and Resources managed on its behalf under the *Indian Act*;

And Whereas the *Framework Agreement on First Nation Land Management* acknowledges that Canada's special relationship with Wasauksing First Nation will continue;

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

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

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**PART 1
PRELIMINARY MATTERS**

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1. Title

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Title

1.1 The title of this enactment is Wasauksing First Nation Land Code.

2. Definitions

Clarification

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

Definitions

2.2 The following definitions apply in this *Land Code*:

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

"Citizen" means a person whose name appears on the Wasauksing First Nation Citizenship List, as managed by Wasauksing First Nation in accordance with S10 of the *Indian Act*;

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

"Community Land" means any Wasauksing First Nation Land in which all Citizens have a common interest;

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

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

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

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

"*Framework Agreement*" means the *Framework Agreement on First Nation Land Management*, entered into between Canada and the signatory First Nations on February 12, 1996, and amended to include Wasauksing First Nation on December 12, 2013;

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

"Individual Agreement" means the Individual Agreement made between Wasauksing First Nation and Canada in accordance with clause 6.1 of the *Framework Agreement*;

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

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

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

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

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

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

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

"Natural Resources" or "Resources" means any materials found in nature, on or under the land, including wildlife, timber, fresh water, or a mineral deposit, that is necessary or useful to humans and therefore has economic value;

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

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

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

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

"Wasauksing First Nation" means Wasauksing First Nation and its Citizens.

3. Interpretation

Interpretation

3.1 In this Land Code:

- (a) the *Land Code* shall be interpreted in a fair, large and liberal manner;
- (b) the word "*shall*" signifies an obligation that, unless this *Land Code* provides to the contrary, must be carried out as soon as practicable after this *Land Code* comes into effect or the event that gives rise to the obligation;
- (c) unless it is otherwise clear from the context, the use of the word "including" means "including, but not limited to", and the use of the word "includes" means "includes, but is not limited to";
- (d) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine;
- (e) titles and headings of Parts and provisions have been inserted in the *Land Code* for convenience of reference only, and are not interpretive aids;
- (f) unless otherwise clear from the context, whenever the singular is used, it will include the plural, and the use of the plural includes the singular;
- (g) all references to a time period of days means consecutive days and not business days;

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- (h) where the time limited for the doing of an act expires or falls on a Saturday or Sunday, or a First Nation, federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday;
- (i) where the time limited for the doing of an act in the Wasauksing First Nation administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open;
- (j) where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded; and
- (k) the principles set out in the Preamble to this *Land Code* may be used to interpret this *Land Code*.

Culture and traditions

- 3.2 The structures, organizations and procedures established by or under this *Land Code shall* be interpreted in accordance with the culture, traditions and customs of Wasauksing First Nation, unless otherwise provided.
- 3.3 The structures, organizations and procedures established by or under this *Land Code shall* maintain the culture, traditions and customs of Wasauksing First Nation, including a Citizen's individual right to hunt, fish, harvest, and gather firewood for their Elders, Immediate Family and Extended Relatives.

Language

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

Paramouncy

- 3.5 If there is an inconsistency or conflict between this *Land Code* and any other enactment of Wasauksing First Nation, including a by-law enacted under section 81 of the *Indian Act*, this *Land Code* prevails to the extent of the inconsistency or conflict. Notwithstanding, this *Land Code* shall uphold, and not abrogate or derogate, from Wasauksing First Nation's s.35 rights under the *Constitution Act* or its rights under treaty.

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Consistency with Framework Agreement

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

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Rights not affected

- 3.7 This *Land Code* does not change:
- (a) the by-law powers of Council pursuant to the *Indian Act*;
 - (b) any Aboriginal, Treaty, inherent rights or other rights or freedoms that pertain now or in the future to Wasauksing First Nation or its Citizens; or
 - (c) the fiduciary relationship between Canada and Wasauksing First Nation and its Citizens.

Lands and Interests affected

- 3.8 A reference to Land in this *Land Code* means all rights and Resources in and of that Land, and includes:
- (a) the water, beds underlying water, Riparian Rights, and renewable and non-renewable Natural Resources in and of that Land, to the extent that these are under the jurisdiction of Canada;
 - (b) all the Interests and Licences granted to Wasauksing First Nation by Canada listed in the Individual Agreement; and
 - (c) all the Interests and Licences granted by Wasauksing First Nation after this *Land Code* comes into effect.

Eligible Reserve Land

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

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4. Authority to Govern

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Origin of authority

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- 4.1 The traditional teachings of Wasauksing First Nation speak of their profound relationship with the Land that is rooted in respect for the spiritual value of the Earth and gifts of the Creator, and of the people's obligation to act as caregivers to the Land. By enacting this *Land Code*, Wasauksing First Nation is reinforcing this special responsibility.

