

MEMBERTOU
LAND CODE, 2019
 [March 12, 2019]

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PREAMBLE

WHEREAS Membertou is a part of the Mi'kmaw Nation whose ancestors have used and occupied Mi'kma'ki from time immemorial;

WHEREAS Membertou has an unextinguished right to self-determination, as affirmed by the United Nations Declaration on the Rights of Indigenous People, which includes a right to govern itself, its members and its lands;

WHEREAS Membertou has an unextinguished and inherent right of self-governance which emanates from its people, culture, language, land and aboriginal and treaty rights, which are recognized by section 35 of the Constitution Act, 1982;

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 First Nation 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, as an aspect of its unextinguished right to self-determination and its unextinguished and inherent right of self-governance, has jurisdiction to create rules for the resolution of issues on Membertou 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:

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PART I CITATION

- 1.1 This enactment may be cited as the *Membertou Land Code, 2019*.

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 or any successor elected government 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;

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

“First Nation Lands Register” means the register established pursuant to clause 51 of the *Framework Agreement* and regulated by the *First Nations Land Registry Regulations*;

“*Framework Agreement*” means the *Framework Agreement on First Nation Land Management* entered into between Canada and the signatory First Nations, on February 12, 1996, as amended;

“Immediate Relatives”, in respect of a person, means the person’s parent, sister, brother, child, and spouse;

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“Individual Agreement” means the Individual Agreement entered into between Membertou and Canada in accordance with clause 6.1 of the *Framework Agreement*;

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

“Governance Committee” means the Committee established under this *Land Code*;

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

“Licence” in relation to Membertou Land, means any right of use or occupation of that Land, other than an Interest in the Land;

“Meeting of Members” means a meeting under Part 4 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, Waters and Resources” means any portion of a reserve that is subject to this *Land Code* under section 6;

“Ratification Vote” means a vote of Eligible Voters under section 16;

“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 marriage.

Paramountcy

- 3.1 If there is an inconsistency or conflict between this *Land Code* and any other enactment of Membertou, including a by-law enacted under section 81 of the *Indian Act*, this *Land Code* prevails to the extent of the inconsistency or conflict.

Consistency with Framework Agreement

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

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Interpretation

3.3 This *Land Code* shall be interpreted in a fair, large and liberal manner.

3.4 The principles set out in the Preamble to this *Land Code* may be used to interpret this *Land Code*.

3.5 In this *Land Code*:

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;

- (a) 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”;
- (b) 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*;
- (c) 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;
- (d) 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
- (e) 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

3.6 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

3.7 The Mi’kmaw language 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.

Rights not Affected

3.8 This *Land Code* does not change:

- (a) any Aboriginal, Treaty, inherent rights or other rights or freedoms that pertain now or in the future to the Membertou or its Members; or

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- (b) the fiduciary relationship between Canada and Membertou and its Members; or
- (c) the by-law powers of Council pursuant to the *Indian Act*.

Treaty and Aboriginal Rights Application and Recognition

- 3.9 This *Land Code* is consistent with all existing Aboriginal and Treaty rights of the Mi'kmaw People of Membertou and Mi'kma'ki.

Lands and Interests Affected

- 3.10 A reference to “Membertou Land, Waters and Resources” in this *Land Code* means all rights and resources that belong to the land, unless the context otherwise requires and means:
- (a) the water;
 - (b) beds underlying water;
 - (c) riparian rights, including to lands acquired through accretion;
 - (d) minerals and subsurface resources
 - (e) and all other renewable and non-renewable natural resources in and of that land, 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

- 4.2 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.

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Purpose

- 5.1 The purpose of this *Land Code* is to set out the principles, rules and administrative structures that apply to Membertou Land, Waters and Resources and by which Membertou will exercise its authority over those Membertou Land, Waters and Resources.

Ratification

- 5.2 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's 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*.

Additional Lands

- 6.2 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.
- 6.3 Council shall hold a Meeting of Members prior to amendment of the description

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of Membertou land subject to this *Land Code* and Individual Agreement.

Land Exchange

- 6.4 For greater certainty, clause 6.3 does not apply to land acquired by land exchange, which requires community approval and is governed by the process in section 18.

Inclusion of Land or Interest

- 6.5 If the relevant conditions in section 6.2 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 Resources.

Examples of Laws

- 7.2 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;
 - (e) enforcement of Membertou Land Laws; and
 - (f) laws on the provision of services for the resolution, outside the courts, of disputes in relation to Membertou land.

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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.

