



**MEMBERTOU FIRST NATION
LAND CODE, 2014**
[Draft #11 May 8, 2014]

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WHEREAS Membertou has a profound relationship with the lands and waters that is rooted in respect for the Spiritual value of the Earth and the gifts of the Creator. Membertou wishes to preserve and protect its relationship with the lands and waters as well as to ensure sustainability and appropriate stewardship for the benefit of future generations;

WHEREAS Membertou hereby recognizes and affirms the existence of Treaty and Aboriginal Rights as separate, distinct and unaffected by this land code;

WHEREAS Membertou hereby recognizes and affirms the collective rights of its members to the land, water and resources;

WHEREAS Membertou has entered into the *Framework Agreement on Membertou Land Management* with Canada, as amended, and which was ratified on behalf of the Government of Canada by the *First Nations Land Management Act*;

AND WHEREAS Membertou wishes to exercise its Inherent Right to govern its reserve lands, waters and resources, rather than having its lands, waters and their resources managed on its behalf under the *Indian Act* or any other statute;

NOW THEREFORE, this Land Code is hereby enacted as the fundamental land law of Membertou as follows:

**PART I
CITATION**

1.This enactment may be cited as the *Membertou Land Code, 2014*.

**PART II
DEFINITIONS AND REFERENCES**

Definitions

2. (1) Unless the context indicates the contrary, in this Law:



“Act” means *First Nations Land Management Act*;

“Adjudicator” means the person appointed by Council to the Office of the Adjudicator;

“community land” means any Membertou reserve lands in which all members have a common interest and which have not been allocated;

“Council” means the Chief and Council of Membertou;

“eligible voter” means, for the purpose of voting in respect of land matters under this Land Code, a member who has attained the age of eighteen (18) years of age on the day of the vote;

“First Nation Land Register” means the register maintained by the Department of Indian Affairs and Northern Development under the *Framework Agreement*;

“Framework Agreement” means the *Framework Agreement on First Nations Land Management* entered into between the Minister of Indian Affairs and Northern Development and the Chiefs of fourteen First Nations, on February 12, 1996, as amended;

“immediate family”, means father, mother, sister, brother, husband, wife, common-law spouse, son or daughter, including adopted;

“Individual Agreement” means the Individual Transfer Agreement entered into between Membertou and Canada in accordance with clause 6.1 of the Framework Agreement and subsection 6(3) of the Act;

“Lands Committee” means the Lands Committee established under this Land Code;

“law” means a law enacted pursuant to this Land Code;

“meeting of members” means a meeting under section 14 to which the members are invited to attend;

“member” means a person whose name appears or is entitled to appear on the Membertou Band Membership List;

“Membertou” means Membertou which is a First Nation within the meaning of the Framework Agreement and named under the *Indian Act*;

“Membertou land” means any portion of a reserve that is subject to this Land Code under section 5;

“ratification vote” means a vote of eligible voters under section 15



“resolution” means a resolution of the Council enacted under this Land Code;

“spouse” means a person who is married to another, whether by a traditional, religious or civil ceremony, and includes a spouse by civil and common-law marriage.

Paramourncy

3.(1) If there is an inconsistency or conflict between this Land Code and any other enactment of Membertou, this Land Code prevails to the extent of the inconsistency or conflict.

Interpretation

(2) This Land Code shall be interpreted in a fair, large and liberal manner.

(3) The principles set out in the Preamble to this Land Code may be used to interpret this Land Code.

(4) In this Land Code:

(a) the use of the word “shall” denotes an obligation that, unless this Land Code provides to the contrary, shall be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation;

(b) 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”;

(c) headings and subheadings are for convenience only, do not form a part of this Land Code and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Code;

(d) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;

(e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and

(f) 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.

Culture and Traditions

(5) The structures, organizations and procedures established by or under its Land Code shall be interpreted in accordance with the culture, traditions and customs of Membertou, unless otherwise provided.



Language

(6) The Mi'kmaw language of Membertou 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.

Non-Abrogation

(7) This Land Code does not abrogate or derogate from any Aboriginal or Treaty rights or freedoms that pertain to Membertou or its members.

Treaty and Aboriginal Rights Application and Recognition

(8) This land code is consistent with all existing Aboriginal and Treaty rights of the Mi'kmaw People of Membertou and Mi'kma'ki.

Fiduciary Relationship

(9) This Land Code does not abrogate the fiduciary relationship between Her Majesty and Membertou and its members.