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Flow of authority

- 4.2 The authority of Wasauksing First Nation to govern its Land and Resources flows from the Creator to the people of Wasauksing First Nation, and from the people to Council according to the culture, traditions, customs and laws of Wasauksing First Nation.

Assurance of authority

- 4.3 Any power, authority, or discretion exercised by Council and other bodies or individuals established or authorized under the *Land Code* will be exercised on behalf of, and for the benefit and protection of Wasauksing First Nation.

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5. Purpose

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Purpose

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

6. Description of Wasauksing First Nation Land

Wasauksing First Nation Land

- 6.1 The Wasauksing First Nation Land that is subject to this *Land Code* is that Land known as **Wasauksing First Nation Parry Island Reserve No. 16.**

Description of Land

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

Additional Lands

- 6.3 Council may receive Community consultation in accordance with section 14, prior to the amendment of the description of Land or addition of reserve Land to the *Land Code*.

No Approval Required

- 6.4 For greater certainty, a community approval or ratification vote is not required for amending the description of reserve Land in the *Land Code* and Individual Agreement.

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Inclusion of Land or Interest

6.5 For greater certainty, Council may, by Resolution, declare the following Land or Interest to be subject to this *Land Code* and Individual Agreement after the applicable condition is met:

- (a) Any Land owned jointly by Wasauksing First Nation and another First Nation, when the First Nations involved agree upon a joint management scheme for those lands, and upon the conclusion of negotiations or litigation to have those lands returned to the First Nations;
- (b) The Land of the original intended reserve of 'four miles square' on the mainland upon the conclusion of negotiations or litigation to have those lands returned to Wasauksing First Nation;
- (c) Any Land or islands identified in the Wasauksing First Nation Boundary Clarification Claim upon the conclusion of the specific claim agreement and the return of those Lands identified in that agreement to the Wasauksing First Nation Parry Island Reserve No. 16;
- (d) Any other Land or Interest acquired by Wasauksing First Nation after this *Land Code* takes effect, whether by land claim, purchase, or other processes, subject to an environmental audit, and clearance or remediation as necessary, or that Council is satisfied that adequate provisions have been made for such clearance or remediation at no cost to Wasauksing First Nation, and with full indemnification to Wasauksing First Nation.

PART 2
FIRST NATION LEGISLATION

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7. Law-Making Powers

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Council may make Land Laws

7.1 Council may, in accordance with this *Land Code*, make Land Laws respecting:

- (a) the development, conservation, protection, management, use and possession of Wasauksing First Nation Land;
- (b) Interests and Licences in relation to Wasauksing First Nation Land; and

- (c) any matter necessary or ancillary to the making of Land Laws in relation to Wasauksing First Nation Land.

Examples of Land Laws

- 7.2 For greater certainty, Council may make Land Laws including, but not limited to:
 - (a) regulation, control and prohibition of zoning, Land use, subdivision control and Land development;
 - (b) the creation, regulation and prohibition of Interests and Licences in relation to Wasauksing First Nation Land;
 - (c) environmental assessment and protection;
 - (d) provision of local services in relation to Wasauksing First Nation Land and the imposition of equitable user charges;
 - (e) enforcement of Wasauksing First Nation Land Laws; and
 - (f) provision of services for the resolution, outside the courts, of disputes in relation to Wasauksing First Nation Land.

Regulatory Instruments

- 7.3 For greater certainty, in addition to Land Laws, Council may make other regulatory instruments, including, but not limited to, rules, regulations, standards, codes and policies.

8. Law-Making Procedure

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Introduction of Land Laws

- 8.1 A proposed Land Law may be introduced at a duly convened meeting of Council by:
 - (a) a Citizen;
 - (b) the Chief;
 - (c) a Councillor; or
 - (d) the representative of the Lands Committee, or other body or authority composed of Citizens, that may be authorized by Council to do so.

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Rationalization of Proposal

- 8.2 It *shall* be incumbent upon any proponent mentioned in clause 8.1 to submit a written explanation for the reason for the proposed Land Law.

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Procedure upon receipt of Proposal

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

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Tabling and posting of proposed Land Laws

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- 8.4 Before a proposed Land Law may be enacted by Council, it *shall* first be:
- (a) tabled at a duly convened meeting of Council held at least forty-two (42) days before the Land Law is to be enacted;
 - (b) deposited with the Lands Committee at least thirty-five (35) days before the Land Law is to be enacted; and
 - (c) provided to the Citizens, posted in public places on Wasauksing First Nation Land and publicly available online at least thirty-five (35) days before the Land Law is to be enacted.

