

HIFN Environmental Stewardship Regime  
ENVIRONMENTAL ASSESSMENT AND PERMITTING  
Proposed HIW Energy Centre on Henvey Inlet Reserve No. 2 Lands

PRIVILEGED AND CONFIDENTIAL (DRAFT – May 26, 2015)

Land Law enacted pursuant to Henvey Inlet First Nation’s Land Code with respect to environmental assessment and permitting for a wind energy generation centre proposed on lands within Henvey Inlet First Nation Reserve No.2.

**PART 1**  
**DEFINITIONS**

1. (1) In this Land Law:

“Act” and “FNLMA” mean the *First Nations Land Management Act*, S.C.1999, c. 24, as amended;

“BCR” means a resolution of Council;

“community” means the membership from time to time of HIFN;

“Community Approval” means the process and terms set out in section 13 of the Land Code;

“Community Input” means consultation set out in section 12.01 of the Land Code;

“designated environmental assessment record” means a document or email or text identified in subsection 5(3) of this regime;

“EA” means environmental assessment;

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

“Energy Centre” means the wind energy physical works and activities proposed for construction, operation and eventual decommissioning on Reserve No.2 lands by HIW pursuant to the 2011 Feed-in-Tariff (FIT) Contract Identification # F-001556-WIN-130-601, issued by Ontario Power Authority to Nigig Power Corporation;

“environment” means the components of the Earth and includes:

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

“environmental assessment record” means a document in paper or electronic form that is related to this environmental assessment and:

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- (a) prepared by the proponent and submitted to Council as the EA or part of the EA;
- (b) prepared by the proponent and made publicly available by the proponent;
- (c) prepared by the proponent and provided to Council or an advisor or expert retained by Council;
- (d) prepared by an advisor or expert retained by Council and submitted to Council;
- (e) prepared by a government or agency and submitted to the proponent or Council; or
- (f) prepared by any member of the community or the public and submitted to the proponent or Council;

“environmental effect” means, in respect of the proposed Energy Centre,

- (a) any change that the Energy Centre may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the *Species at Risk Act, 2002*;
- (b) any effect of any change referred to in paragraph (a) on:
  - (i) health and socio-economic conditions,
  - (ii) physical and cultural heritage,
  - (iii) the current use of lands and resources for traditional purposes by aboriginal persons, or
  - (iv) any structure, site, or thing that is of historical, archaeological, paleontological, or architectural significance; or
- (c) any change to the Energy Centre that may be caused by the environment,

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

“Environmental Permit” means a permit issued by Council to HIW under and in accordance with Part 3 of this Land Law;

“expert” means a person retained by Council who is, to Council’s satisfaction, unbiased, free from conflict of interest, and has knowledge or expertise relevant to the potential environmental effects of the Energy Centre;

“guidance instrument” means the Land Law contemplated by and described in section 11 of Part 2 of this Land Law that provides binding direction to the proponent of the Energy Centre for its environmental assessment;

“HIFN” means Henvey Inlet First Nation;

“HIW” means Henvey Inlet Wind LP and its successor, transferees, and assigns with respect to the Energy Centre;

“irrevocable decision” means a decision to issue an Environmental Permit;

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“Land Code” means the Henvey Inlet First Nation Land Code passed on September 9, 2009, amended on November 27, 2012, and certified on April 29, 2013;

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

“principles” means:

- (a) for Part 2, the principles set out in section 2; and
- (b) for Part 3, the principles set out in section 17;

“proponent” means HIW and includes agents appointed in writing by it;

“public” means persons who are not members of HIFN;

“qualified person” means a person having the following minimum attributes:

- (a) extensive experience with managing environmental assessments, particularly federal environmental assessments;
- (b) extensive experience working with First Nations on environmental assessments;
- (c) experience with managing Ontario’s renewable energy approval process for wind energy generation; and
- (d) employment as part of an office with support staff and colleagues having federal environmental assessment and renewable energy approval experience;

“recommission” shall mean a proposal by HIW to construct and operate wind energy works and activities on Reserve No.2 lands following the termination or expiry of the 2011 FIT Contract Identification # F-001556-WIN-130-601, issued by the Ontario Power Authority to Nigig Power Corporation;

“Reserve lands” means lands subject to the Land Code;

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

- (2) Headings are part of this Land Law.
- (3) Where this Land Law uses a term defined in the Land Code, the Land Code definition applies.