Lands and Interests Affected

(10) A reference to "Membertou land, waters and resources" in this Land Code means all rights and resources that belong to the land, and includes

- (a) A reference to "Membertou land, waters and resources" in this Land Code is, unless the context otherwise requires means:
- (b) the water;
- (c) beds underlying water;
- (d) riparian rights, including to lands acquired through accretion;
- (e) minerals and subsurface resources
- (f) and all other renewable and non-renewable natural resources in and of that land,
- (g) to the extent that these are under the jurisdiction of Canada or Membertou; and all the interests and licences granted to Membertou by Canada listed in the Individual Agreement.

Authority to Govern

4.(1) Self-determination is part of the inherent right of self-government recognized by section 35 of the Constitution Act, 1982, and is a basic human right grounded in



international law affirmed by the United Nations Declaration on the Rights of Indigenous People.

Flow of Authority

(2) The authority of Membertou to govern its Membertou land, waters and resources flows from the Creator to the people of Membertou, and from the people to the Chief and Council according to the culture, traditions, customs and laws of Membertou.

Purpose

5.(1) The purpose of this Land Code is to set out the principles and administrative structures that apply to *Membertou* Membertou land, waters and resources and by which Membertou will exercise its authority over those Membertou land, waters and resources.

Ratification

(2) The *Framework Agreement* is ratified and confirmed when this Land Code takes effect.

Description of Membertou Land

6.(1) Membertou land that is subject to this Land Code are all Membertou land, waters and resources as identified in Membertou Individual Agreement including:

- (a) Sydney 28A;
- (b) Membertou 28B;
- (c) Caribou Marsh 29; and
- (d) Membertou land, waters and resources set apart by Canada in the future as Membertou land, waters and resources reserved for the use and benefit of Membertou, within the meaning of subsection 91(24) of the Constitution Act, 1867 and section 2(1) of the *Indian Act*.

Excluded Lands

(2) Despite section 6(1), the land described as follows is excluded from the application of this Land Code [e.g., and may only be included after it is cleaned up and a full environmental site assessment declares it to be free of environmental hazard and safe for community use]: **Put jointly held lands in here.**

Additional Lands



(3) The following Membertou land, waters and resources may be made subject to this Land Code after the applicable condition is met:

(a) any land owned jointly by Membertou and another First Nation, when the First Nations involved agree upon a joint management scheme for those Membertou land, waters and resources; and

(b) any land or interest acquired by Membertou after this Land Code takes effect, whether by land claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for community use, provided the Membertou land, waters and resources are set aside as a reserve.

Land Exchange

(5) For greater certainty, section 6(4) does not apply to land acquired by land exchange, which is governed by the process in section 18.

Inclusion of Land or Interest

(6) If the relevant conditions in section 6(4) are met, Council shall call a meeting of members and, after receiving input from members, Council may, by resolution, declare the land or interest to be subject to this Land Code.

PART III MEMBERTOU LEGISLATION

Law-Making Powers

7.(1) The Council may, in accordance with this Land Code, make laws respecting the development, conservation, protection, management, use and possession of Membertou land, waters and resources, and interests and licenses in relation to those Membertou land, waters and resources. This power includes the power to make laws in relation to any matter necessary or ancillary to the making of laws in relation to Membertou lands, water and natural resources.

Examples of Laws

(2) The following examples illustrate some of the laws that may be enacted:

(a) laws on the regulation, control and prohibition of zoning, land use, construction standards, subdivision control and land development;

(b) laws on the creation, regulation and prohibition of interests and licenses in relation to Membertou land;



- (c) laws on environmental assessment and protection;
- (d) laws on the provision of local services in relation to Membertou land and the imposition of equitable user charges; and
- (e) laws on the provision of services for the resolution, outside the courts, of disputes in relation to *Membertou* land.

Delegation of Administrative Authority

(3) Council shall perform all the duties and functions, and exercise all the powers, of Membertou that are not specifically assigned to an individual or body established under this Land Code.

(4) Notwithstanding section 7(3), Council may, by resolution, delegate administrative authority to an individual or body established or authorized under this Land Code.

Law-Making Procedure

8. (1) A proposed law may be introduced at a duly convened meeting of the Council by

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

Tabling and Posting of Proposed Laws

(2) Before a proposed law may be enacted by the Council, it must first be

- (a) tabled at a meeting of the Council held at least 45 days before the law is to be enacted; and
- (b) published in the community newsletter at least 30 days before the law is to be enacted.