Procedure Upon Receipt of Proposed Land law

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

Tabling and Posting of Proposed Land Laws

- 8.3 Before a proposed Land Law may be enacted, Council shall:
- (a) table the proposed Land Law at a duly convened meeting of Council;
 - (b) post it in public places and publish it online;
 - (c) deposit the proposed Land Law with the Governance Committee;
 - (d) review comments and recommendations provided by the Governance Committee; and
 - (e) take any other steps to give notice of the proposed Land Law that Council may consider appropriate.

Urgent Matters

- 8.4 The Council may enact a law without the preliminary steps required under section 8.3, 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 8.3.

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Approval of Law by Council

8.5 A law is enacted if it is approved by a majority of the Council.

Certification of Laws

8.6 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 Land Laws pursuant to this *Land Code* shall be published:
- (a) in the minutes of the Council meeting at which it was enacted;
 - (b) by posting a copy of the Land Law in a location within the administrative office of Membertou accessible to all Members, as soon as practicable after enactment.;
 - (c) by making it publicly available on the Membertou website; and
 - (d) any additional method as Council may consider appropriate.

Posting Laws

9.2 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

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

Copies of Laws

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

Commencement of Laws

9.5 A law enacted by the council takes effect on the date of its enactment or such later date as specified by the law.

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Enforceability of Land laws

- 10.1 To enforce its *Land Code* and its Land Laws, Membertou shall have the power to:
- (a) establish offences that are punishable on summary conviction;
 - (b) provide for fines, imprisonment, restitution, community services, and alternate means for achieving compliance;
 - (c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information; and
 - (d) enter into agreements with provincial or municipal governments with respect to any matter concerning the enforcement of its *Land Code* and Land Laws.

Prosecuting Offences

- 10.2 For the purpose of prosecuting offences, Membertou may:
- (a) retain its own prosecutor; and
 - (b) make laws with respect to the appointment and authority of justices of the peace.

PART IV COMMUNITY MEETINGS AND APPROVALS

Participation of Members

- 11.1 Every Member is entitled to participate in the meeting of Members.

Participation of Eligible Voters

- 12.1 Every Eligible Voter is entitled to participate in community approvals.

Notice of Meeting

- 13.1 Council shall give written notice of the Meeting of Members and any matter requiring community approval at a Meeting of Members, and include in the notice:
- (a) the date, time and place of the meeting;
 - (b) a brief description of the matter to be discussed;

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- (c) a brief description of any matter that requires community approval; and
- (d) other information and material that Council considers appropriate.

Manner of Notice

- 13.2 The notice shall be given to the Members before the meeting or vote, by:
- (a) posting the notice in public places;
 - (b) providing the notice to Members and taking reasonable steps to locate and inform Members who reside on and off-reserve;
 - (c) posting the notice online; and
 - (d) additional methods Council considers appropriate.

Permission of Council

- 13.3 A person, other than a Member, authorized by Council may attend a Meeting of Members.

Informed Decision

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

Community Meeting of Members

- 14.1 Council shall call a Meeting of Members prior to:
- (a) declaring Land or an Interest to be subject to this *Land Code*;
 - (b) enacting a Land Law respecting a community plan or subdivision plan;
 - (c) any development affecting a cultural site or an environmentally sensitive property;
 - (d) enacting a Land Law respecting environmental assessment and protection;
 - (e) enacting a Land Law respecting the transfer and assignment of rights and Interests in Membertou Land;
 - (f) enacting a Land Law respecting matrimonial real property on reserve;
 - (g) enacting a Land Law respecting the rate and criteria for the payment of fees or rent for Membertou Land;

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- (h) enacting a Land Law respecting the rights and procedures on community expropriation; and
- (i) respecting any other matter, Land Law or class of law that Council, by Resolution, declares to be subject to this section.

No Quorum

- 14.2 No quorum or minimum level of participation is required at a Meeting of Members.

Community Approval

- 15.1 Community approval shall be obtained for any law or class of law that Council, by resolution, declares to be subject to this section.

Utility Permits Excepted

- 15.2 Community approval is not required for an easement, right of way or permit granted by Council for utilities, including telecommunications, water, electricity, natural gas, sewer services and ancillary services.

Method of Voting

- 15.3 Community approval shall be obtained by one or more of the following methods:
 - (a) establishing polling locations;
 - (b) show of hands;
 - (c) mail-in ballot;
 - (d) alternative voting methods, such as electronic and telephone voting; or
 - (e) any other method outlined in voting policies.

