

WAHNAPIITAE FIRST NATION RESOURCE DEVELOPMENT POLICY

Amended by **Band Council Motion: #09/10-96**
At **Chief and Council Meeting of: March 9, 2010**
Amended by **Band Council Motion: #02/62**
At **Chief and Council Meeting of: October 7, 2002**
Adopted by **Band Council Motion: #99/60**
At **Chief and Council Meeting of: August 23, 1999**

1.0 *BACKGROUND*

- 1.1 The Wahnapiitae First Nation forms part of the Ojibway Nation of North-Central Ontario. The Wahnapiitae First Nation is signatory to Robinson – Huron Treaty 1850. The Wahnapiitae First Nation is a growing and vibrant community, which is striving to develop its people, resources and livelihoods for the present and future generations.
- 1.2 In general, Wahnapiitae First Nation is supportive of economic development within its territory namely the Wahnapiitae Watershed. Fundamental to any proposed resource development is that the Benefits will be shared with Wahnapiitae First Nation.
- 1.3 This policy is based on the relationship that Wahnapiitae First Nation has with the land and requires proponents operating in Wahnapiitae First Nation territory adopt a similar vision.
- 1.4 The proponent will acknowledge this policy by way of letter addressed to Chief and Council. The letter will also contain an invitation to meet and begin discussion on any existing or proposed project.

2.0 *PURPOSE*

The Wahnapiitae First Nation has developed this Resource Development Policy to:

- 2.1 Ensure that the Wahnapiitae First Nation continues to protect their prior and existing rights to the land and resources by:

- 2.1.1 An open and transparent manner;
 - 2.1.2 This Policy is community driven and monitored;
 - 2.1.3 Community recognition that there are multiple uses on the land;
 - 2.1.4 Continued evolution with the community; and
 - 2.1.5 Serving as a guide and tool for the future generations in resource management;
- 2.2 Ensure that the intent of The Robinson Huron Treaty 1850 is protected which states “**shall have the right to pursue their hunting, trapping, and fishing throughout the tract surrendered as heretofore described**”. These rights are further protected in the Canadian Constitution Act 1982 section 35(1) which states “**The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed**”;
- 2.3 Recognize that Wahnapiatae First Nation have never surrendered their rights to lands and resources;
- 2.4 Acknowledge that Wahnapiatae First Nation has submitted a Specific Claim to land and loss of resources, currently under negotiation by the Federal Government;
- 2.5 Guide for proponents engaged in resource development.

3.0 *POLICY OBJECTIVES*

- 3.1 Protect Native Values.
- 3.2 Protect Environment.
- 3.3 To advocate joint activity and involvement in resource management and in those decisions affecting Wahnapiatae First Nation territory.
- 3.4 To provide a clear framework on which proponents will engage the Wahnapiatae First Nation community in resource development.
- 3.5 To work towards an Agreement that can be executed as a standalone agreement or as a schedule to a broader agreement.

4.0 DEFINITIONS:

4.1 Aboriginal & Treaty Rights

Treaty Rights arise from and are embodied in the treaty entered into with the crown.

An Aboriginal Right is a right held by indigenous people arising from ancestral living in the land prior to contact. The right to occupy, use the land and move about freely to support community subsistence (hunting, gathering, fishing, trapping) and the right to take what you need to survive.

4.2 Abrogate

Does not: annul, cancel; destroy; abolish; revoke, repeal, rescind, reverse, retract, recall; abolitionize; overrule, override; set aside; disannul, dissolve, quash, nullify, declare null and void; disestablish, disendow; deconsecrate

4.3 Agreements

Are written commitments between Wahnapiatae First Nation and the proponent outlining the terms and conditions on how proponents will operate in Wahnapiatae First Nation Territory for the benefit of Wahnapiatae First Nation. These may include i) Memorandum of Understanding, ii) Impact & Benefit Agreements, iii) Environment Agreements, iv) Participation Agreements and others.

4.4 Benefits

These are considerations from the proponent for the use, occupation, removal and utilization of resources. These considerations will contribute to the enhancement of the community.

4.5 Community member

A Band Member, a spouse of a Band Member, or a child of a Band Member residing within the WFN Reserve No. 11, according to the WFN Residency Code.

4.6 Compensation

A mechanism which first recognizes damage (financial or otherwise) and then seeks to recover for damages such as a loss of use of a resource, an adverse impact and/or irreparable damage caused by the proponent.