Urgent Matters

(3) The Council may enact a law without the preliminary steps required under section 8(2), if the Council is of the opinion that the law is needed urgently, but the law expires 120 days after its enactment unless re-enacted in accordance with section 8(2).

Approval of Law by Council



(4) A law is enacted if it is approved by a majority of the Council.

Certification of Laws

(5) The original copy of any law or resolution concerning Membertou land shall be signed by a quorum of the Council present at the meeting at which it was enacted.

Notice of Laws

9. (1) The enactment of the law shall be recorded in the minutes of the Council.

Posting Laws

(2) Within 7 (seven) days after a law has been enacted, the Council shall post the law on the Membertou community website and in the administrative offices of Membertou.

Registry of Laws

(3) The Council shall cause to be kept, at the administrative offices of Membertou a register of the original copy of all laws and resolutions, including laws and resolutions that have been repealed or are no longer in force.

Copies of Laws

(4) Any band member or person affected by a law may view a copy of a law or resolution at the Membertou administrative offices.

Commencement of Laws

10. (1) A law enacted by the council takes effect on the date of its enactment or such later date as specified by the law.

PART IV COMMUNITY APPROVALS

Rights of Eligible Voters

11.(1) Each member who is at least 18 years of age is eligible to vote at a meeting of members and at a ratification vote.

Meeting of Members

12.(1) The Council shall convene a meeting of members to receive their input prior to the introduction of a Law under this Land Code following laws.



Notice of Meeting

13.(1) The Council shall give written notice of the meeting of members that

- (a) specifies the date, time and place of the meeting; and
- (b) contains a brief description of the matters to be discussed.

Manner of Notice

(2) The notice of a meeting of members must be given to the members by

- (a) posting the notice at the Membertou administrative building at least 21 days before the meeting;
- (b) publishing the notice in the community newsletter; and
- (c) such additional method as the Council may consider appropriate in the circumstances.

Who May Attend

(3) All members may attend a meeting of members, but other persons may attend if the matter directly affects them.

Community Approval by Ratification Vote

14.(1) Community approval by ratification must be obtained for:

- (a) a spousal properly law; and
- (b) any law or class of law that Council, by resolution, declares to be subject to this section.

No Verifier

(2) A verifier is not needed in any ratification vote.

Minimum Requirements for Approval

(3) A matter shall be considered approved at a ratification vote if at least 50 eligible voters attend a ratification vote meeting and a majority of these voters cast a vote in favour of the matter.

Other Laws



(4) For greater certainty, the Council may make laws respecting the Land Code amendment ratification process.

PART V PROTECTION OF LAND

Rights and Interest that May be Expropriated

15.(1) Membertou may expropriate an interest or licence in Membertou land, or in any building or other structure on those lands, in accordance with the *Framework Agreement* and any expropriation law enacted for the purpose of establishing the rights and procedures for community expropriations.

Community Purposes

(2) A community expropriation may only be made for a necessary community purpose or works of Membertou, including but not limited to a fire hall, sewage or water treatment facility, community center, public works, roads, schools, daycare facility, hospitals, health-care facility, and retirement home.

Expropriation Laws

(3) Before proceeding to make any community expropriations in accordance with this Land Code, the Council shall enact a 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

Public Notice

(4) Before Membertou decides to expropriate an interest or licence, it shall set out the reasons justifying the expropriation on a notice posted at the Membertou administration office.

Rights that May Not be Expropriated



(5) An interest of Her Majesty the Queen in Right of Canada or the province is not subject to expropriation by Membertou.

Acquisition by Mutual Agreement

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

Compensation for Rights and Interests

(7) Membertou shall, in accordance with its laws and the *Framework Agreement*,

(a) serve reasonable notice of the expropriation on each affected holder of the interest or licence to be expropriated; and

(b) pay fair and reasonable compensation to the holders of the interest or licence being expropriated.

Compensation Calculations

(8) The total value of the compensation under this section will be based on the following:

(a) the market value of the interest or licence that is being expropriated;

(b) the replacement value of any improvement to the land that is being expropriated;

(c) the damages attributable to any disturbance; and

(d) damages for any reduction in the value of a remaining interest.

Market Value

(9) The market value of an expropriated interest or licence is equal to the amount that would have been paid for the interest or licence if it had been sold on the reserve by a willing seller to a willing buyer under no duress.

Cultural Sites

17.(1) No amendment may be made to a land use plan to develop or delete from the land use plan a cultural site designated under that plan unless Council has received input from members at a meeting of members held to discuss the amendment.