Minimum Requirements for Approval

- 15.4 For Community approvals, a matter shall be considered approved if at least a majority of participating Eligible Voters cast a vote in favour of the matter.

Ratification Votes

- 16.1 Community Approval by ratification vote shall be obtained for an amendment to this *Land Code*.

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Exceptions

- 16.2 A community approval by Ratification Vote is not required for:
- (a) an amendment to the description of land of this *Land Code*;
 - (b) revisions to this *Land Code* made pursuant to section 41.1; and
 - (c) an amendment to, or renewal of, the Individual Agreement.

Ratification process

- 16.3 Any ratification vote required under this *Land Code* may be conducted in a similar manner as the Membertou Community Ratification Process, which was used to ratify this *Land Code*.

No verifier

- 16.4 A verifier is not required in any ratification vote.

Minimum Requirements for Approval

- 16.5 For community approvals by ratification vote, a matter shall be considered approved if at least a majority of participating Eligible Voters cast a vote in favour of the matter.

Policies Consultation, Approval and Ratification

- 16.6 For greater certainty, Council may make Land Laws or policies:
- (a) for Meetings of Members;
 - (b) for community consultations;
 - (c) for community approvals;
 - (d) for Ratification Votes; and
 - (e) respecting any other matter, that Council, by resolution, declares to be subject to part 4 of this *Land Code*.

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PART V PROTECTION OF LAND

Rights and Interest that May be Expropriated

- 17.1 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

- 17.2 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

- 17.3 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

- 17.4 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.

Member Notification

- 17.5 In the case of an expropriation of a Member's Interest in Membertou land, the affected Member or Members shall receive notification of the expropriation within a reasonable time prior to the release of the public report.

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Rights that May Not be Expropriated

- 17.6 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

- 17.7 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

- 17.8 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

- 17.9 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

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

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*

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and the *Framework Agreement*.

No effect

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

Land to be Received

- 18.3 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

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

Additional Land

- 18.5 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

- 18.6 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.

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Community Notice

- 18.7 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 18.3 have been met;
 - (e) a copy or summary of the exchange agreement; and
 - (f) a copy of the consent referred to in section 18.6.

Process of Land Exchange

- 18.8 The land exchange agreement shall provide that
- (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;
 - (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 First Nations Lands Register.
 - (d) the land to be set apart as a reserve has been subject to an environmental audit, and clearance or remediation as necessary, or that Council is satisfied that adequate provisions have been made for such clearance or remediation at no cost to Membertou, and with full indemnification to Membertou.

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*

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2013, Schedule - Avoiding and Mitigating Conflicts of Interest shall apply.

Disclosure of Conflict of Interest

- 19.2 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.

Publish Annual report

- 21.1 Council, on behalf of the Membertou, shall publish an annual report on land matters.

Contents

- 21.2 The annual report shall include:
- (a) an annual review of Membertou land and natural resources management;
 - (b) annual budget;
 - (c) a copy and explanation of the audit as it applies to Membertou land and natural resources; and
 - (d) any other matter as determined by Council or Lands Committee.

**PART VII
LAND ADMINISTRATION**

Membertou Lands Office

- 22.1 The Membertou Lands Office shall carry out duties and responsibilities delegated or assigned to it under this *Land Code* and any other applicable law.
- 22.2 Without limiting the generality of section 22.1, the Membertou Lands Office

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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 First Nations 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 First Nations 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 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.

22.3 The Membertou Lands Office shall perform such duties and responsibilities delegated or assigned under this *Land Code* or any other applicable law.

22.4 In consultation with Council, the Lands Office may develop policies and procedures required for the proper administration and management of the Membertou Lands Office.

Delegation of Administrative Authority

22.5 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*.

22.6 Notwithstanding section 22.5, Council may, delegate administrative authority to an individual or body established or authorized under this *Land Code*.

22.7 Without limiting the generality of sections 22(1), (2), (3) or (4), the Lands Office shall:

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- (a) oversee the day-to-day operations of the Membertou Lands Office;
- (b) advise the Governance 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 Members to discuss issues related to Membertou Land, Waters and Resources, and make recommendations to Council on the resolution of such issues;
- (e) assist in the exchange of information between Members and Council regarding Membertou Land, Waters and Resources issues;
- (f) oversee community consultations and Ratification Votes under this *Land Code*; and
- (g) perform such other duties and functions consistent with this *Land Code* as Council may direct.

Governance Committee Established

- 23.1 Council shall establish a Governance Committee.
- 23.2 The Governance Committee shall:
 - (a) assist the Membertou Lands Office 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 Members on land issues; and
 - (e) perform such other duties and functions as Council or the Lands Office may direct.