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**PART 2**  
**ENVIRONMENTAL ASSESSMENT**

**PRINCIPLES**

2. The following principles guide the environmental assessment required by Council for the proposed Energy Centre:
  - (1) The purpose of this environmental assessment is to assess and influence the design of the proposed construction, operation, and decommissioning of the Energy Centre to avoid or minimize and mitigate potential significant adverse environmental effects on Reserve lands.
  - (2) To promote the avoidance or mitigation of adverse environmental effects, the EA will provide for protection of Nishshing Aki on Reserve lands and otherwise consider substantive standards that are at least equivalent in effect to the federal and provincial standards applicable to similar wind energy generation facilities located in Ontario, not on Reserve lands.
  - (3) To promote community and public engagement, the EA will include a process of notice, information, and comment analogous to the process applicable to similar wind energy generation facilities located in Ontario, not on Reserve lands.
  - (4) Council may delegate to any person the exercise of some or all powers, duties or functions required to carry out and complete the Energy Centre EA other than Council's decisions on the EA.
  - (5) Council shall not accept the Energy Centre environmental assessment unless Council is satisfied that the EA process and EA report conform to this Land Law.

**APPLICATION**

3.
  - (1) This Part of the Land Law applies to the proponent during the planning process for the development of the Energy Centre.
  - (2) This Part requires that, prior to any irrevocable decision to issue an Environmental Permit that would authorize the construction or operation of the Energy Centre, the proponent of the Energy Centre shall carry out and complete an environmental assessment that is acceptable to Council.
  - (3) Pursuant to this Land Law, Council authorizes the proponent to undertake all investigations or actions necessary to conduct the environmental assessment required by this Part.

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**ADMINISTRATION**

4. (1) Council is responsible for:
  - (a) administering this environmental assessment; and
  - (b) ensuring that all requirements of the Energy Centre environmental assessment process are carried out in accordance with the principles and requirements of this Part before it makes an irrevocable decision.
- (2) Council may delegate powers, duties or functions over the environmental assessment required for the Energy Centre other than decisions pursuant to sections 14 and 15 of this regime.
- (3) To assist with its administration of the environmental assessment, Council may appoint an EA coordinator.

**REPOSITORY AND ELECTRONIC REGISTRY**

5. (1) During the environmental assessment process for the Energy Centre, the proponent shall:
  - (a) establish and maintain a repository and an electronic registry of all environmental assessment records received by it during the environmental assessment process;
  - (b) establish and maintain through a website an electronic registry of all designated environmental assessment records and a complete index of such records;
  - (c) ensure that the electronic registry is maintained to provide direct public access to all designated environmental assessment records, subject to subsection (2); and
  - (d) ensure, subject to a reasonableness standard, that any environmental assessment record in the repository is available on request.
- (2) During the environmental assessment process for the Energy Centre, Council shall:
  - (a) subject to subsection (4), provide an electronic copy of all environmental assessment records received by it to the proponent;
  - (b) where a person or body that has provided or is subject to a duty to provide a record forming part of the environmental assessment under this Land Law reasonably believes that the record would not reasonably be expected to be disclosed under the federal *Access to Information Act* and/or the Ontario equivalent, as amended, permit that person or body at the time of providing the record to the Council to request that such record be held in confidence; and
  - (c) following receipt of a record requested to be held in confidence under paragraph (b), review the request and decide within 15 days whether such record would not reasonably be expected to be disclosed under the above-noted legislation and, if so, hold such record in confidence and not disclose it.

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- (3) The following environmental assessment records are designated:
- (a) a Land Law relevant to the environmental assessment that is tabled or issued by Council;
  - (b) a notice relevant to any phase of the environmental assessment process that is issued by the proponent or the Council during the environmental assessment process;
  - (c) an environmental assessment report submitted to Council or made publicly available by the proponent;
  - (d) a study, report, or appendix that is submitted to Council as part of the environmental assessment or made publicly available by the proponent; and
  - (e) a letter or record prepared by a government or agency that comments on the environmental assessment and was submitted to the proponent or Council.

**ADVISORS AND EXPERTS**

6. Council may at any time appoint advisors and experts to advise it on the environmental assessment or any part of the environmental assessment process.

**PROCESS**

7. (1) The environmental assessment process consists of four phases:
- (a) Phase 1: Council guidance to the proponent;
  - (b) Phase 2: the EA and EA report;
  - (c) Phase 3: review of the EA; and
  - (d) Phase 4: Council decision on the EA.
- (2) During the environmental assessment process, Council may at any time:
- (a) consult with the proponent or request information from the proponent that is relevant to this environmental assessment; and
  - (b) consult with Canada or any government or ministry or agency.