4.7 Confidentiality

Information shared (written and/or oral) with the proponent and/or Wahnapiatae First Nation, which if released into the public domain, could be damaging to Wahnapiatae First Nation and/or proponent.

4.8 Consultation

A mutually agreed upon process with the clear intent by both parties to engage in flexible discussions where the outcome of a particular issue is not yet known and comprises of:

- 4.8(a) a process which facilitates the exchange of information between the parties;
- 4.8(b) the information exchanged assists in making fully informed decisions.
- 4.8(c) the process is intended to be characterized as a two-way dialogue.
- 4.8(d) the proponent acknowledges that the process requires the inclusion of Wahnapiatae First Nation input and recommendations.
- 4.8(e) the proponent must demonstrate that they acted on those mutually discussed and mutually accepted recommendations arising from joint discussions between Wahnapiatae First Nation and the proponent.

Without limiting the forgoing, the parties agree that this definition of consultation only applies within this Policy.

4.9 Derogate

Does not: detract, take away and minimize

4.10 Wahnapiatae Traditional Territory

The Wahnapiatae Traditional Territory is located within North-Central Ontario. (*See map attached*)

4.11 Environmental Protection

The act of protecting the environment and the community's native values by way of developing management prescriptions, buffers and identifying where resource development activities are allowed or not allowed by the Wahnapiatae First Nation,

4.12 Equitable

Dealing fairly and equally with all concerned.

4.13 First Nation Business

Is a business entity controlled and managed by the Wahnapiatae First Nation, a registered member and/or a community member.

4.14 Impact & Benefits Agreement

An Impact & Benefits Agreement is a contractual arrangement between the proponent and Wahnapiatae First Nation Community, which is intended to manage any negative or positive impacts to the land and people as development takes place. The benefits to the community refer to the land being protected and sustained, while also realizing compensation and a form of sharing of revenues or royalties. The contents and the negotiations of these Agreements will be guided by the community.

4.15 Irreparable damage

Actions that cause harm to the land, environment and people which cannot be restored to an original or natural state.

4.16 Mitigation Measures

Is a means to address identified impacts to minimize harm to the Wahnapiatae First Nation.

4.17 Native Values

Knowledge of the community including, medicine gathering places, canoe routes, burial grounds, sacred spiritual and ceremonial places, old villages, camping grounds, seasonal spawning areas, specific harvesting and hunting areas, pictographs, cabins (trappers), timber, esker, nesting areas. This is not meant to be an exhaustive list, but will evolve as more values are identified.

4.18 Negative Impacts

Actions that adversely affect the community's traditional lands, environment, resources, people, health and livelihood and cause harm.

4.19 Parties

Refer to the Wahnapiatae First Nation and the Proponent.

4.20 Project

Is any activity existing proposed, being investigated, developed, and utilized and/or when a resource is removed.

4.21 Proponent

Are an individual, corporation and/or government, who are proposing any resource development, including, but not limited to resource exploration, resource development and resource production.

4.22 Registered Band Member

Is a person who is a registered member of Wahnapiatae First Nation and is on the band list.

4.23 Resource

- **Renewable** - wind, water, hydro development, vegetation, wildlife, tourism, forestry, fire management
- **Non-renewable** - minerals, land, sand, gravel, waste (nuclear)

4.24 Resource Development

The act of investigating, developing, utilizing and/or removing of a resource.

4.25 Standards – Includes no waste, no garbage, original state, useable and safe state

5.0 PRINCIPLES:

Before any Resource Development activities can commence within the Wahnapiatae First Nation's Traditional Territory, it is necessary for the proponent and/or its assignees and the Wahnapiatae First Nation leadership to commit to work together and to enter into an agreement(s) encompassing the following elements and basic principles:

- 5.1** Wahnapiatae First Nation members will be involved in decisions that affect their rights and livelihoods, through an open and transparent process. Such a process provides for accountability to its members;
- 5.2** Initially a Memorandum of Understanding signed between the parties;
- 5.3** A clause that advanced development will not proceed without having an Impact & Benefits Agreement signed between the proponent and Wahnapiatae First Nation;