Other Laws

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

Urgent matters

- 8.6 Council may enact a Land Law without the preliminary steps required under clause 8.4, by policy or Land Law, if Council is of the opinion that the Land Law is needed urgently for public health and safety or to protect Wasauksing First Nation Land or the Citizens.

Expiration

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

Wasauksing First Nation Land Code

Approval of Land Law

- 8.8 Subject Part 3 of this *Land Code* (Community Meetings and Approvals), a Land Law is approved by a quorum of Council at a duly convened meeting of Council open to the Citizens.

Certification of Land Laws

- 8.9 The original copy of any approved Land Law or Resolution concerning Wasauksing First Nation Land *shall* be signed by a quorum of Council.

Land Laws taking effect

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

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9. Publication of Land Laws

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Publication

- 9.1 Land Laws pursuant to this *Land Code shall* be published:
- (a) in the minutes of the Council meeting at which it was enacted;
 - (b) by posting a copy of the Land Law in a location within the administrative office of Wasauksing First Nation accessible to all Citizens, within seven (7) days after enactment and for a period of not less than thirty (30) days thereafter;
 - (c) by making it publicly available on the Wasauksing First Nation website; and
 - (d) any additional method as Council may consider appropriate.

Registry of Land Laws

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

Copies for any Person

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

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10. Enforcement of Land Laws

Enforceability of Land Laws

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

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

Prosecuting Offences

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

- (a) retain its own prosecutor;
- (b) enter into an agreement with the government of the province of Ontario to arrange for a provincial prosecutor; or
- (c) make laws with respect to the appointment of justices of the peace.

11. Repealing Land Laws

Repeals

11.1 A Land Law enacted under this Land Code may be amended or repealed in the same manner in which it was approved and enacted.

Other Laws

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

PART 3 COMMUNITY MEETINGS AND APPROVALS

12. Participation of Citizens

Participation of Citizens

12.1 Every Citizen is entitled to participate in the community meetings process set out in Part 3 of this *Land Code*.

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13. Participation of Eligible Voters

Participation of Eligible Voters

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

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14. Community Meetings of Citizens

Community Meetings

14.1 Council *shall* call a Meeting of Citizens prior to:

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

No Quorum

14.2 For greater certainty, a community meeting for input purposes does not require a quorum.

15. Procedure at a Meeting of Citizens

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Notice of meeting

15.1 Council *shall* give written notice of the Meeting of Citizens 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; and
- (c) such other information and material that Council may consider appropriate.

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Manner of notice

15.2 The notice of a Meeting of Citizens *shall* be given to the Citizens by:

- (a) posting the notice in public places on Wasauksing First Nation Land at least thirty (30) days before the meeting;
- (b) mailing the notice to Citizens and taking reasonable steps to locate and inform Citizens who reside on and off-reserve at least thirty (30) days before the meeting;
- (c) posting the notice on a website maintained by the Wasauksing First Nation that is open and accessible by any person who may be entitled to attend the meeting at least thirty (30) days before the meeting;
- (d) publishing the notice in the community newsletter or local newspaper at least thirty (30) days before the meeting; and
- (e) such additional method as Council may consider appropriate in the circumstances.

Permission of Council

15.3 A person, other than a Citizen, may attend a Meeting of Citizens only with permission of a quorum of Council.

Informed Decision

15.4 Council may schedule more than one Community Meeting of Citizens as may be necessary to ensure that Citizens are well informed before making a decision on a proposed Land Law or Land matter.

16. Community Approval

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Community approval

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16.1 Community approval *shall* be obtained for the following:

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- (a) any master Land use plan;
- (b) any new grant or disposition of an Interest or Licence in any Wasauksing First Nation Land exceeding a term of thirty five (35) years;

- (c) any renewal of a grant or disposition of an Interest or Licence in any Wasauksing First Nation Land that extends the original term beyond thirty five (35) years;
- (d) any grant or disposition of any non-renewable Natural Resources on any Wasauksing First Nation Land exceeding a term of five (5) years;
- (e) any deletion of a heritage site or environmentally protected area;
- (f) any voluntary exchange of Wasauksing First Nation Land referred to in section 19 of this *Land Code*; and
- (g) any Land Law or class of law that Council, by Resolution, declares to be subject to this section.

Method of Voting

16.2 Community approval shall be obtained by calling for a vote by one or more of the following methods, including:

- (a) establishing polling locations;
- (b) show of hands;
- (c) mail-in ballot;
- (d) alternative voting methods, such as electronic and telephone voting;
or
- (e) any other method outlined in voting policies.

