



FORT MCKAY

FIRST NATION

LAND CODE

SUMMARY

SUMMARY

Interpretation

Preamble

- The purpose of the preamble is to clearly communicate the intentions of the drafters and the purpose of the Land Code.
- Dene and Cree language is used for key words and concepts in the preamble.
 - A glossary of words with pronunciations and translations is included after the table of content and before the preamble.

Definitions

- Definitions of key terms are provided to help interpret the Land Code, make it easier to read (i.e., less repetitive) and/or for clarification on what certain terms mean.
- Wherever possible, definitions in the Land Code are consistent with definitions included in other Fort McKay Laws or codes (i.e., Election Code).

First Nation Land

- The definition of First Nation Land includes only Fort McKay First Nation reserve land & resources.
 - The legal description for the reserves was prepared by Natural Resources Canada.
- New reserve land may be included in the land code through the addition to reserve process (ATR); this can be done automatically, without having to make amendments to the Land Code.

Consistency with Framework Agreement and hierarchy of laws

- If there is a conflict between the Land Code and the Framework Agreement, the Framework Agreement will be followed.
- If there is a conflict between the Land Code and any other Fort McKay laws, including bylaws under the Indian Act, the Land Code will be followed.

Rights not affected

- This section confirms the Land Code does not impact the following rights:
 - any Inherent, Treaty, Indigenous or other rights or freedoms that pertain now or in the future to the Fort McKay First Nation or its Members.
 - the application of Section 35 of the Canadian Constitution, 1982, to Fort McKay First Nation or its Members.
 - the fiduciary relationship between Canada and Fort McKay First Nation and its Members.
 - Fort McKay First Nation's eligibility to make claims for historical wrongs or breach of its aboriginal and treaty rights.
 - the by-law powers of Chief and Council pursuant to the Indian Act.
 - Fort McKay's ability to access funding for land and resource management activities or projects.



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PART 2

SUMMARY

Fort McKay First Nation Legislation

Law-making powers:

Under the Land Code, Fort McKay First Nation will have its own law-making powers that do not depend on the authority of Canada under the *Indian Act* or any other level of government.

Law-making process:

- A Land law or amendment to a Land Law may be proposed by members of Chief and Council or a representative of a committee or other body/authority that is authorized by Chief and Council to do so (i.e., Land Code Committee, FMFN administration).
- Chief and Council may reject a proposed law or amendment and address the matter using other tools such as policies, guidelines, or other existing laws.

Steps for enacting or amending a law:

- Introduction of proposed law or amendment at a Chief and Council meeting
- Review by a committee of members
- Posting in Fort McKay & published online.
- Presentation and discussion at one or more meeting(s) of Elders
- Presentation at one or more meeting(s) of Members
- Tabled at a Chief and Council meeting
- Approved by a consensus of Chief and Council (BCR)

Urgent Matters:

- Chief and Council may enact a law without going through the full law-making process if the law is needed to address an urgent public health and/or safety concerns in the community.
- A law enacted to address an urgent health and/or safety issue can not be in effect longer than 120 days unless it goes through the full lawmaking process.

Publishing Laws:

- After a law is enacted, it must be posted in the community and published online in the First Nations Gazette.

Law Enforcement and Prosecution:

- Fort McKay will have the power to implement an enforcement and prosecution regime that will meet the needs of the community. This will include issuing tickets, imposing fines, community service, imprisonment, and the ability/authority to perform searches, seizures, etc.
- Fort McKay may also enter into agreements with other governments or agencies with respect to any matter concerning enforcement of the Land Code and Land Laws.
- Fort McKay can hire its own prosecutors and/or enter into an agreement with Alberta to use a provincial prosecutor.

SUMMARY

Meetings of Fort McKay First Nation Members and Member Approval Votes

Meetings of Members:

- A meeting of Members must be called prior to seeking Member Approval for any matter under the Land Code or a Land Law.
- Notice of meetings of members must be given at least 7 days prior to the meeting date by written notification.

Member Approval:

- Approval of membership by vote must be obtained for the following decisions under the land code:
 - Any removal of a heritage site designation
 - Any voluntary exchange of Fort McKay First Nation Reserve Land
 - Granting a license or interest in land on the Moose Lake or Namur Lake reserves that is for industrial development.
 - Amending the law-making process or requirements for Member approvals in the Land Code.
 - Any other matter, law, or class of law that Council, by resolution, declares to be subject to this section

Method of Voting:

- Votes may be conducted by secret ballot, in-person polling locations, mail-in ballot to Members, alternative voting methods such as electronic voting or any combination of these methods.