**PHASE 1: COUNCIL GUIDANCE TO THE PROPONENT**

8. (1) Council shall provide binding direction to the proponent of the EA, through approval of a guidance instrument that is consistent with this Part and addresses the following environmental assessment topics:
- (a) the proposed construction, operation, and decommissioning of physical works or activities by HIW that are part of the Energy Centre;
  - (b) the related physical works or activities by HIW which shall be considered with the Energy Centre, including works or activities off Reserve lands;
  - (c) Nishshing Aki and valued ecosystem components;
  - (d) the factors to be considered;

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- (e) the standards relevant to the assessment of the significance of adverse environmental effects;
  - (f) community and public consultation by the proponent; and
  - (g) any other matters which are relevant to the environmental assessment.
- (2) For greater certainty, in the event of conflict between the guidance instrument and this Land Law, this Land Law prevails.

PHASE 2: THE EA AND EA REPORT

9. (1) The proponent shall carry out the environmental assessment in conformity with the requirements of this Part and the guidance instrument.
- (2) The proponent shall:
- (a) carry out the environmental assessment to address the following factors:
    - (i) the scale and location of the Energy Centre,
    - (ii) the existing environment without the Energy Centre,
    - (iii) the potential effects of the existing environment on the Energy Centre,
    - (iv) the protection of Nishshing Aki from adverse environmental effects,
    - (v) the adverse environmental effects of the Energy Centre on valued ecosystem components and their likelihood,
    - (vi) the overlapping adverse environmental effects on valued ecosystem components that may arise from the Energy Centre and related physical works and activities on and off Reserve lands,
    - (vii) the cumulative adverse environmental effects on valued ecosystem components that are likely to arise from the Energy Centre and related works and activities in combination with other projects and activities that have occurred, are occurring, or are reasonably foreseeable in the future,
    - (viii) all measures proposed by the proponent to avoid adverse environmental effects of the Energy Centre and related physical works and activities that are likely to occur on Nishshing Aki on Reserve lands,
    - (ix) all measures proposed by the proponent to avoid or mitigate adverse environmental effects of the Energy Centre and related physical works and activities that are likely to occur to valued ecosystem components on and off Reserve lands,
    - (x) the significance of adverse environmental effects on valued ecosystem components and their likelihood, taking into account mitigation,
    - (xi) any issues that make uncertain the prediction of environmental effects or their significance; and

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- (b) prepare and submit to Council a report on the environmental assessment that summarizes all of the factors addressed in paragraph (a), in two stages, as follows:
  - (i) Stage 1: a draft EA report to support consultation with interested persons and review by HIFN experts, and
  - (ii) Stage 2: a final EA report which clearly identifies
    - (A) amendments to the draft EA report and the reasons for the amendments, and
    - (B) actions taken to carry out community and public consultation, the results of such consultation on the report, and the results of expert input on the report.
- 10. To evaluate the significance of adverse environmental effects caused by the Energy Centre, the draft and final EA reports shall identify one of the following conclusions for each adverse environmental effect:
  - (a) without any mitigation, the effect is not significant;
  - (b) after applying identified mitigation, the effect is not significant;
  - (c) after applying identified mitigation, the effect is significant; or
  - (d) the significance of the effect is uncertain.
- 11. Council may upon request of HIW during the environmental assessment process and consistent with the guidance instrument, provide written interpretive advice on the following environmental assessment topics:
  - (a) the interpretation of the guidance instrument;
  - (b) the form or content of notices required for the environmental assessment under this Land Law;
  - (c) standards respecting environmental effects which must be considered in the environmental assessment; and
  - (d) the kinds of investigations or actions which may be taken on No.2 Reserve lands by the proponent to prepare the environmental assessment of the Energy Centre.

PHASE 3: REVIEW OF THE EA

- 12. (1) On submission of the draft EA report to Council, Council and the proponent shall ensure that there is community and public notice of the draft EA report and an opportunity for consultation and comment on it.
- (2) The community and public notice, consultation, and comment on the draft EA report shall be consistent with the following timetable:
  - (a) the proponent will provide immediate notice to the community and the public on the electronic registry that the draft EA report is available for review and comment;
  - (b) Council will provide such additional notice to the community as Council deems appropriate to advise that the draft EA report is available for review and comment;

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- (c) the notices in paragraphs (a) and (b) will provide a period not less than 30 days for the community and the public to submit electronic or written comments on the draft EA report to Council;
  - (d) following the period for receiving comments, Council will ensure that
    - (i) all comments received within the specified timeframe are provided to the proponent for the purposes of paragraph (ii) and subparagraph 9(2)(b)(ii); and
    - (ii) the proponent will prepare the report summarizing comments and make it available on the electronic registry before Council makes a decision whether to accept the environmental assessment.
13. (1) On receipt of the draft EA report, Council shall undertake a technical review of the draft EA report.
- (2) The technical review of the draft EA report shall be completed within 30 days of Council receipt of the draft EA report.
- (3) The technical review shall be carried out by the advisors and any experts that may be retained by HIFN.
- (4) The purpose of the technical review is to provide Council with written input that identifies the merits of the draft EA report, with particular attention to possible adverse environmental effects, the significance of such effects, and measures to avoid or mitigate such effects.
- (5) Council shall ensure that a technical review received within the specified timeframe is, after acceptance by Council, provided to the proponent for the purposes of subparagraph 9(2)(b)(ii).