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Quorum

16.3 In order to obtain a quorum for community approval under section 16 of this *Land Code* at least ten percent (10%) of Eligible Voters **shall** participate.

Approval by Majority

16.4 For community approvals under section 16, a matter **shall** be considered approved if a majority of fifty percent plus one (50%+1) of the quorum of Eligible Voters, as per clause 16.3, cast a vote to approve the matter.

Second Community Approval

16.5 If a quorum was not obtained pursuant to clause 16.3, a second community approval vote may be called.

Second Community Approval Vote

16.6 In order to obtain a quorum for a second attempt at a community approval vote under section 16 of this *Land Code* at least five percent (5%) of Eligible Voters *shall* participate.

Approval by Majority

16.7 A matter *shall* be considered approved at a second attempt at a community approval vote, if a majority of fifty percent plus one (50%+1) of the quorum of Eligible Voters, as per clause 16.6, cast a vote to approve the matter.

Third Community Approval Vote

16.8 If a quorum was not obtained pursuant to clause 16.6, a third community approval vote may be called without any quorum requirement.

Approval by Majority

16.9 A matter *shall* be considered approved at a third attempt at a community approval vote, if a majority of fifty percent plus one (50%+1) of the Eligible Voters in attendance, as per clause 16.8, cast a vote to approve a matter.

No Further Vote if Land Matter Rejected

16.10 For greater certainty, if, after any attempt at a community approval vote where quorum was obtained, the matter is not approved, the Land Law or Land matter shall not be executed and shall have no effect.

Community Consultation Incorporated for a Second Vote

16.11 The matter may be resubmitted for a vote under clause 16.3 provided additional community consultation occurs and is incorporated into the proposed Land Law or Land matter.

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17. Ratification Votes

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Community Approval by ratification vote

17.1 Community approval by ratification vote *shall* be obtained for an amendment to this *Land Code*.

Exceptions

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

- (a) an amendment to the description of Land of this *Land Code*;
- (b) revisions to this *Land Code* made pursuant to section 50; and

(c) an amendment to, or renewal of, the Individual Agreement.

Ratification process

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

No verifier

17.4 A verifier is not required in any ratification vote.

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Quorum

17.5 In order to obtain a quorum for a community approval by ratification vote under this *Land Code* at least twenty five percent (25%) of Eligible Voters **shall** register.

Approval by majority

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

Second Ratification Vote

17.7 If a quorum was not obtained pursuant to clause 17.5, a second ratification vote may be called.

Second Attempt at Ratification Vote Quorum

17.8 In order to obtain a quorum for community approval for a second attempt at a ratification vote under this *Land Code* at least ten percent (10%) of Eligible Voters **shall** register.

Approval by majority

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

Policies Consultation, Approval and Ratification

17.10 For greater certainty, Council may make Land Laws or policies:

- (a) for Meetings of Citizens;
- (b) for community consultations;
- (c) for community approvals;

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- (d) for ratification votes; and
- (e) respecting any other matter, that Council, by Resolution, declares to be subject to Part 3 of this *Land Code*.

**PART 4
PROTECTION OF LAND**

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18. Expropriation

Acquisition by Mutual Agreement

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

Rights and Interest that may be expropriated

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

Community purposes

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

Expropriation Land Laws

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

- (a) the taking of possession of the Interest or Licence;
- (b) transfer of the Interest or Licence;
- (c) notice of expropriation and service of the notice of expropriation;
- (d) entitlement to compensation;
- (e) determination of the amount of compensation; and

(f) the method of payment of compensation.

Citizen notification

18.5 In the case of an expropriation of a Citizen's Interest in Wasauksing First Nation Land, the affected Citizen or Citizens *shall* receive notification of the expropriation within a reasonable time prior to the release of the public report referred to in clause 18.6.

Public report

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

Rights that may not be expropriated

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

Compensation for rights and Interests

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

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

Compensation calculations

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

Market value

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

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Neutral evaluation to Resolve Disputes

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

Arbitration to resolve Disputes

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

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

19. Voluntary Exchange of Wasauksing First Nation Land

Conditions for a land exchange

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

No effect

19.2 A land exchange is of no effect unless it receives community approval in accordance with Part 3 of this *Land Code* and with clause 14.2 of the *Framework Agreement*.

Land to be received

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

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Negotiators

19.4 The person who will have authority to negotiate a land exchange agreement on behalf of the Wasauksing First Nation *shall* be designated by Resolution of Council.