Conditions for a Land Exchange

18.(1) Membertou may agree with another party to exchange a parcel of



Membertou land for a parcel of land from that other party in accordance with this Land Code and the *Framework Agreement*.

Land to be Received

(2) No land exchange may occur unless the land to be received in the exchange meets the following conditions:

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

Negotiators

(3) The persons who will have authority to negotiate a land exchange agreement on behalf of Membertou must be appointed by Council.

Additional Land

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

Federal Consent

(5) Before Membertou concludes a land exchange agreement, it must receive a written statement from Canada clearly stating that Her Majesty in right of Canada

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

Community Notice

(6) Once negotiations on the land exchange agreement are concluded, the Council may provide the following information to members:

- (a) a description of Membertou land to be exchanged;



- (b) a description of the land to be received in the exchange;
- (c) a description of any other compensation to be exchanged;
- (d) a report of a certified land appraiser setting out that the conditions in section 18(2) have been met;
- (e) a copy or summary of the exchange agreement; and
- (f) a copy of the consent referred to in section 18(5)

Process of Land Exchange

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

PART VI ACCOUNTABILITY

Conflict of Interest

19.(1) In the event of real, perceived and potential conflicts of interest arising in relation to the management and administration of Membertou land, waters and resources under this Land Code, the *Membertou Financial Administration Law 2013, Schedule - Avoiding and Mitigating Conflicts Of Interest* shall apply.

Disclosure of Conflict of Interest

(2) The procedure for the disclosure of any real, perceived or potential conflict of interest that arise to the management and administration of Membertou lands, waters and resources under this Land Code, shall be the procedure set out in the *Membertou Financial Administration Law 2013, Schedule - Avoiding and Mitigating Conflicts Of Interest*.

Financial Management and Policy

20.(1) All financial matters in relation to Membertou land administered under this Land Code shall be conducted in accordance with the *Membertou Financial Administration Law, 2013*, and all regulations, policies or procedures enacted or



approved under it.

Establishment of Bank Accounts

(2) Council shall maintain one or more financial accounts in a financial institution and shall deposit in those accounts:

- (a) transfer payments received from Canada for the management and administration of;
- (b) moneys received by the Membertou from the grant or disposition of interests or licences in Membertou land, waters and resources;
- (c) all fees, fines, charges and levies collected under a law or resolution;
- (d) all capital and revenue moneys received from Canada from the grant or disposition of interests and licences in Membertou land, waters and resources; and
- (e) any other land revenue received by Membertou.

Other Laws and Policies

(3) Council shall establish a process for determining:

- (a) fees and rents for interests and licences in Membertou land, waters and resources; and
- (b) fees for services provided in relation to Membertou land, waters and resources and compliance with this Land Code.

Financial Records

21.(1) Membertou shall keep financial records in accordance with generally accepted accounting principles and in compliance with the *Membertou Financial Administration Law, 2013*.

Offences

(2) A person who has control of the financial records of the Membertou and who impedes or obstructs anyone from exercising a right to inspect those records is guilty of an offence.

Appointment of Auditor

22.(1) For each fiscal year, Council shall appoint a duly accredited auditor to audit the financial records of Membertou in relation to Membertou land, waters and resources.



PART VII
LAND ADMINISTRATION

Membertou Lands Office

23.(1) The Membertou Lands Office shall carry out duties and responsibilities delegated or assigned to it under this Land Code and any other applicable law.

(2) Without limiting the generality of section 23(1), the Membertou Lands Office shall:

- (a) administer Membertou land, waters and resources in accordance with this Land Code and any other applicable law or regulation;
- (b) develop forms of written instruments for use in registering or recording interests or licences in Membertou land, waters and resources in the Membertou Lands Register if it is deemed necessary and advisable by the Membertou Lands Office;
- (c) process applications for the registration or recording of written instruments and documents in the Membertou Lands Register in relation to interests or licences in Membertou land, waters and resources;
- (d) provide electronic copies of applications for the registration and recording of written instruments and documents in the Membertou Lands Register in relation to interests or licences in Membertou land, waters and resources to the First Nation Land Register;
- (e) arrange for the execution of written instruments and documents on behalf of Membertou;
- (f) maintain and protect records in relation to Membertou land, waters and resources; and
- (g) perform such other duties and functions consistent with this Land Code as Council may direct.

Lands Governance Director

(3) The Lands Governance Director shall manage the Membertou Lands Office and perform such duties and responsibilities delegated or assigned to the Lands Governance Director under this Land Code or any other applicable law.