Approval Threshold:

- A matter is considered approved by the Electors if a majority (50%+1) of the votes are in favour of approving the matter.
- Votes relating to granting an interest on the Moose Lake and Namur Lake reserves for industrial purposes must have a minimum participation of at least a majority (50%+1) of eligible voters for the results to be accepted.

Approval thresholds may be increased, but may not be lowered:

- Prior to a vote, Chief and Council may:
 - Opt to increase the percentage of Electors that must participate in a vote to consider a matter approved.

AND/OR

- Require that a percentage greater than 50% of the votes must be in favour for a matter to be approved.



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PART 4

SUMMARY

Protection of Land

Expropriation by the First Nation under the Land Code:

- Fort McKay First Nation may expropriate all or part of an interest in land (i.e., leases or subleases) for community works or purposes such as roads, utilities, community centers, recreation facilities, etc.
- Efforts to acquire the land must be taken before using expropriation powers and fair compensation must be paid to the interest holder.
- A law dealing with the steps and requirements for expropriation should be enacted as soon as possible after the Land Code comes into effect.

Voluntary Exchange of Land:

- Fort McKay First Nation may agree with another party to exchange a parcel of Fort McKay Land for another parcel of land from that other party.
 - For example, if the province requires a portion of reserve land for road widening or improvements.
 - Other compensation, such as additional land or money, may also be included in the exchange agreement
- The land that is received in exchange for the reserve land must be equal in size to the reserve land that is provided in the exchange and it must be added to reserve by Canada (i.e., if 10 acres of reserve is given, 10 acres must be added to reserve).
- All information relating to the land exchange agreement must be shared with Fort McKay Members.
- Members must approve the land exchange by referendum vote.

Cultural Heritage Resources

- Any disturbance, alteration, removal, etc. of a cultural heritage site or resource is not allowed unless Chief and Council authorize the activity and the resource is protected, preserved, or restored.
- Chief and Council may designate cultural-heritage sites by resolution
- Fort McKay may develop its own policies, standards, guidelines or enact laws that deal with the protection and preservation of cultural-heritage resources.

SUMMARY

Accountability

Conflict of Interest:

- A conflict of interest is when a person's ability to make an unbiased and fair decision is affected by a private interest that they might have in the matter, or a private interest of an immediate family member (i.e., spouse, child, brother, sister, parent)
 - Conflict of interest rules apply to anyone deciding or participating in making decisions under the Land Code, including staff and committee members.
 - Disclosure of actual or potential conflict of interest is required and the person must step back from the decision-making process.
- If a board or committee is unable to act in the decision-making, the decision will be referred to Chief and Council.
- If Chief and Council can't act due to conflict of interest, the matter may be referred to membership for approval by vote.
- No more than two members of the same immediate family may participate on an appointed board, committee etc. (applies to land code matters only).
 - If a board or committee has less than six members only one person per immediate family may be appointed.

Financial Management:

- Chief and Council will approve an annual budget for land and resource management
- Fort McKay's annual financial statements will be audited and will include revenues and expenditures relating to management of land and resources.

Annual Report:

- An annual report on land and resource management will be produced and shared with members.
- The report will include:
 - An overview of land and resource management activities
 - A copy and explanation of the financial audit as it applies to land and resources

Access to Information:

- Fort McKay First Nation members will have guaranteed access to information relating to the management of Fort McKay First Nation land and resources, including:
 - All land laws
 - The financial audit reports
 - Information from the annual report
 - Any public records pertaining to the management of FMFN land and resources.



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PART 6

SUMMARY

Interests and Licenses in Land

Administration and record keeping:

- Chief and Council may establish a process, policy or enact a Law for determining:
 - Rental rates and fees
 - Fees for services
 - Royalties for taking natural resources
- An interest in Fort McKay Land must be in writing and registered in the First Nation Lands Registry or it will not be enforceable.
- All interests in land, transfers of an interest in land, land laws and amendments, land or resource plan and land code amendments must be registered in the First Nation Land Registry.

Existing Interests:

- All legally valid interests in Fort McKay land that existed when the Land Code came into effect remain in force (i.e., commercial headleases, utility permits, etc.).
 - An interest holder and Fort McKay may agree to change the terms and conditions of the lease or permit or replace the agreement after the land code is passed.
- Fort McKay First Nation takes over the role of Canada under the leases and permits:
 - Collecting rent
 - Ensuring compliance with terms and conditions of the lease/permit.
 - Monitoring environmental requirements

New Interests and Licenses:

- Fort McKay First Nation has the power and authority to grant new interests and licenses in Fort McKay land and resources.
- If the grant is to a non-member, it must be confirmed by BCR, except if it is a tenancy under the Housing Law (i.e., a residential lease to a teacher) – those are approved by Housing
- Interests and allocations to members will continue under the Community Housing by-law, Long Term Leasing Law, and any related policies.