Additional land

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

Federal Consent

19.6 Before Wasauksing First Nation concludes a land exchange agreement, it *shall* receive a written statement from Canada clearly stating that Canada:

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

Community notice

19.7 Once negotiations on the land exchange agreement are concluded, Council *shall* provide the following information to Eligible Voters at least thirty (30) days before the vote:

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

Process of land exchange

19.8 The land exchange agreement *shall* provide that:

- (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;

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

PART 5 ACCOUNTABILITY

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20. Conflict of Interest or Appearance of Conflict of Interest

Application of rules

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

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

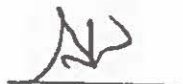
Duty to report and abstain

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

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

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Apparent conflict of interest

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

Inability to act

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

Meeting of Citizens

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

Specific Conflict situations

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

Elected Body

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

Disputes

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

Other laws

20.9 Any Land Law enacted in respect of conflict of interest will be consistent with the existing Wasauksing First Nation Conflict of Interest Policy, as amended from time to time, and without limiting the generality of the foregoing, will include:

- (a) A definition of conflict of interest;

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- (b) A requirement that no member of Council or person to whom the Land Law applies will be involved in any transaction or matter where they are in conflict of interest or appear to be in a conflict of interest;
- (c) A procedure for disclosure of conflicts of interest or appearances of conflict of interest;
- (d) A procedure for resolving disputes regarding whether a conflict of interest exists;
- (e) A procedure for approving a transaction where a conflict of interest or appearance of conflict of interest exists; and
- (f) Remedies or penalties.

21. Financial Management

Application

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21.1 This section applies only to financial matters relating to Wasauksing First Nation Land and Natural Resources.

Financial policies

21.2 Any Land Law enacted in respect of financial management, will be consistent with the existing Wasauksing First Nation Financial Administration Law, as amended from time to time, and without limiting the generality of the foregoing, will include:

- (a) Continuation or implementation of a system of financial planning and financial administration for the management of First Nation moneys through which the Council, First Nation employees and other persons who manage moneys in relation to Wasauksing First Nation Land are accountable to the Citizens within the meaning of Clause 5.2(d) of the Framework Agreement;
- (b) regulating the receipt, management and expenditure of moneys, including transfer payments, all capital and revenue moneys received from Canada, all Land revenue, and moneys received from a grant or disposition of any Interests or Licences in relation to Wasauksing First Nation Land and Natural Resources;
- (c) managing financial records and accounts;
- (d) preparing financial statements and audits;
- (e) preparing and implementing Land management budgets and annual presentation of budgets;
- (f) determining the general investment strategy;

- (g) contract notes, loans and other indebtedness;
- (h) establishing fees, fines, charges and levies; and
- (i) establishing and maintaining confidentiality, records security and document retention.

Administrative structure

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21.3 Council *shall* establish the administrative structure:

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

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22. Annual Report

Publish annual report

22.1 Council, on behalf of the Wasauksing First Nation, *shall* publish an annual report on Land matters.

Contents

22.2 The annual report will include:

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

23. Access to Information

Access

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

- (a) the register of Land Laws;

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- (b) the auditor's report; and
- (c) the annual report on Land and Natural Resources.

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Copies for Citizens

23.2 Any Citizen may obtain a copy of the auditor's report or annual report on payment of a reasonable fee set by or under Resolution of Council.

Access to records

23.3 Any person authorized by Council may, at any reasonable time, inspect the financial records of Wasauksing First Nation related to Wasauksing First Nation Land.

PART 6 LAND AND NATURAL RESOURCES ADMINISTRATION

24. Land Staff

Administration

24.1 Council may delegate administrative authority to staff to carry out functions necessary for day to day administrative operations of Land and Natural Resources.

25. Lands Committee

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Lands Committee established

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

- (a) assist with the development of the Land administration system;
- (b) advise Council and its staff on matters respecting Wasauksing First Nation Land;
- (c) recommend Land Laws, Resolutions, policies and practices respecting Wasauksing First Nation Land to Council;
- (d) consult with Citizens and non-Citizens on Wasauksing First Nation Land issues, and to make recommendations on the resolution of those issues to Council;
- (e) oversee community Meetings of Citizens, community approvals and ratification votes; and
- (f) perform such other duties as may be delegated or assigned by Resolution or Land Law under this *Land Code*.

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Process to Implement Land Laws

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

Development of Land related rules and procedures.

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

- (a) environmental protection and assessment in relation to Wasauksing First Nation Land;
- (b) any outstanding issues on the resolution of disputes in relation to Wasauksing First Nation Land;
- (c) Land use planning and zoning;
- (d) section 40 respecting Matrimonial real property on reserve and whether any change should be made to the policy upon which that section is based; and
- (e) any other matter referred by Council.