(4) In consultation with Council, the Lands Governance Director may develop policies and procedures required for the proper administration and management of the Membertou Lands Office and the Membertou Lands Register.

(5) Without limiting the generality of sections 24(1), (2), (3) or (4), the Lands



Governance Director shall:

- (a) oversee the day-to-day operations of the Membertou Lands Office;
- (b) advise the Lands Committee and Council on matters in relation to Membertou land, waters and resources;
- (c) make recommendations to Council on the development of laws, policies and procedures in relation to Membertou land, waters and resources;
- (d) subject to Part IX (Dispute Resolution), hold regular and special meetings with member to discuss issues related to Membertou land, waters and resources, and make
- (e) recommendations to Council on the resolution of such issues;
- (f) assist in the exchange of information between member and Council regarding Membertou land, waters and resources issues;
- (g) oversee community consultations under this Land Code; and
- (h) perform such other duties and functions consistent with this Land Code as Council may direct.

Lands Committee Established

24.(1) Council shall establish a Lands Committee.

(2) The Lands Committee shall:

- (a) assist the Lands Governance Director with administrative decisions in relation to Membertou land, waters and resources;
- (b) review draft laws and provide comments to Council;
- (c) recommend to Council laws, policies and procedures in relation to Membertou land, waters and resources;
- (d) consult with member on land issues; and
- (e) perform such other duties and functions as Council or the Lands Governance Director may direct.

Membertou Lands Register

25.(1) The Membertou Lands Office shall maintain the Membertou Lands Register in substantially the same form and with the same content as the First Nation Land Register.

Enforcement of Interests and Licences



(2) An interest or licence in Membertou land, waters and resources created or granted after this Land Code comes into effect, is not enforceable unless it is registered or recorded in the Membertou Lands Register.

Duty to Deposit

(3) The Membertou Lands Office shall ensure that an original copy of the following instruments received is registered or recorded in the Membertou Lands Register and the First Nation Land Register:

- (a) an interest or licence in Membertou Lands granted by Membertou;
- (b) an interest in Membertou land, waters and resources transferred or assigned by Membertou; and
- (c) this Land Code and any amendment to this Land Code.

(4) Every person who receives an interest or licence in Membertou land, waters and resources shall register or record an original copy of the relevant instrument in the Membertou Lands Register.

(5) The deposit of an instrument in the Membertou Lands Register and the First Nation Lands Register does not imply that the instrument is validly made or that it has been registered as opposed to having been recorded.

Registration of Consent or Approval

(6) No instrument that requires the consent of Council, approval of the Membertou Lands Office, or approval of member at a Meeting of Members or in a Ratification Vote may be registered or recorded in the Membertou Lands Register unless a certified copy of the document that records the consent or approval is attached to the instrument.

(7) Notwithstanding section 27(1), nothing in this Land Code precludes Council from enacting a law providing for the maintenance of the Membertou Lands Register in such other land registry system or facility as may meet the requirements of Membertou.

Registration Fees

(8) The Membertou Lands Office may establish and charge reasonable fees for services provided to the public including processing applications for the registration or recording of instruments in the Membertou Lands Register.



PART VIII INTERESTS AND LICENCES IN LAND

All Dispositions in Writing

26.(1) An interest in, or licence to use, Membertou land may only be created, granted, disposed of, assigned or transferred by a written document made in accordance with this Land Code.

Standards

(2) The Council may establish mandatory standards, criteria and forms for interests and licences in Membertou land.

Improper Transactions Voidable

(3) A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which Membertou, a member or any other person purports to grant, dispose of, transfer or assign an interest or licence in land after the date this Land Code takes effect is voidable if it contravenes this Land Code.

Non-Members

(4) A person who is not a member may hold a lease, licence, easement, mortgage or permit in Membertou Lands.

Grants to Non-Members

(5) The written consent of Council shall be obtained for the original grant of a lease, licence, easement or permit in Membertou land, waters and resources to a person who is not a member.

(6) Notwithstanding section 26(5), if Council has consented to the original grant of a lease in Membertou land, waters and resources to a person who is not a member, that leasehold interest may be subsequently mortgaged, transferred or assigned without the consent of Council or approval of Members. Existing Interests.

Continuation of Existing Interests

27.(1) An interest or licence in Membertou land, waters and resources, whether held by a member or a person other than a member that is in effect on the date this Land Code comes into force shall, subject to this Land Code, continue in force in accordance with the terms and conditions of that interest or licence.



