



MAUPELTU
TA'N TELSUTEKEK
MEMBERTOU GOVERNANCE

Summary of the
Membertou Land Code



Introduction

The Land Code was drafted under the Framework Agreement on First Nation Land Management. The purpose of the Land Code is to set out the principles, guidelines and processes by which Membertou will exercise control and governance over reserve lands and resources consistent with the Framework Agreement.

Ratification

The Land Code has been developed by the Community for the Community. The Land Code does not come into force unless the Members approve both the Land Code and the Individual Agreement with Canada in a ratification vote. If the Land Code is approved, Membertou will govern its own reserve lands and resources, and will no longer be managed by the Minister under the Indian Act.

Contents of the Land Code

Membertou will have the right to govern ourselves in relation to matters that are integral to our culture, identity, traditions, language, and with respect to our special relationship to the reserve lands and resources;

Membertou wishes to govern our reserve lands and resources, rather than having our reserve lands and resources managed on our behalf under the Indian Act;

This Land Code will be the fundamental Land Law of the Membertou.



Preliminary Matters

The title, definitions and interpretation are set out in sections 1 & 2.

Authority to Govern and Purpose

Jurisdiction and Authority

The Land Code establishes Membertou's jurisdiction over all rights and resources in reserve lands, natural resources, and land revenues and all rights and resources in reserve land interests and licenses. By enacting the Land Code, Membertou is reclaiming this special responsibility.

Purpose

The purpose of the Land Code is to set out the principles, rules and administrative structures that apply to Membertou land and by which Membertou will exercise authority over that land in accordance with the Framework Agreement.

Membertou Land

Land that is subject to the Land Code is that land known as Sydney Indian Reserve No. 28A, Membertou Indian Reserve No. 28B and Caribou Marsh Indian Reserve No. 29.

Legislative Authority

Enforcement

Membertou will have the jurisdiction to compel observance of and compliance with land laws, rules and obligations.

Law-Making Powers, Procedures, and Publication

Council may, subject to the terms of the Land Code, make land laws respecting the reserve lands and resources subject to the Land Code. The law-making power is as comprehensive as possible in respect of land matters and replaces the powers set out in the Indian Act. Land laws may be proposed by a member of Chief and Council or a representative of the Governance Committee, or other body or authority composed of Members, that may be authorized by Council to do so. The proponent must also include a written explanation of the reason for the proposed land law. Members must be given notice before land laws are passed and may be involved in the development or approval of certain types of land laws. Approved land laws must be posted in the minutes of the Council Meeting at which it was enacted, the administration office, online, and any additional method as Council may consider appropriate.

Community Engagement and Approvals

Community Approval

Certain land laws and other important land matters must be approved by the community before they can take effect. Every eligible voter, whether resident on or off reserve, can participate in community approval processes and ratification votes to discuss and decide the following matters:

- declaring Land or an Interest to be subject to this Land Code;
- enacting a Land Law respecting a community plan or subdivision plan;
- any development affecting a cultural site or an environmentally sensitive property;
- enacting a Land Law respecting environmental assessment and protection;

- enacting a Land Law respecting the transfer and assignment of rights and Interests in Membertou Land;
- enacting a Land Law respecting matrimonial real property on reserve;
- enacting a Land Law respecting the rate and criteria for the payment of fees or rent for Membertou Land;
- enacting a Land Law respecting the rights and procedures on community expropriation; and
- respecting any other matter, Land Law or class of law that Council, by Resolution, declares to be subject to this section.

Protection of Land

Acquisition by Mutual Agreement

The right of Membertou to expropriate can only be exercised after a good faith effort to acquire, by mutual agreement, the interest or licence.

Clear Rules for Acquisition

The Land Code and Framework Agreement provide clear and transparent rules for expropriation, notification, compensation and public reporting.

Voluntary Exchange of Land

The Land Code and Framework Agreement protect against loss of reserve land by surrender for sale and expropriation. However, Membertou may decide that it is advantageous to exchange some of its reserve land for other lands. An exchange of land cannot occur without the consent of the Members.