Implementation of Policies

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

Internal procedures

25.5 The Lands Committee may establish rules for the procedure at its meetings and generally for the conduct of its affairs, not inconsistent with those established in the *Wasauksing First Nation Lands And Resources Committee (LARC) Kinaa Eh Gwuk Sii Yung Terms of Reference*, or its successor, as approved by Council.

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26. Implementation of the Lands Committee

First Lands Committee

26.1 Immediately upon the coming into effect of this *Land Code*, the Lands And Resources Committee (LARC) Kinna Eh Gwuk Sii Yung, as it exists on the Official Ratification Vote Date of this Lands Code, shall continue to serve the remainder of their term in accordance with the *Wasauksing First Nation Lands And Resources Committee (LARC) Kinna Eh Gwuk Sii Yung Terms of Reference*, as amended from time to time.

Policy Governing Successors to the First Lands Committee

26.2 As soon as possible after the coming into force of this *Land Code*, Council, in consultation with the Lands Committee, *shall* develop, adopt or revise existing policies, and the *Wasauksing First Nation Lands And Resources Committee (LARC) Kinna Eh Gwuk Sii Yung Terms of Reference* to ensure that there are appropriate provisions for community involvement in the selection, election, or appointment of Eligible Voters to serve on the Lands Committee, and dealing with such matters as number of members, composition, eligibility, Chair and Deputy Chair, functions of the Chair, term of office, remuneration, conditions of service, termination of membership, vacancies arising during term and such other matters as Council deems appropriate to the operation of the Lands Committee.

PART 7 INTERESTS AND LICENCES IN LAND

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27. Revenue from Lands and Natural Resources

Revenue from Natural Resources

27.1 The Natural Resources on Community Land and any revenue arising from the sale of those Resources belongs to Wasauksing First Nation.

Determination of fees and rent

27.2 The Lands Committee *shall*, subject to the approval of Council, establish the process and recommend any Land Laws, rules and policies for determining:

- (a) the fees and rent for Interests and Licences in Wasauksing First Nation Land;
- (b) the fees for services provided in relation to any Wasauksing First Nation Land; and

- (c) the fees and royalties to be paid for the taking of Natural Resources from Wasauksing First Nation Land.

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28. Registration of Interests and Licences

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Enforcement of Interest and Licences

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

Registration of Consent or approval

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

Instrument void

- 28.3 An instrument registered in the First Nation Lands Register and the separate Wasauksing First Nation Lands Register which does not include the certificate referred to in clause 28.2 is void.

Duty to deposit

- 28.4 An original copy of the following instruments *shall* be deposited in the First Nation Lands Register and the separate Wasauksing First Nation Lands Register:
 - (a) any grant of an Interest or Licence in Wasauksing First Nation Land;
 - (b) any transfer or assignment of an Interest or Licence in Wasauksing First Nation Land;
 - (c) every Land use plan, subdivision plan or Resource use plan; and
 - (d) this *Land Code* and any amendment to this *Land Code*.

29. Separate Wasauksing First Nation Lands Register

Maintain a separate Wasauksing First Nation Register

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

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Duty to Deposit

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

Priority

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

30. Limits on Interests and Licences

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All dispositions in writing

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

Standards

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

Improper Transactions void

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

31. Existing Interests

Continuation of existing Interests and Licences

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

Voluntary exchange

31.2 For greater certainty, Interests or Licences previously issued under the *Indian Act shall* continue in effect after the coming into force of this *Land Code*.

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Unregistered Interests

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

32. New Interests and Licences

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Authority to make dispositions

32.1 Subject to clause 16.1, Council may, on behalf of Wasauksing First Nation, grant:

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

Conditional grant

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

Role of the Lands Committee

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

33. Interests of Non-Citizens

Grants to non-Citizens

33.1 A transfer or other disposition of all or any part of an interest or Licence in Wasauksing First Nation Land to a person who is not a Citizen *shall* not be effective unless and until it is confirmed by a Resolution of Council, adopted with the advice of the Lands Committee.

34. Certificates of Possession or Citizen Interests

Application

34.1 For greater certainty, certificates of possession previously issued under the *Indian Act*, Citizen Interests, or traditional land allotments previously issued by a decision of Council *shall* continue to exist after the coming into force of this *Land Code*.

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35. Allocation of Land to Citizens

Policies and procedures for allocation of Land

35.1 Subject to the provisions of this *Land Code*, Council in consultation with the Lands Committee *shall* establish Land Laws, policies and procedures for the traditional allocation of Land to Citizens consistent with the *Wasauksing First Nation Community Development Plan (aka Land Use Policy)*, or its successor thereof.

