



Membertou
WELCOMING THE WORLD!

**Membertou
Certificate of Possession Law,
2020**

Law number: LAW-MCP-001
Adoption date: April 27, 2020
Effective date: April 27, 2020


MEMBERTOU
CERTIFICATE OF POSSESSION LAW, 2020

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WHEREAS

- A. Membertou is a part of the Mi'kmaw Nation whose ancestors have used and occupied Mi'kma'ki from time immemorial;
- B. Membertou has an unextinguished right to self-determination, as affirmed by the United Nations Declaration on the Rights of Indigenous Peoples, which includes a right to govern itself, its members and its lands;
- C. Membertou has an unextinguished and inherent right of self-governance which emanates from its people, culture, language, land and aboriginal and treaty rights;
- D. Membertou has a profound relationship with the lands, waters and resources that is rooted in respect for the spiritual value of the Earth and the gifts of the Creator.
- E. 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;
- F. Membertou has the authority to make laws respecting the management, use and possession of Membertou lands pursuant to the *Membertou Land Code, 2019*;
- G. The Council of Membertou deems it to be in the best interests of Membertou to make a

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Membertou Certificate of Possession Law relating to allotment and creation of interests;
and

- H. Membertou held a meeting of members regarding this Law in accordance with the *Membertou Land Code, 2019*.

NOW THEREFORE the Council of Membertou duly enacts as follows:

PART I CITATION

1. This Law may be cited as the *Membertou Certificate of Possession Law, 2020*.

PART II DEFINITIONS, INTERPRETATION AND APPLICATION

Definitions

2. For the Purposes of this Law, terms have the same definitions as in the *Membertou Land Code, 2019* unless the context indicates the contrary, in this Law:

“allot” means the act of Council granting to a member the lawful possession of Membertou Lands;


“allotment” means those Membertou Lands that have been lawfully granted to a member and in which that member has lawful possession;

“application for certificate of possession” means an application made under section 8 of this Law;

“certificate of possession” means an interest in Membertou Lands granted pursuant to this Law and Part VIII of the *Membertou Land Code, 2019* or formerly issued under section 20 of the *Indian Act* to confirm a member’s allotment;

“certificate of possession holder” means a member who has been allotted a certificate of possession pursuant to:

- (a) section 20(1) of the *Indian Act*;
 - (b) part VIII of the *Membertou Land Code 2019*; or
 - (c) this Law,
- and who is entitled to a certificate of possession under this Law;

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“Council” means the Chief and Council of Membertou;

“First Nations Land Register” means the register maintained by Canada 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;

“*Indian Act*” means the *Indian Act*, R.S.C. 1985, c I-5:

“*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 *First Nations Land Management Act*;

“interest” in relation to Membertou Lands, 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;

“member” means a person whose name appears or whose name 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 lands” means all Membertou lands, waters and resources as identified in the *Individual Agreement* including:

- (a) Sydney 28A;
- (b) Membertou 28B;
- (c) Caribou Marsh 29;
- (d) Membertou land set apart by Canada in the future as Membertou land 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; and
- (e) Membertou land that become additional lands pursuant to section 6(2) of the Membertou Land Code, 2019,

but not including the land described as Malagawatch 4 at this time;

“parcel of land” means a parcel of Membertou land;

“registered” means validly registered in the First Nations Land Register under this Law;

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Interpretation


3. This Law must be interpreted in a fair, large and liberal manner.
4. In this Law:
 - (a) the use of the word “must” denotes an obligation that, unless this Law provides to the contrary, must be carried out as soon as practicable after this Law 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 Law and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Law;
 - (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.

Application of Law

5. This Law applies to all Membertou lands.
6. Where any law or regulation of Canada or any other Membertou law applies to any matter covered by this Law, compliance with this Law does not relieve the person from also complying with the provisions of the other applicable laws.
7. If any provision of this Law is held invalid by a court of competent jurisdiction, the invalid provision must be severed from and must not affect the remaining provisions of this Law.

Purpose

8. The purpose of this Law is to provide a fair and transparent process for the allotment of a certificate of possession in Membertou Lands.

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PART III MEMBERTOU CERTIFICATE OF POSSESSION

9. A certificate of possession may only be granted in accordance with this Law.
10. A certificate of possession may only be granted to a member.
11. No member lawfully holds, or may enforce, a certificate of possession in Membertou land unless, a certificate of possession in such Membertou land has been allotted to that member by Council:
 - (a) before the coming into force of the *Membertou Land Code, 2019*, under section 20 of the *Indian Act*, or
 - (b) since the coming into force of the *Membertou Land Code, 2019*, under this Law and Part VIII of the *Membertou Land Code, 2019*,
and such interest is registered with the First Nations Land Register;


Creation of Membertou Certificate of Possession

12. A Membertou certificate of possession:
 - (a) must be created, granted, disposed of, assigned or transferred by a written instrument in accordance with this Law;
 - (b) may only be granted, disposed of, assigned or transferred to Membertou or to one or more members; and
 - (c) may be subject to conditions as deemed necessary or advisable by Council.

Entitlements of a Membertou Certificate of Possession Holder

13. Subject to Membertou laws, by-laws and policies, a certificate of possession holder is entitled to:
 - (a) permanent possession of their allotment;
 - (b) benefit from the resources in and of their allotment;
 - (c) grant subsidiary interests, licences and permits in their allotment;
 - (d) transfer, devise or otherwise dispose of their allotment to another member; and;
 - (e) any other rights consistent with the *Membertou Land Code, 2019* that are attached to a certificate of possession under the *Indian Act*.