(2) Council may, subject to a determination under Part IX or by a court of competent jurisdiction:

- (a) cancel or correct any interest or licence in Membertou land, waters and resources issued or allotted in error, by mistake or by fraud; and
- (b) issue a replacement instrument if required.

Authority to Make Grants

28.(1) Subject to this Land Code, Council may grant:

- (a) interests in Community Lands; and
- (b) licences and permits to take resources from Community Lands.

Conditional Grant

(2) The grant of an interest, licence or permit in Community Lands may be made subject to conditions.

Role of Lands Governance Director

(3) The Lands Governance Director may advise Council on the granting of interests, licences and permits in Community Lands and may be authorized to act as a delegate of Council under this part.

Nature of Interest

29.(1) Council may enact laws providing for an interest in Membertou land, waters and resources that entitles a member holding that interest to:

- (a) permanent possession of the land;
- (b) benefit from the resources in and of the land;
- (c) grant subsidiary interests, licences and permits in the land;
- (d) transfer, devise or otherwise dispose of the land to another member; and
- (e) any other rights, consistent with this Land Code, that are attached to Certificates of Possession under the *Indian Act*.

(2) For greater certainty, no interest under section 29(1) may be granted to or held by a person who is not a member.

Transfer and Assignment of Interests



(3) Members may transfer or assign their interest in Membertou land, waters and resources to Membertou or a member without the consent of Council.

(4) For greater certainty, member may transfer their interest to themselves.

Limits on Mortgages and Seizures

30. (1) In accordance with the Framework Agreement and the Act, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply to Membertou land, waters and resources.

(2) The Membertou Lands Office and the Lands Governance Director shall not be responsible or liable for ensuring that a lease in Membertou land, waters and resources permits the leasehold interest to be mortgaged or charged, that the lease is in good standing or that the leaseholder is in compliance with the terms of the lease.

(3) Disputes in relation to mortgages of leases shall be determined as follows:

(a) the parties to the dispute may agree that the dispute may be determined by mediation, arbitration or other dispute resolution mechanism agreed to by the parties; or

(b) if the parties to the dispute do not agree on a dispute resolution mechanism, the dispute shall be determined by a court of competent jurisdiction.

Mortgage of a Leasehold Interest in Membertou Lands Held by a Person Who is Not a Member

(4) A leasehold interest in Membertou land, waters and resources held by a person who is not a member is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution without the consent of Council or approval of member.

Mortgage of Leasehold Interests in Community Lands or in Membertou Lands Held by a Member

(5) The interest of a member in Membertou land, waters and resources which is not a leasehold interest may be subject to a mortgage or charge only to Membertou or a member.

(6) An Indian, as that term is defined in the *Indian Act*, including a member, may grant a lease to him or herself in the same manner as to another person.

(7) The leasehold interest in Membertou land, waters and resources of an Indian, as that term is defined in the *Indian Act*, including a member, may be subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution without the consent



of Council or approval of member, and the mortgagee has the same legal and equitable rights it would have if the leasehold interest was held by a non-Indian.

(8) A leasehold interest in Community Lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution by the mortgagee.

Default in Mortgage

(9) In the event of default in the terms of a mortgage or charge of a leasehold interest in s, the leasehold interest is not subject to possession by the mortgagee or chargee, foreclosure, power of sale or any other form of execution or seizure, unless:

- (a) the mortgage or charge was registered in the Membertou Lands Register; and
- (b) reasonable notice of the foreclosure was provided to Council.

Right of Residence

31.(1) The following persons have a right to reside on Membertou lands;

- (a) members, who have been allocated a residential lot or residential unit by Council, and their spouses and children;
- (b) members with a registered interest in Membertou land; and
- (c) lessees and permittees, in accordance with the provisions of the granting instrument.

Right of Access

(2) The following persons have a right of access to Membertou lands;

- (a) a lessee and his or her invitees;
- (b) a person granted a right of access under a permit;
- (c) Membertou members and their spouses and children;
- (d) a person who is authorized by a government body or any other public body, established by or under an enactment of Membertou or the province to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey; or
- (e) a person authorized in writing by the Council or by a Membertou law.

Public Access

(3) Any individual may have access to Membertou land for any social or business



purposes, if

- (a) the individual does not trespass on occupied land and does not interfere with any interest in land; and
- (b) the individual complies with all applicable laws.