Namur Lake and Namur River Reserves (“Moose Lake Reserves”)

- An interest or license in land on the Moose Lake Reserves that is not for the personal, recreational or cultural use of a Member may not be granted until a law addressing land use and development is enacted for those reserves.

Transfers and Assignment of Interests in Land:

- Transfers of an interest in land must have the consent of Chief and Council
- Exceptions – Transfers may happen:
 - under a will or under estates law
 - under a Matrimonial Real Property Law
 - between Fort McKay business entities

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- under the commercial leases and subleases, unless required by those agreements
- to a mortgage company or bank

Mortgages and Seizures:

- Chief and Council must provide written consent for mortgages unless it is for the existing commercial headleases or subleases.
- A mortgage may not be for longer than the term of the lease
- If there is a mortgage default the bank/lender can't take possession or foreclose unless:
 - The mortgage was consented to by Chief and Council (except existing commercial headleases and subleases)
 - The mortgage was registered in the First Nation Land Registry System
 - Chief and Council has had a reasonable opportunity to pay out the mortgage and take possession of the property on behalf of Fort McKay First Nation.
 - Note: Fort McKay First Nation not obligated to pay out a mortgage and take possession of a property.

Residency and Access Rights

- The Fort McKay First Nation Trespass Law covers the rights of residency, occupancy and access relating to Fort McKay Land.

Transfers on Death

- Indian Act provisions relating to wills and estates apply until Fort McKay exercises jurisdiction over those matters
- Leases granted under the Long-Term Leasing Law may be transferred according to that Law.
- A non-Member may not acquire an interest in Fort McKay Land by inheritance, unless there is a Fort McKay Law allowing the transfer or required by a court order.
- If there is no will, and an interest in a property should go to a Member under ISC's estate rules, the ISC Minister may request Fort McKay grant an interest in the land to the Member.

Matrimonial Real Property on Reserve Law

- The Family Homes on Reserves and Matrimonial Interests or Rights Act applies to property rights on Fort McKay Land until Fort McKay enacts its own matrimonial real property law.

Natural Resources

- All natural resources on or under Fort McKay Land belong to Fort McKay First Nation
- Removal of natural resources must either be approved by Chief and Council or authorized by a license or interest in land.
- Natural Resources includes, but is not limited to:
 - Minerals, stone, sand, gravel, shale, peat, soil
 - Trees saplings, shrubs, timber, or hay



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PART 7

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Dispute Resolution

Dispute Resolution

- The dispute resolution process in the Community Housing By-law and any other Fort McKay laws still apply.
- Disputes relating to matters under the Land Code may be resolved by:
 - mediation, independent evaluation, arbitration, or other process agreed upon by the parties to the dispute; or
 - a court of competent jurisdiction if the parties do not agree on a dispute resolution process.
- As soon as possible after the land code comes into effect a dispute resolution law will be enacted.
- The Parties to a lease, sublease, permit, etc. may establish a dispute resolution process as an alternative to a dispute resolution process set out in this Land Code or a Fort McKay law.

SUMMARY

Other Matters

Land and Natural Resources Administration

- Chief and Council may delegate any authority under the Land Code to employees and/or departments, except for the power to enact laws, make resolutions and amend the Land Code.
- A committee of members will be established to provide advice on proposed laws and any other Land Code related matters.

Land Code Amendments

- Land Code amendments must follow the procedure for enacting and amending Fort McKay Land Laws, except:
 - if the amendment is made to correct an error, make the language clearer or add land to the land code after an addition to reserve; or
 - An amendment would change section 6.3 (Law-making process) or 12.1 (Community Approval) – this requires a vote.
- Chief and Council may opt to require a Membership vote to approve other amendments to the Land Code.

Liability

- Fort McKay First Nation is not liable for anything that happened while Canada was responsible for land management under the Indian Act.
- Fort McKay First Nation will be responsible for any damages, etc. because of Fort McKay First Nation's land administration and must have liability insurance for its directors, employees, etc. covering such damages.

Offences

- The Criminal Code of Canada conviction procedures will apply for offences under the land code, unless already covered by a Fort McKay Land Law.
 - Fines for offenses may not exceed \$5000
 - Prison sentences up to 6 months
 - Penalties may be set higher for environmental offenses if consistent with similar environmental protection laws in Canada.