Reserve Land Status Remain

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14. Membertou land in which a member holds a certificate of possession pursuant to this Law continue to be lands reserved for the Indians within the meaning of section 91(24) of the *Constitution Act*.

Responsibilities of a Membertou Certificate of Possession Holder

15. A person or persons who are allotted a certificate of possession under this Law is or are responsible for:
- (a) insurance and maintenance of the parcel of land that is described in the certificate of possession;
 - (b) insurance, maintenance and repairs for structures and buildings on the parcel of land that is described in the certificate of possession;
 - (c) managing and monitoring any interests, licences or permits granted over the parcel of land that is subject to the certificate of possession;
 - (d) registering any changes to ownership of the certificate of possession with the First Nations Land Register; and
 - (e) ensuring all uses of the parcel of land that is subject to the certificate of possession comply with Membertou laws and by-laws and any applicable laws of Canada.

Membertou Certificate of Possession

16. At the request of a certificate of possession holder, and every time a new allotment is granted, Council must issue the allotment holder a certificate of possession as evidence of the allotment holder’s lawful possession of Membertou lands therein.
17. Any person who at the time this Law is enacted holds a valid and subsisting certificate of possession, or has a right to acquire a certificate of possession, pursuant to the *Indian Act* must be deemed to be:
- (a) lawfully in possession of the land to which the certificate of possession relates; and
 - (b) a certificate of possession holder with respect to those lands.

PART IV REGULATION AND POLICIES

18. Council may make a regulation or policy that:
- (a) sets out the procedures that apply to the implementation of this Law;
 - (b) sets out the procedures that apply to the allotment and cancellation of a certificate of possession; and

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- (c) prescribes forms for use in the allotment and cancellation of a certificate of possession.

PART V CANCELLATION OF A CERTIFICATE OF POSSESSION

Power to Cancel a Certificate of Possession

19. Council may cancel a certificate of possession:
- (a) if Council granted the certificate of possession in error, by mistake, or by fraud; or
 - (b) if the person or persons named in the certificate of possession ceases to be a member and do not, within six (6) months of ceasing to be a member, dispose of such interest to another member; or
 - (c) by agreement with the person named in the certificate of possession.

When Cancellation Takes Effect

20. A certificate of possession is deemed cancelled at the time the cancellation of the certificate of possession is registered in the First Nations Lands Register.

Effect of Cancellation

21. All rights and interests in a parcel of land held under a cancelled certificate of possession vest in Membertou at the time of cancellation.


PART VI TRANSFERS OF A CERTIFICATE OF POSSESSION AND GRANTING INTERESTS AND LICENCES IN A CERTIFICATE OF POSSESSION

Transfer of Membertou Certificate of Possession on Death

22. The transfer of a certificate of possession on death of an allotment holder must be:
- (a) in accordance with the *Indian Act*; and
 - (b) registered in the First Nations Land Register.

Transfer of Certificate of Possession and Granting of Interests

23. Every transfer of a certificate of possession and every grant of an interest or licence in or to a certificate of possession must:

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- (a) comply with Membertou laws and policies, including any zoning laws, land use plans, environmental management plans and environmental assessment requirements; and
- (b) be registered in the First Nations Land Register.

Consent of Council Requirements

- 24. Council consent is not required for the transfer of a certificate of possession.
- 25. Council consent must be obtained by a holder for the original grant of an interest or licence in to their certificate of possession.

No Liability for Council

- 26. Membertou must not be responsible or liable for ensuring a certificate of possession that transfers an allotment or grants an interest or licence in or to an allotment
 - (a) is validly made;
 - (b) is enforceable; or
 - (c) will be accepted by the First Nations Land Register.

PART VII CONFLICTS OF INTEREST


- 27. In the event of real, perceived and potential conflicts of interest arising in relation to the management and administration of this Law, the *Membertou Financial Administration Law 2015, Schedule - Avoiding and Mitigating Conflicts Of Interest* must apply.

Disclosure of Conflict of Interest

- 28. The procedure for the disclosure of any real, perceived or potential conflict of interest that arise to the management and administration of this Law, must be the procedure set out in the *Membertou Financial Administration Law 2015, Schedule - Avoiding and Mitigating Conflicts Of Interest*.

PART VIII DISPUTE RESOLUTION

- 29. (1) The following disputes must be addressed following the Dispute Resolution process set out in Part IX of the *Membertou Land Code, 2019*:
 - (a) disputes regarding the boundaries of a registered certificate of possession;

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- (b) disputes between a person or persons named in a registered certificate of possession and another member or Membertou regarding the possession, use or occupation of lands described in the certificate of possession;
 - (c) disputes regarding the allocation of a certificate of possession in a parcel of land to a member under an agreement between Membertou and that member; and
 - (d) disputes regarding the cancellation of a registered certificate of possession.
- (2) For greater certainty, a person cannot dispute a decision by Council in relation to the granting of an allotment.

PART IX AMENDMENTS

- 30. Council may, in accordance with this Part, make amendments to this Law.
- 31. Amendments to this Law may be made by an approval by Council, by band council resolution.

PART X EFFECTIVE DATE

- 32. This Law comes into force and effect on April 27, 2020.

THIS LAW IS HEREBY DULY ENACTED by the Council on 27th day of April, 2020, at Membertou, Nova Scotia.