PART VIII INTERESTS AND LICENCES IN LAND

All Dispositions in Writing

- 24.1 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*.

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Standards

- 24.2 The Council may establish mandatory standards, criteria and forms for Interests and Licences in Membertou land.

Fees and Rents

- 24.3 Council may 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*.

Enforcement of Interest and Licences

- 25.1 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.

Registration of Consent or Approval

- 25.2 An instrument granting an Interest or Licence in Membertou land that requires the consent of Council, or community approval, shall include a form of certificate indicating that the applicable consent or approval has been obtained.

Duty to Deposit

- 25.3 A copy of the following instruments shall be deposited in the First Nation Lands Register:
- (a) any grant of an Interest or Licence in Membertou land;
 - (b) any transfer or assignment of an Interest or Licence in Membertou land;
 - (c) every land use plan, subdivision plan or resource use plan;
 - (d) every Land Law: and
 - (e) this *Land Code* and any amendment to this *Land Code*.

Improper Transactions Voidable

- 25.4 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

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Membertou land after the date this *Land Code* takes effect is voidable if it contravenes this *Land Code*.

Non-Members

- 25.5 A person who is not a Member may hold a lease, licence, easement, mortgage or permit in Membertou lands.

Grants to Non-Members

- 25.6 The written consent of Council shall be obtained for the original grant of a lease, licence, easement or permit in community land, waters and resources to a person who is not a Member.
- 25.7 Notwithstanding section 25.5, 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

- 26.1 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.
- 26.2 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

- 27.1 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

- 27.2 The grant of an Interest, Licence or permit in Community Lands may be made

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subject to conditions.

Role of the Lands Office

- 27.3 The Lands Office 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

- 28.1 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*.
- 28.2 For greater certainty, no interest under section 28.1, may be granted to or held by a person who is not a Member.

Transfer and Assignment of Interests

- 28.3 Members may transfer or assign their Interest in Membertou Land, Waters and Resources to Membertou or a Member without the consent of Council.
- 28.4 For greater certainty, Members may transfer their interest to themselves.

Consent of Council

- 28.5 There shall be no transfer or assignment of an Interest in Membertou land without the written consent of Council, except for:
- (a) transfers between Members;
 - (b) transfers that occur by operation of law, including transfers of estate by testamentary disposition; and
 - (c) transfers in accordance with the *Membertou Family Homes Law, 2016* reserve law.

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Member Authority to Grant to Themselves

- 28.6 A Member holding an interest in Membertou land may grant a leasehold, easement, permit, Licence or Interest to himself or herself in the same manner as to another person.

Limits on Mortgages and Seizures

- 29.1 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.
- 29.2 The Membertou Lands Office shall not be responsible or liable for ensuring that a lease that permits the leasehold interest to be mortgaged or charged is in good standing or that the leaseholder is in compliance with the terms of the lease.
- 29.3 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, Waters and Resources Held by a Person Who is Not a Member

- 29.4 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

- 29.5 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.
- 29.6 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.
- 29.7 The leasehold interest in Membertou Land, Waters and Resources of an Indian,

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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 were held by a non-Indian.

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

Default in Mortgage

- 29.9 In the event of default in the terms of a mortgage or charge of a leasehold interest, 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 the mortgage or charge was registered in the First Nations Land Register.

Power of Redemption

- 29.10 Subject to prior redemption by the lessee or Member, Council may redeem the charge or mortgage from the charger or mortgager in possession and shall thereupon acquire all the rights and Interests of the charger or mortgager and of the lessee or Member for all purposes after the date of the redemption.

Waiver of Redemption

- 29.11 Council may waive its rights to redemption for any charge or mortgage of a leasehold Interest or License.

Right of Residence

- 30.1 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 spouses and children who reside with them and;
 - (b) members with a registered interest in Membertou land; and
 - (c) lessees and permittees, in accordance with the provisions of the granting instrument.
 - (d) a person authorized by Council or by a law enacted by Membertou.

Right of Access

- 30.2 The following persons have a right of access to Membertou lands;

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- (a) a lessee and his or her invitees;
- (b) a person granted a right of access under a permit;
- (c) Membertou Members, their spouses and children and his or her invitees;
- (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

- 30.3 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

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

Trespass

- 30.5 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

- 30.6 Subject to any law enacted under this *Land Code*, all civil remedies for trespass are preserved.