Allocation

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

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

No allocation of Land to non-Citizens

35.3 A person who is not a Citizen is not entitled to be allocated Land or to hold a permanent Interest in Wasauksing First Nation Land.

36. Transfer and Assignment of Interests

Transfer of Citizen Interest

36.1 A Citizen may transfer or assign their Interest in Wasauksing First Nation Land to another Citizen without community approval or the consent of Council.

Consent of Council

36.2 There *shall* be no transfer or assignment of an interest in Wasauksing First Nation Land without the written consent of Council, except for:

- (a) transfers under clause 36.1;
- (b) transfers that occur by operation of law, including transfers of estate by testamentary disposition; and
- (c) transfers in accordance with the Matrimonial Real Property on Reserve Law enacted pursuant to section 40.

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37. Limits on Mortgages and Seizures

Protections

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

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

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Mortgage of Allocated Land

37.2 The Interest of a Citizen in First Nation Land may be subject to a mortgage or charge, but only to a Citizen or to Wasauksing First Nation with the express written consent of Council through a Resolution of Council.

Mortgages of leasehold Interests with consent

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

Time limit

37.4 The term of any charge or mortgage of a leasehold Interest *shall* not exceed the term of the lease.

Default in mortgage

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

Power of redemption

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

Waiver of redemption

37.7 Council may, by Resolution, waive the requirements of 37.6 for any charge or mortgage of a leasehold Interest or Licence.

38. Residency and Access Rights

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Right of residence

38.1 The following persons have a right to reside on Wasauksing First Nation Land;

- (a) Citizens, their Spouses and children;
- (b) Citizens with a registered Interest in Wasauksing First Nation Land;
- (c) any invitee of a Citizen referred to in clause (a) or (b);
- (d) lessees and permittees, in accordance with the provisions of the granting instrument; and
- (e) a person authorized in writing by Council or by a Wasauksing First Nation Land Law.

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

Right of Access

38.3 The following persons have a right of access to Wasauksing First Nation Land:

- (a) Wasauksing First Nation Citizens, their Spouses, children, and his or her invitees;
- (b) a lessee and his or her invitees;
- (c) a person granted a right of access under a permit; or
- (d) a person authorized in writing by Council or by a Wasauksing First Nation Land Law.

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Public access

38.4 Any person may have access to Wasauksing First Nation Land for any social or business purposes, if:

- (a) the person does not trespass on occupied Land and does not interfere with any Interest in Land;
- (b) the person complies with all applicable laws;
- (c) the person is attending a public event approved by Council, is obtaining goods or services from a Council approved business, or has written permission from Council to access Wasauksing First Nation Land; and
- (d) no Resolution has been enacted barring that person.

Use of Roads

38.5 Any person having a right of access to Wasauksing First Nation Land may have the right of access to Wasauksing First Nation public roads, subject to this *Land Code* and Land Laws.

Trespass

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

Civil remedies

38.7 All civil remedies for trespass are preserved.

39. Transfers on Death

Indian Act application

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

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Registered of transfer

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

Disposition of Interest

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

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

40. Matrimonial Real Property on Reserve Law

Development of rules and procedures

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

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

Enactment of rules and procedures

40.2 The rules and procedures contained in the matrimonial real property on reserve law *shall* be developed by a Matrimonial Real Property Working Group, in consultation with the community.

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Policy Governing the Matrimonial Real Property Working Group

40.3 As soon as possible after the coming into force of this Land Code, Council, in consultation with the Lands Committee, shall develop a Terms of Reference for the Matrimonial Real Property Working Group to ensure that there are appropriate provisions for community involvement in the selection, election, or appointment of Eligible Voters to serve on the Working Group, and dealing with such matters as number of members, composition, eligibility, Chair and Deputy Chair, functions of the Chair, term of office, remuneration, conditions of service, termination of membership, vacancies arising during the term and such other matters as Council deems appropriate to the operation of the Working Group.

Enactment deadline

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

General principles

40.5 For greater certainty, the rules and procedures developed by the Matrimonial Real Property Working Group under this section *shall* respect the following general principles:

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

Immediate rules

40.6 Until a matrimonial real property on reserve law is enacted under the Land Code, the provisional rules of the *Family Homes on Reserves and Matrimonial Interests or Rights Act S.C. 2013, c.20* shall apply effective December 16, 2014.