PHASE 4: COUNCIL DECISION ON THE EA

14. (1) On receipt of the final EA report from the proponent, Council may, in respect of changes to the EA report that it considers to be material to the assessment of the significance of adverse environmental effects:
- (a) provide an opportunity for further community and public input;
  - (b) request an update to the technical review.
- (2) To decide whether the environmental assessment is acceptable, the Council shall have before it:
- (a) the final EA report;
  - (b) the summary of community and public comments on the draft EA report received within the specified timeframe;
  - (c) the technical review of the draft EA report; and

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- (d) where there were material changes to the EA report, the results of any further community and public input and any technical updates that may have been received.
- 15.
- (1) Subject to subsection (4), Council shall make a decision whether the environmental assessment is acceptable within 30 days of receipt of the final EA report.
  - (2) In deciding whether the environmental assessment is acceptable, Council may waive any defects or irregularities in the environmental assessment process or compliance with this Part of the Land Law, the Council process, or community consultation which in its opinion are not material to assessing the significance of adverse environmental effects likely to be caused by the Energy Centre.
  - (3) Council shall not decide that the Energy Centre environmental assessment is acceptable unless Council concludes it is satisfied:
    - (a) with community engagement on the EA;
    - (b) with the technical review of the EA;
    - (c) with any panel advice requested and received by it pursuant to subsection (4);
    - (d) that the EA process and EA report conform to this Land Law and the guidance instrument; and
    - (e) that, taking into account mitigation and other information before Council through the environmental assessment process,
      - (i) the Energy Centre is not likely to cause significant adverse environmental effects; or
      - (ii) the significant adverse environmental effects likely to be caused by the Energy Centre may be justified in the circumstances.
  - (4) Where the information set out in section 14 indicates that the Energy Centre may cause significant adverse environmental effects and Council believes such effects are a matter of community concern, Council may appoint one expert or a panel of experts to provide, within 30 days, written advice to Council on the significance of adverse effects identified by Council and possible measures to avoid or minimize and mitigate such adverse environmental effects.
16. Where Council decides that the EA is acceptable, it shall notify Canada that the Energy Centre environmental assessment has been accepted by Council for use by all federal authorities for any decisions made on matters related to the Energy Centre.

**PART 3**  
**ENVIRONMENTAL PERMIT**

**PRINCIPLES**

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17. The following principles guide the Environmental Permit which may be issued by Council for the Energy Centre:
  - (1) Council shall not make an irrevocable decision to issue an Environmental Permit unless Council has decided that the Energy Centre EA is acceptable.
  - (2) Where Council has concluded that the Energy Centre may cause significant adverse environmental effects that are justified in the circumstances, it shall seek Community Input before making an irrevocable decision to issue the Environmental Permit to authorize construction and operation of the Energy Centre.
  - (3) The Energy Centre cannot be constructed or operated in whole or in part except in accordance with an Environmental Permit issued by Council.
  - (4) A decision by Council to issue an Environmental Permit authorizing the Energy Centre to proceed on Reserve lands shall
    - (a) be in the form of a Land Law subject to Community Input; and
    - (b) provide that the Environmental Permit is not in legal force and effect unless and until Council has established the financial and legal means of ensuring compliance with its terms.
  - (5) To promote the avoidance or mitigation of adverse environmental effects, the Environmental Permit will provide for protection of Nishshing Aki on Reserve lands and, to the extent practicable, provide substantive standards that are at least equivalent in effect to the federal and provincial standards applicable to similar wind energy generation facilities located in Ontario, not on Reserve lands.

**DECISION TO ISSUE AN ENVIRONMENTAL PERMIT**

18. The Energy Centre shall not be authorized to proceed to any construction or operation except in accordance with an Environmental Permit issued by Council.
19.
  - (1) Where Council has accepted the environmental assessment, it shall make a decision on whether to issue an environmental permit for the Energy Centre within 30 days of the decision to accept the environmental assessment.
  - (2) Where Council has concluded that all of the adverse environmental effects of the Energy Centre are justified in the circumstances, Council may table a proposed Environmental Permit and initiate Community Input on it prior to deciding whether to accept the Energy Centre environmental assessment.
  - (3) Council may appoint advisors or experts to provide advice on the Environmental Permit and related matters.