Transfers on Death or Mental Incompetence

- 31.1 A member who receives an interest in Membertou lands by testamentary disposition, succession or through an order for sale made upon a finding of mental incompetence is entitled to have that interest registered in the First Nations Land Register provided that the written instrument transferring the interest is executed by the person appointed under the *Indian Act* as the personal representative of the estate of the deceased or the mentally

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incompetent member.

- 31.2 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 First Nations Land Register provided that the written instrument transferring the interest is duly executed by the person duly authorized under the *Indian Act* to transfer the interest.
- 31.3 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.

PART IX DISPUTE RESOLUTION

Informal Resolution of Disputes

- 32.1 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

- 33.1 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.
- 33.2 The Adjudicator 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

- 34.1 The following persons may notify the Lands Office 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

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- 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

34.2 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

34.3 Disputes that originated before the date this *Land Code* comes into force may be decided under this part.

Demonstration of Reasonable Effort to Resolve

34.4 Persons applying for adjudication under section 34.1, shall demonstrate that they have made reasonable efforts to resolve the dispute.

Limitation Period

- 34.5 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 32.1, has failed.

Lands Office Shall Establish Procedures

- 35.1 In consultation with the Lands Committee and Council, the Lands Office shall establish procedures for referring disputes to an Adjudicator.
- 35.2 Subject to section 35.1, the Lands Office shall, in a timely manner as required to settle the dispute, appoint the Adjudicator in accordance with the procedures

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established by Council.

Agreement to be Bound

- 35.3 The Lands Office 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 Office.

Duties and Powers of the Adjudicator

- 36.1 The Adjudicator shall act impartially and without bias or favour to any party in a dispute.

Offense

- 36.2 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

- 36.3 In addition to any other penalty provided for an offence under section 36.2, 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 36.2, 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

- 36.4 The Adjudicator may, consistent with this *Land Code*, establish rules for procedure at hearings and for the general conduct of proceedings.

Professional Services

- 36.5 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.
- 36.6 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.
- 36.7 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

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who are, in the reasonable opinion of the Adjudicator, required to resolve the dispute.

36.8 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.

Decisions

36.9 The Adjudicator shall give written reasons for a decision and shall sign the written reasons.

36.10 Subject to section 38.1 (Appeal of Decision), a decision of the Adjudicator is binding.

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

Costs

37.1 Unless otherwise ordered by the Adjudicator under section 36.8, 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.

37.2 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.

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Membertou Liability

- 37.3 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

- 38.1 Subject to any exception established by a law, a decision of the Adjudicator may be appealed to a court of competent jurisdiction.

Alternate Forums

- 38.2 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

- 39.1 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

- 39.2 The extent of the insurance coverage shall be determined by the Council.

Application of the Criminal Code

- 40.1 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.
- 40.2 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

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penalties consistent with similar environmental protection laws in force in Canada.

- 40.3 Membertou law may provide for a penalty which is different than the penalties referred to in section 40.2.

Revisions to the Land Code

- 41.1 A ratification vote is not required for revisions made to this *Land Code* that do not change the substance of this *Land Code*. Council may, from time to time, arrange and revise this *Land Code*. Revisions include:
- (a) an amendment of the description of Membertou Land subject to this *Land Code* and Individual Agreement;
 - (b) a reference in this *Land Code* to a clause in another act or document that was amended and resulted in clause renumbering;
 - (c) a reference in this *Land Code* to an Act or parts thereof that have expired, have been repealed or suspended;
 - (d) changes in this *Land Code* as are required to reconcile seeming inconsistencies with other acts;
 - (e) minor improvements in the language as may be required to bring out more clearly the intention of Membertou without changing the substance of this *Land Code*; and
 - (f) correct editing, grammatical or typographical errors.

Part XI Coming into Force

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

Commencement Date

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

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APPENDIX "A"

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

ANNEX "G"

DESCRIPTION OF MEMBERTOU FIRST NATION LAND

Surveyor General Branch - Land Description for Membertou Indian Reserve No. 28B prepared under First Nation Land Management Act (S.C. 1999, c.24).

- **Canada Lands Surveys Records No. FB41942 dated February 7, 2018**

Surveyor General Branch - Land Description for Sydney Indian Reserve No. 28A prepared under First Nation Land Management Act (S.C. 1999, c.24).

- **Canada Lands Surveys Records No. FB41943 dated February 12, 2018**

Surveyor General Branch - Land Description for Caribou Marsh Indian Reserve No. 29 prepared under First Nation Land Management Act (S.C. 1999, c.24).

- **Canada Lands Surveys Records No. FB41101 dated March 30, 2016**