Accountability

Conflict of Interest

Members of Council, employees, any member of a board, committee or other body of the First Nation dealing with any matter related to First Nation land must disclose the conflict of interest and shall not take part in any deliberations or vote on that matter. They shall remove themselves from the proceedings. Any claims that there has been a breach of the conflict of interest rules may be referred to dispute resolution.

Financial Accountability

Council is accountable to Members for the management of moneys and land under the Land Code. An annual report will be prepared and published for the Members. Any person may have reasonable access to the register of land laws, the auditor's report and the annual report on reserve land and natural resources.

Land and Natural Resources Administration

Lands Staff

Council may delegate administrative authority to the Lands Office/staff to carry out functions necessary for day-to-day administrative operations of Membertou lands and natural resources.

Governance Committee

The Governance Committee will assist with the development of the land administration system, advise Council and its staff on matters respecting land, recommend land laws, resolutions, policies and practices to Council, consult with Members on land issues, and make recommendations on the resolution of such issues to Council, oversee meetings of members, community approvals and ratification votes, and perform such other duties as may be delegated.

Interests and Licenses in Land

Registration of Interests

An interest or licence in Membertou land created or granted after this Land Code takes effect is not enforceable unless it is registered in the First Nation Lands Register.

Existing Interests

Any interest or licence in Membertou 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. This includes member and third-party interests.

New Interests and Licenses

All new allocation of land, interests and licenses, shall be granted in accordance with the Land Code once it takes effect.

Transfers of Interests and Licenses

Members may transfer their interests to other Members without community or Council approval. Other transfers, except those that occur by operation of law or under the Membertou Family Homes Law 2016, require the consent of Council.

Limits on Mortgages and Seizures

A leasehold interest or the interest of a Member in Membertou land may be subject to a mortgage or charge, with the written consent of Council. The term of any charge or mortgage of a leasehold interest shall not exceed the term of the lease.

Residency and Access Rights

The Land Code sets out the rights of residency and access for Members, their families, invited guests, lessees and their invitees. The public may access Membertou Land for any social or business purposes.

Wills and Estates

The provisions of the Indian Act dealing with wills and estates shall continue to apply with respect to interests in Membertou land. An interest or a transfer of an interest will be issued to a person who receives an interest in accordance with a written decision of the Minister.

Matrimonial Real Property on Reserve Law

Membertou has enacted the Membertou Family Homes Law 2016, which establishes the rules and procedures to be applied on the breakdown of a marriage, that does not discriminate on the basis of sex and provides for the best interests of the child(ren).

Dispute Resolution

Intent and Purpose

The intent of the dispute resolution process is to ensure that all persons entitled to possess, reside upon, use or otherwise occupy Membertou Land do so harmoniously with due respect to the rights of others and of Membertou and with access to Membertou procedures to resolve disputes. The purpose of these rules is to enable the parties to a dispute to achieve a just, speedy and inexpensive determination of matters in dispute, taking into account the values which distinguish dispute resolution from litigation.

Processes

A dispute may be resolved through facilitated discussions, negotiation, mediation or by final arbitration.

Powers of the Adjudicator

The Adjudicator has the power to confirm or reverse the decision in dispute (in whole or in part), substitute its own decision for the decision in dispute, direct that an action be taken or ceased, refer the matter or dispute back for a new decision, or refer the matter to a court of competent jurisdiction or other forum.

Other Matters

Liability Insurance

Council has the authority to determine how much insurance is required (which could be based on the cost of insurance and the amount of funds available to pay for it).

Offences and Enforcement

The summary conviction provisions of the Criminal Code apply to offences under the Land Code or land law enacted under the Land Code, unless some other procedure is provided for by a land law.

Minor Revisions to the Land Code

When a ratification vote is not required to make changes to the Land Code (e.g. amendment to the Land Description, numbering, inconsistencies, minor improvements...).

Coming into Force

Commencement

This Land Code shall take effect if the community approves this Land Code and the Individual Agreement with Canada. This Land Code comes into effect on the first day of the month following the certification of this Land Code by the Verifier.

For any addition questions, please contact:

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