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- (4) Prior to issuing an Environmental Permit for the Energy Centre, Council shall:
- (a) require the preparation of and have before it a report which provides a summary of the mitigation identified in the environmental assessment process;
  - (b) ensure that the Environmental Permit includes, as permit conditions:
    - (i) the proposed mitigation described in the environmental assessment, or such alternate mitigation as Council deems appropriate to avoid or minimize adverse environmental effects, requirements that:
      - (a) adequate and effective environmental protection measures shall be in place before the Environmental Permit comes into force;
      - (b) prior to decommissioning the Energy Centre, HIW shall apply to Council for approval of a decommissioning plan that is consistent with the lease between HIFN and Henvey Inlet Wind GP Inc. regarding the works to be removed, the lands to be restored, and the restoration of soil to baseline conditions identified by a study carried out by the proponent prior to any construction of the Energy Centre, and for which Council may require an update to the Energy Centre environmental assessment consideration of decommissioning;
    - (c) the Environmental Permit is not in legal force and effect unless and until Council satisfies itself that adequate and effective measures are in place to ensure environmental protection compliance with the terms of the Environmental Permit at all material times during the construction, operation, and decommissioning of the Energy Centre on Reserve lands;
    - (iii) changes to the Energy Centre that are contemplated in the Permit respecting matters that are not material to environmental effects of the Energy Centre; and
    - (iv) matters that such other measures or requirements which Council deems necessary to discharge its environmental stewardship responsibilities with respect to the Reserve lands affected by the Energy Centre;
  - (c) obtain Community Input on the proposed Environmental Permit and the Energy Centre, including, in the event the project is likely to cause significant adverse environmental effects, Council's conclusion that the effects are justified in the circumstances; and
  - (d) subject to ensuring compliance with paragraph (b), amend the draft environmental permit as Council deems necessary.
20. (1) Council may amend the Environmental Permit by a Land Law enacted with Community Input.
- (2) Prior to enacting an amendment, Council may require the completion and review of an environmental assessment of the material environmental effects of the proposed amendment, consistent with the principles set out in Part 2.

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21. (1) Where, subsequent to the enactment of the Environmental Permit Land Law, HIW or Council seeks to undertake an amendment to the Permit or a modification to the Energy Centre that is material to the environmental effects of the Energy Centre and which is not permitted pursuant to the Permit, Council may, in its discretion, amend the Environmental Permit Land Law.
- (2) Where Council is considering an amendment to the Environmental Permit Land Law that is material to the environmental effects of the Energy Centre pursuant to subsection (1), Council shall establish the process and requirements for this amendment consistent with the principles set out in this Part and Council may, in its discretion, require an environmental assessment of this amendment consistent with the principles set out in Part 2 of the present Land Law.

**ENVIRONMENTAL PERMIT LEGAL FORCE AND EFFECT**

22. The Environmental Permit does not be in legal force and effect until Council is satisfied that an adequate and effective environmental protection enforcement program is in place.
23. Subject only to the requirement that the proponent shall have a leasehold interest or other interest pursuant to the Land Code in the Reserve lands, where Council declares that the Environmental Permit Land Law is in legal force and effect, the proponent shall be authorized to proceed with the construction and operation of the Energy Centre subject to the terms and conditions described therein.

**PART 4**  
**RECOMMISSIONING**

24. (1) Where, following a Council declaration that an environmental permit Land Law is in legal force and effect, HIW seeks to recommission the Energy Centre, it shall submit a recommissioning plan to Council.
- (2) Following timely receipt of a plan from HIW to recommission the Energy Centre, Council shall review the plan and determine the process it wishes to follow to determine if this plan is acceptable.
- (3) The process required by Council to determine whether the plan to recommission the Energy Centre is acceptable shall include:
  - (a) environmental assessment by HIW of the construction, operation, and decommissioning of the recommissioned Energy Centre;
  - (b) the issuance by Council of guidance specific to the environmental assessment of the recommissioned Energy Centre; and

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- (c) a decision by Council whether to issue a permit authorizing the construction, operation, and decommissioning of the recommissioned Energy Centre.

**PART 5**  
**GENERAL**

- 25. No action or other proceeding may be instituted against any individual on Council or employed by Council for any act done in good faith in the execution or intended execution of any duty or authority under this Land Law or for any alleged neglect or default in the execution in good faith of such a duty or authority.

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