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**PART 8
DISPUTE RESOLUTION**

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41. Purpose

Intent

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

Purpose

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

42. Disputes

Dispute Prevention

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

Disputes Prior to *Land Code*

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

Decision of Council

42.3 If a Citizen, or a non-Citizen with an Interest in Wasauksing First Nation Land, has a dispute with respect to a decision of Council, the person *shall* first attempt to resolve that dispute with Council or the Lands Committee, before referring the dispute to the Panel.

Settle a Dispute

42.4 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.

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Settlement Agreement

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

Contractual Agreement

42.6 A contractual agreement made under this *Land Code* may establish that the dispute resolution outlined in this *Land Code* and its Land Laws may be mandatory or may to some degree prescribe for alternate dispute resolution processes if there is consensual agreement by the parties involved in that agreement. The dispute resolution clause which forms part of a contract *shall* be treated as an agreement independent of the other terms of the contract.

Variation of Rules

42.7 The parties to a dispute to which these rules apply may to some degree, modify, vary or amend these rules by consensual agreement in writing, and notify the Panel in writing.

Civil Remedies

42.8 Notwithstanding clause 42.6 and 42.7, nothing in this Part *shall* be construed to prevent a party to a dispute from, at any stage of dispute resolution, applying to have the dispute resolved in a court of competent jurisdiction.

Challenge to Validity of Law

42.9 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. Processes

Staged Processes

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

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

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Procedure to File a Dispute

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

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

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Termination of Processes

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

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

Notice of Termination

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

Dispute resolution not available

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

- (a) administration or distribution of an estate;
- (b) decisions relating to housing allocations;
- (c) decisions of Council to grant or refuse to grant an Interest or Licence in Wasauksing First Nation Land to a non-Citizen;
- (d) decisions on expropriation under section 18 of this *Land Code*: and
- (e) prosecution or conviction of an offence under a Land Law or under criminal law.

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Duty of Fairness

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

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- (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

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

- (a) facilitated discussions, mediations, negotiations and final arbitrations;
- (b) terms of office for panelists;
- (c) remuneration of facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part;
- (d) code of conduct for facilitators, mediators, arbitrators, panelists, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part;
- (e) disclosure and confidentiality;
- (f) imposition of time limitations for submitting a notice of dispute and referring a matter or dispute to the Panel;
- (g) implementing recommendations of the Dispute Resolution Panel made under clause 47.2; and
- (h) any other matter necessary to give effect to this Part.

Waiver of Liability

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

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44. Roster Panel Established

Appointment to Roster Panel

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

Ineligible

44.2 Notwithstanding section 20, in order to avoid conflict of interest, no Council member, or employee of the Wasauksing First Nation department responsible for managing Wasauksing First Nation Land or person already serving on another board, body, or committee related to Wasauksing First Nation Land *shall* sit on the Roster Panel.

Representation

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

Rules of Roster Panel

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

45. Impartiality of the Dispute Resolution Panel

Duty to Act Impartially

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

Offence

45.2 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

45.3 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

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

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46. Arbitration by the Dispute Resolution Panel

Disputes

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

Panel of Three Chosen From Roster Panel

46.2 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 two (2) panelists chosen in section (a) above; 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.

Panel Established

46.3 The Panel is hereby established with jurisdiction to resolve disputes in relation to Wasauksing First Nation Land. For greater certainty, disputes outlined in clause 43.5 *shall* not be heard by the Panel.

47. Powers of the Dispute Resolution Panel

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Power of the Panel

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47.1 The Panel may, after hearing a dispute:

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

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Recommendations by Panel

47.2 In addition to making a determination under clause 47.1, 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

47.3 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 Wasauksing First Nation Land.

Professional Services

47.4 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

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

Appeal of Decision

47.6 A decision of the Panel is binding but, subject to review by the Federal Court (Trial Division).

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PART 9
OTHER MATTERS

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48. Liability

Liability Coverage

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

Extent of coverage

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

49. Offences

Application of the Criminal Code

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

Fines & Imprisonment

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

Penalties in Laws

49.3 A Wasauksing First Nation Land Law may provide for a penalty which is different than the penalties referred to in clause 49.1 and 49.2.

50. Revisions to *Land Code*

Revisions

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

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

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51. Commencement

Preconditions

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

Commencement date

51.2 This *Land Code shall* take effect on the first day of the month following the certification of this *Land Code* by the verifier.

VERIFIED
OCT 24 2016


APPENDIX "A"

Description of the Wasauksing First Nation Land as listed as ANNEX "G" in the Individual Agreement on First Nation Land Management between Wasauksing First Nation and Canada.

ANNEX "G"

[INSERT ANNEX "G" OF INDIVIDUAL AGREEMENT HERE]

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DATE


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