Resolution Barring Individual or Restricting Access

- (4) The right of any individual to access Membertou land may be removed or modified by resolution.

Trespass

(5) Any person, who resides on, enters or remains on Membertou land other than in accordance with a residence or access right under this Land Code is guilty of an offence.

Civil Remedies

(6) Subject to any law enacted under this Land Code, all civil remedies for trespass are preserved.

Transfers on Death

32.(1) A member who receives an interest in Membertou lands by testamentary disposition, succession or through a declaration of mental incompetence is entitled to have that interest registered in the Membertou Lands Register provided that the written instrument transferring the interest is duly executed by the person duly appointed under the *Indian Act* as the personal representative of the estate of the deceased or the mentally incompetent member.

(2) A member who purchases an interest in Membertou lands under subsection 50(2) of the *Indian Act* is entitled to have that interest registered in the Membertou Lands Register provided that:

- (a) the written instrument transferring the interest is duly executed by the person duly authorized under the *Indian Act* to transfer the interest; and
- (b) Council has, by resolution, consented to the written instrument transferring the interest to the purchasing member.

(3) Council may, by resolution, authorize the Lands Governance Director to act as a delegate of Council under section 32(2).

(4) An interest in Membertou lands that reverts to Membertou under subsection 50(3) of the *Indian Act* shall become Community Lands on the date of reversion or on



such other date that the Minister or the Minister's duly authorized delegate may specify.

Spousal Property Law

33.(1) The Council shall enact a spousal property law providing rules and procedures applicable on the breakdown of a marriage, to

- (a) the use, occupancy and possession of Membertou land; and
- (b) the division of interests in that land.

Enactment Deadline

- (2) The spousal property law will be enacted by June 18, 2016.

General Principles

(3) For greater certainty, the rules and procedures developed under this section must respect the following general principles;

- (a) the children of the spouses, if any, should have a right to reside in the matrimonial home until the age of majority or until other arrangements have been made in the best interests of the children;
- (b) each spouse should have an equal right to possession of their matrimonial home;
- (c) each spouse should be entitled to an undivided half interest in their matrimonial home, as a tenant in common;
- (d) a mortgage of lease of spousal property shall not be set aside if the mortgagee acquired it for value and acted in good faith;
- (e) the rules and procedures shall not discriminate on the basis of sex; and
- (f) only members are entitled to hold a permanent interest in Membertou land or a charge against a permanent interest in Membertou land.

PART IX DISPUTE RESOLUTION

Informal Resolution of Disputes

34.The Membertou intends that whenever possible, a dispute in relation to Membertou lands shall be resolved through informal discussion by the parties to the dispute and nothing in this part shall be construed to limit the ability of the parties to a dispute to settle a dispute without recourse to this part.



Office of the Adjudicator

35.(1) The Office of the Adjudicator is hereby established to hear and resolve disputes in relation to Membertou lands in accordance with this Land Code and any other applicable laws and policies.

(2) The Adjudicator shall be a shall consist of a person qualified to practice law in the Province of Nova Scotia, or formerly so qualified, who has had experience in First Nations land management and who is independent of the parties to a dispute and to other interests in the dispute.

Reference to Adjudicator

36.(1) The following persons may notify the Lands Governance Director that they wish to refer the dispute to the Adjudicator for resolution under this part:

- (a) a member who claims an interest in Membertou lands based on a registered interest;
- (b) a person who has a dispute with another person or with Membertou in relation to the possession, use or occupation of Membertou lands;
- (c) Membertou when asserting an interest in Membertou lands; and
- (d) Membertou when disputing the possession, use or occupation of Membertou lands.

Dispute Resolution Not Available

(2) Dispute resolution processes under this Land Code are not available under this part for disputes in relation to:

- (a) mortgages of lease;
- (b) decisions relating to housing allocation; or
- (c) decisions of Council to grant or refuse to grant an interest or licence in Membertou lands.

Disputes Originating Prior to Land Code

(3) Disputes that originated before the date this Land Code comes into force may be decided under this part.

Demonstration of Reasonable Effort to Resolve

(4) Persons applying for adjudication under section 36(1) shall demonstrate that



they have made reasonable efforts to resolve the dispute.

Limitation Period

(5) Parties may request a referral to the Adjudicator no later than:

(a) 60 days after the day the decision, act or omission that is the subject of the dispute occurred; or

(b) 30 days after an attempt to resolve the dispute informally, in accordance with section 34, has failed.

Lands Governance Director Shall Establish Procedures

37.(1) In consultation with the Lands Committee and Council, the Lands Governance Director shall establish procedures for referring disputes to an Adjudicator.

(2) Subject to section 37(1), the Lands Governance Director shall, in a timely manner as required to settle the dispute, appoint the Adjudicator in accordance with the procedures established by Council.

Agreement to be Bound

(3) The Lands Governance Director shall not refer a dispute to the Adjudicator unless all parties to the dispute agree to be bound by the decision of the Adjudicator, in a form prescribed by Council in consultation with the Lands Governance Director.

Duties and Powers of the Adjudicator

38. (1) The Adjudicator shall act impartially and without bias or favour to any party in a dispute.

Offense

(2) It is an offense for a person to act, or attempt to act, in an improper way to influence the decision of the Adjudicator.

Rejection of Application

(3) In addition to any other penalty provided for an offence under section 43.2, the Adjudicator may refuse to hear or decide an application if, regardless of whether a person has been found to have committed an offence under section 43.2, the Adjudicator reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence the Adjudicator's decision.



Rules of Adjudicator

(4) The Adjudicator may, consistent with this Land Code, establish rules for procedure at hearings and for the general conduct of proceedings.

Professional Services

(5) Prior to retaining the services of any professionals to assist in fulfilling his or her functions, the Adjudicator shall notify the parties to the dispute of the proposed professionals and their estimated services and costs.

(6) Upon agreement of the parties, the Adjudicator may retain the services of professionals to assist in fulfilling his or her functions, in which case they shall make best efforts to use professional services available in the community who do not have a conflict of interest.

(7) The Adjudicator may refuse to hear or decide an application if one or more of the parties refuse to accept the Adjudicator's proposal to retain professionals who are, in the reasonable opinion of the Adjudicator, required to resolve the dispute.

(8) The Adjudicator may, after hearing a dispute:

- (a) confirm or reverse the decision in dispute, in whole or in part;
- (b) substitute the Adjudicator's own decision for the decision in dispute;
- (c) direct that an action be taken or ceased;
- (d) refer the matter or dispute for reconsideration by the decision-maker; or
- (e) refer the matter to a court of competent jurisdiction or other forum.
- (f) Decisions

(9) The Adjudicator shall give written reasons for a decision and shall sign the written reasons.

(10) Subject to section 40(1) (Appeal of Decision) a decision of the Adjudicator is binding.

(11) An order from an Adjudicator may be entered into court and enforced through the court of competent jurisdiction.

Costs

39.(1) Unless otherwise ordered by the Adjudicator under section 38(8) or by a court, the parties to a dispute shall bear their own costs and an equal share of the costs



of the adjudication process.

(2) The Adjudicator has the authority to order one, both or all of the parties to pay some or all of the costs of the adjudication process, including but not limited to the costs of the Adjudicator and any professionals retained, taking into account:

- (a) the reasonableness of the parties in their positions;
- (b) the conduct of the parties;
- (c) the result of the adjudication;
- (d) the use of professional services; and
- (e) any other relevant factor.

Membertou Liability

(3) For greater certainty, Membertou shall not be liable or responsible for the costs of adjudication under this part, or of any dispute resolution process, where Membertou is not a party.

Appeal of Decision

40.(1) Subject to any exception established by a law, a decision of the Adjudicator may be appealed to a court of competent jurisdiction.

Alternate Forums

(2) Nothing in this part precludes Council from establishing additional processes or laws for resolving disputes, which processes may include facilitated discussion, mediation, administrative appeals, or referral to another forum.

PART X OTHER MATTERS

Liability Coverage

41.(1) The Council shall arrange, maintain and pay insurance coverage for its officers and employees engaged in carrying out any matter related to Membertou land to indemnify them against personal liability arising from the performance of those duties.

Extent of Coverage

(2) The extent of the insurance coverage shall be determined by the Council.



Application of the Criminal Code

42.(1) Unless some other procedure is provided for by a Membertou 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 Membertou law.

(2) Any person who commits an offence under this Land Code or a Membertou 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 Membertou environmental protection laws may carry penalties consistent with similar environmental protection laws in force in Canada.

(3) Membertou law may provide for a penalty which is different than the penalties referred to in section 42(2).

Commencement

43. (1) This Land Code shall take effect if the community approves this Land Code and the Transfer Agreement with Canada and this Land Code has been certified by the verifier pursuant to the *Framework Agreement*

Commencement Date

(2) This Land Code shall take effect on the first day of October 2015.