- 5.4 For advanced resource development an Impact & Benefits Agreement signed between the parties;
- 5.5 The Memorandum of Understanding as required in 5.2 and the Impact & Benefits Agreement required in 5.4 will among other matters, include those set out in the following sections 5.6 to 5.16 of this policy;
- 5.6 Assurance that Resource Development activities will not cause any irreparable damage. The proponent must avoid negative impacts on the community and if such cannot be avoided, then mitigation measures must be jointly developed between the parties and be put in place;
- 5.7 Ensure that the Resource Development activities will not jeopardize, prejudice or otherwise compromise Wahnapiatae First Nation's Aboriginal, Treaty or Constitutional rights and the jurisdiction of the First Nation including any impact on traditional lifestyle activities;
- 5.8 In the event that Resource Development is to proceed, the proponent must ensure that the project will support Wahnapiatae First Nation community or registered and/or community member initiatives, including infrastructure projects. The project must provide for more positive than negative social impacts on the Wahnapiatae First Nation community and its members;
- 5.9 The widest possible opportunity for education and direct employment and related training for the Wahnapiatae First Nation members (on and off-reserve) in connection with the project and when possible resource development programs;
- 5.10 The widest possible employment and business opportunities with respect to the proposed project. All proponents will use best efforts to operate from the community of Wahnapiatae First Nation, utilizing community lodging & other utilities such as meal service, provided the community is able to provide the required services in a timely and cost effective manner. The Wahnapiatae First Nation will assist the proponent to establish and dismantle camps and the cleanup of old sites which do not meet Wahnapiatae First Nation standards;
- 5.12 The widest possible support for Wahnapiatae First Nation business services over which the proponent and/or its contractors may require;

- 5.13** In the event that project development occurs, the proponent will assist the Wahnapiatae First Nation community to accomplish the objectives stated above, by providing up to, but not limited to, financial and managerial assistance and advice where identified by Wahnapiatae First Nation. This will include funding the activities of Wahnapiatae First Nation to effectively participate in the proposed project including the costs to support negotiations;
- 5.14** A communication framework that ensures that on-going information is shared with community members. The communication framework must address who, what, where, when and how information will be shared both internally (within Wahnapiatae First Nation) and externally (public);
- 5.15** To harmonize all land use activities with traditional activities;

6. ABORINGAL & TREATY RIGHTS:

Nothing in this Agreement:

- 6.1** Shall be construed so as to abrogate or derogate from, or define the content of any existing or claimed Aboriginal rights, titles and interests in or to the traditional territory or in any part thereof;
- 6.2** Shall be construed so as to abrogate or derogate from any fiduciary duties or other obligations owed by the Crown to any Aboriginal peoples in respect of their Aboriginal rights, titles and interests; and,
- 6.3** Is intended to create a partnership, joint venture or other relationship whereby the Parties hereto may be liable for the acts or debts of the other Party hereto.

7.0 PENALTIES

If the proponent does not wish to comply with this policy, the Wahnapiatae First Nation will oppose the proposed project until the proponent complies with this Policy.

8.0 IMPLEMENTATION

Monitoring, Enforcement & Compliance

The Chief and Council or their designated group (by recommendations from the community) are responsible for ensuring all of the undertakings of this Policy.

9.0. FEES

The proponent will be required to pay an administration fee to facilitate community consultation and communication. This Fee will be determined between the parties on a case-by-case basis depending on the magnitude of the project.

10.0 APPLICATION

This Policy will be applied to proponents who are members, individuals, companies and governmental organizations that have and/or are proposing projects within the Wahnapiatae First Nations' traditional territory.

11.0 AMENDMENT

This Policy can only be amended from time to time by the Chief and Council of Wahnapiatae First Nation; and this Policy will be reviewed annually by the Chief and Council of Wahnapiatae First Nation.

12.0 CONCLUSION

This policy will be applied to members and community members and other individuals as well as companies who have proposed activities within Wahnapiatae First Nation's Traditional Territory.

When proponents and Wahnapiatae First Nation can reach agreements embracing the points listed above, the Wahnapiatae First Nation community, proponents and others connected to the project will enjoy equitable benefits from each Resource Development undertaken. The result of this Policy will be that there will be business and land use harmony within the Wahnapiatae First Nation Traditional Territory.

Chief, Myles Tyson

Councillor, Larry McGregor

Councillor, Henry Burke

Councillor, Bob Pitfield

Councillor, Christina Anderson

Date:

