



FISHING LAKE FIRST NATION

SUMMARY OF LAND CODE

WHAT IS A LAND CODE?

The Land Code is our proposed land law that sets out our Authority to Govern, the Law Making Process, Community Approvals, Protection of Lands, Accountability, the Administration of the Lands and Resources, Interests, Dispute Resolution, Other Matters, and the Description of the Land to be governed by FLFN rather than under the *Indian Act*.

Preamble

- ✦ The purpose of the Preamble is to clearly communicate our Traditional Laws and Principles regarding our sacred responsibility to look after the lands & resources for our future generations.
- ✦ It sets out our history as Saulteaux people, our Sovereignty to develop our own laws, such as this *Land Code* that is consistent with our Traditional practices and Inherent Right to Govern ourselves.

PART 1 PRELIMINARY MATTERS

Purpose

- ✦ A *Land Code* is a law that replaces the *Indian Act* rules on Lands and Resources Management with our own Fishing Lake First Nation (FLFN) Law.
- ✦ It sets out the principles, rules and administrative structures that apply to the lands that FLFN will exercise authority and jurisdiction in accordance with its Inherent Right to Self-Government and the *Framework Agreement on First Nation Land Management*.
- ✦ The Land Code has 9 main parts and is 42 pages in length with a table of contents and an appendix.

Definitions/Interpretations

- ✦ 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 Fishing Lake Laws and Policies.
- ✦ Interpretations ensure that the readers understand what the Law means and that it should be consistent with our culture and traditions and languages.
- ✦ Our Land Code will also be paramount if there is any inconsistency in any other laws enacted on FLFN.

Rights not affected

- ✦ This section makes it clear that the Land Code does not impact any Inherent, Treaty, Indigenous or other rights or freedoms that pertain now or in the future to the Fishing Lake First Nation or its Members.
- ✦ Nor will it impact the fiduciary relationship between Canada and Fishing Lake First Nation and its Members.
- ✦ Nor will it affect Fishing Lake First Nation's eligibility to make claims for historical wrongs or breach of its Aboriginal and Treaty rights.
- ✦ Nor will it impact Fishing Lake First Nations eligibility to access or receive funding for

- programs and services related to Land or Resource Management or economic development;
- ✦ It will also not affect the current by-law making power that Council has under the *Indian Act*.

Authority to Govern

- ✦ We ensure that it is clear that FLFN's authority to govern the lands and resources comes as a preexisting right from the Creator to the People of Fishing Lake First Nation.
- ✦ The flow of this Authority is from the Creator to the People then to the Lands Committee and Council.

Description of Fishing Lake First Nation Land

- ✦ The land and resources that will be governed by our Land Code are the lands that are listed in the Appendix of the Land Code. Also described are all the attributes of the land, water, minerals, wildlife and so on.
- ✦ The lands we have identified to come under the Land Code are:

Fishing Lake First Nation #89

Total Lands containing 4,537 hectares (11, 206 acres), more or less,

Fishing Lake First Nation #89A

Total Lands containing 254 hectares (627 acres) more or less,

Sabitawasis Beach #89C-1

Total lands containing 60 hectares (148 acres) more or less,

Fishing Lake First Nation #89D1

Total Lands containing 63 hectares, (155 acres) more or less.

- ✦ This section also sets out when additional land or new reserve land may be included in the Land Code. Certain conditions must be met if land is jointly owned and as well, all additional land must have a clear environmental audit.
- ✦ Any new or additional land must be brought to the community for a meeting to receive input and have been recommended by the Lands Committee and confirmed by BCR from Council.
- ✦ This section also empowers FLFN, while waiting for new land to become reserve status, to apply this Land Code to those lands.
- ✦ Note that all land must be 'reserve status' and officially added in order for it to be governed by our Land Code.

PART 2 FIRST NATION LEGISLATION

Law-Making Powers

- ✦ Under the Land Code, Fishing Lake 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. In other words, the Land Code can be considered our 'land umbrella law' where all other laws on lands and resources are passed under it.
- ✦ Council may make laws on the development, conservation, protection, management, use and possession of Fishing Lake First Nation Land and Resources, laws on interests and

licenses or any other mater necessary to manage our Land and Resources;

- ✦ The Land Code sets out examples of Laws we are empowered to pass.
- ✦ Additionally, FLFN doesn't have to pass only laws, but can pass other instruments, including rules, regulations, standards, codes, or policies.

Law-Making Procedure

- ✦ A Land law or amendment to a Land Law may be proposed (introduced) by: the Lands Committee or any other body authorized to do so; or by Chief and Council through a BCR.
- ✦ All proposed laws must have a written explanation of why it's needed.
- ✦ Council shall refer any proposed law to the Lands Committee for review & comment.
- ✦ After the Lands Committee review, Chief and Council may accept the proposed law for enactment, request more information, or reject a proposed law or amendment and address the mater using other tools such as policies, guidelines, or other existing laws.

Urgent Maters

- ✦ Chief and Council may enact a law without going through the full law-making process if the law is needed to address urgent public health and/or safety concerns in the community.
- ✦ A law enacted to address an urgent health and/or safety issue cannot be in effect longer than 180 days unless it goes through the full law-making process.

Publishing Laws

- ✦ After a law is enacted, it must be posted in the community and published online & in the First Nations Gazette.
- ✦ A copy of all laws, amendments and Resolutions including those repealed must be kept at the Administration office in a registry and copies can be obtained by any person.

Enforcement of Land Laws

- ✦ Fishing Lake 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.
- ✦ Fishing Lake may also enter into agreements with other governments or agencies with respect to any mater concerning enforcement of the Land Code and Land Laws.
- ✦ Fishing Lake can hire its own prosecutors and/or enter into an agreement with the province to use a provincial prosecutor.

PART 3 COMMUNITY MEETINGS AND APPROVALS

Participation of Members

- ✦ Every member is entitled to participate in the Community Meetings and those over 18 years of age are entitled to vote in all community ratification votes.

Notice of Community Meetings

- ✦ Written Notice of a Community Meetings must be given at least ____ days prior to the meeting by posting in a public area, online, mailed, emailed or hand delivered to all Members who provided addresses.
- ✦ Council may schedule more than one informational meeting as necessary for Citizens to be well informed.

Community Consultation Meetings

- ✦ Council and the Lands Committee shall call a community meeting seeking input for:
 - ✓ Any master land use plan;

- ✓ A community plan or subdivision plan;
- ✓ Any other mater they declare subject to this part.
- ✦ Citizens must make their best efforts to attend the community meetings. Although there is no minimum requirements for a quorum, Council and the Lands Committee can require a minimum threshold.

Approval by Community Vote

- ✦ Community Votes shall be obtained for the following maters:
 - ✓ Any new grant of a license or interest or a renewal in land exceeding 49 years;
 - ✓ Any grant of disposition of any non-renewable natural resources exceeding 25 years;
 - ✓ Any removal of a heritage site;
 - ✓ Any voluntary exchange of Fishing Lake First Nation Reserve land;
 - ✓ Any substantive Amendment to the Land Code;
 - ✓ Any other mater, law, or class of law that the Council, by resolution, declares to be subject to this section.

Approval Votes

- ✦ Any community approval votes must be conducted similar to the vote process used to approve this Land Code.

Approval by Electors

- ✦ A mater is considered approved by the Electors if a majority of those participating in the vote approve the matter, and Council (and the Lands Committee) may establish a higher minimum threshold.
- ✦ Land laws and policies may be made for how community meetings and approval votes are conducted.

PART 4 PROTECTION OF LAND

This Part covers how Fishing Lake First Nation will conduct an expropriation of an interest or license in their land. Expropriation means the taking back of the interest or license. Additionally, it addresses voluntary exchange. Both are ~~are~~ for a First Nation to exercise, however FLFN needs to have this ability as part of its jurisdiction over land.

Expropriation

- ✦ Fishing Lake First Nation may expropriate all or part of an interest in land (i.e., leases or subleases) for necessary community works or purposes such as fire hall, water treatment plant, roads, utilities, community centers, recreation facilities, hospital, schools etc.
- ✦ Efforts to acquire the land must be made 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.
- ✦ The Land Code requires that a public report be made to the Membership and this Part also sets out other rules on expropriation such as how compensation is calculated, and what happens if there is a dispute.

Voluntary Exchange of Land

- ✦ Fishing Lake First Nation may agree with another party to exchange a parcel of Fishing Lake Land for another parcel of land, but it must be first approved by membership through a vote.
- ✦ 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 Fishing Lake Members and Members must approve the land exchange by a community approval vote.

Cultural Heritage Resources

- ✦ These are our protected areas. Any disturbance, alteration, or removal of a cultural heritage site or resource is not allowed unless the Lands Committee and Chief and Council authorize the activity and the resource is protected, preserved, or restored.
- ✦ Chief and Council upon the recommendation of the Lands Committee may designate cultural-heritage sites by Resolution.
- ✦ Fishing Lake may develop its own policies, standards, guidelines or enact laws that deal with the protection and preservation of cultural-heritage resources.

PART 5 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/participating in decisions under the Land Code, including staff and committee members and they must disclose and withdraw themselves.
- ✦ If a board or committee has a conflict and 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 then be referred to a dispute resolution panel or to the 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).

Financial Management

- ✦ Chief and Council, along with the Lands Committee will develop financial rules and administrative structures regulating all land and resource revenues including approving an annual budget, investment strategies, contracts etc.
- ✦ George Gordon's annual financial statements will be audited and will include revenues and expenditure relating to management of land and resources.
- ✦ An annual report on land and resource management will be produced and shared with members which will include an overview of land and resource management activities.

Access to Information

- ✦ Fishing Lake First Nation members will have guaranteed access to information relating to the management of Fishing Lake First Nation land and resources, including all land laws, auditors report, and annual reports.

PART 6 LAND AND NATRURAL RESOURCES ADMINISTRATION

Land Staff

- ✦ Council may delegate administrative authority to the lands staff for the day to day operations of our Lands and Natural Resources.

Lands Committee

- ✦ FLFN must have a lands committee in place that will assist Council with the development of the Land administration system. They will:
 - ✓ Advise Council and its staff on matters respecting Fishing Lake First Nation Land and Natural Resources;
 - ✓ Recommend Land laws, resolutions, policies, and practices respecting Fishing Lake First Nation Land and Natural Resources to Council;
 - ✓ Consult with Members and non-Members on Fishing Lake First Nation Land issues, and to make recommendations on the resolution of those issues to Council;
 - ✓ Oversee community meetings, community approval votes; and
 - ✓ Perform such other duties as may be delegated or assigned by resolution or Land law under this Land Code.
- ✦ After the vote, the Lands Committee will serve up to three years and develop internal policies for their operations.

PART 7 INTERESTS AND LICENCES IN LAND

Determination of Rents and Fee's

- ✦ The Lands Committee and Chief and Council shall establish a process, policy or enact a Law for determining rental rates and fees; fees for services; fees and royalties on natural resources.

Registration of Interests and Licences

- ✦ All interests in Fishing Lake 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.
- ✦ If any instrument requires the consent of Council or the community, a certificate must be filled out saying that the approval was obtained.

Limits on Interests, licenses, and Leases

- ✦ All interests in Fishing Lake Land must be in writing and registered in the First Nations Lands Registry or it will not be enforceable.

Existing Interests

- ✦ All legally valid interests in Fishing Lakeland that existed when the Land Code came into effect remain in force (i.e., commercial headleases, utility permits, etc.).
- ✦ An interest holder and Fishing Lake First Nation may agree to change the terms and conditions of the lease or permit to replace the agreement after the land code is passed.
- ✦ Fishing Lake First Nation takes over the role of Canada including all rights and obligations on Interests and Licenses.

New Interests and Licenses

- ✦ Fishing Lake First Nation has the power and authority to grant new interests and licenses in Fishing Lake First Nation land and resources.

Member Interests

- ✦ Interests and allocations to members previously issues under a BCR or custom allotment shall continue.
- ✦ The Lands Committee and Council shall establish laws, policies on Member allocation and issue instruments.

Transfers and Assignment of Interests in Land

- ✦ Transfers of an interest in land must have the consent of Chief and Council, except for transfer under a will or estates law, or under a Matrimonial Real Property Law.
- ✦ No person may acquire an interest by any length of adverse possession or prescription.

Taxation and Seizures

- ✦ The following *Indian Act* protections continue to apply: Section 29 Exemption from Seizure; Sec. 87 Property Exempt from Taxation, Subsection 89(1) Restrictions on Mortgage and Seizure of Property on Reserve, Subsection 89(2) Restrictions on Mortgage and Seizure of Property on Reserve and Conditional Sales.

Residency and Access Rights

- ✦ The Land Code sets out that Members, their spouses, children, their invitees, Interest holders or persons authorized by Council in writing have a right of residency and access to Fishing Lake Land.
- ✦ The general public may have access to FLFN Land provided they do not interfere or trespass on occupied land, that they follow all Laws and there has been no BCR barring them.
- ✦ Council may, for valid and fair reasons, including public health, safety, and crime prevention, deny or restrict the right of any person to reside on, or access Fishing Lake First Nation Lands, if at a duly convened meeting, aquorum of Council vote in favor of a Band Council Resolution to deny or restrict the rights of such persons.
- ✦ Council can enforce Trespass remedies.

Transfers on Death

- ✦ *Indian Act* provisions relating to wills and estates apply until Fishing Lake exercises jurisdiction over those matters. FLFN will follow procedures on instruments of beneficiaries as required by law.

Matrimonial Real Property on Reserve Law

- ✦ The *Family Homes on Reserves and Matrimonial Interests or Rights Act* applies to property rights on Fishing Lake Land until Fishing Lake First Nation enacts its own matrimonial real property law.
- ✦ Principles of equal rights to matrimonial real property and nondiscrimination will be followed.

Dispute Resolution

- ✦ Until FLFN passes a Dispute Resolution Law, the dispute resolution process in the Land Code will apply.
- ✦ The intent of this part is to ensure that all persons entitled to possess, reside upon, use, or otherwise occupy Fishing Lake First Nation Land does so harmoniously with due respect to the rights of others, the rights of the Fishing Lake First Nation and FLFN processes.
- ✦ This part enables the parties to a dispute to achieve a just, speedy, and inexpensive determination of a mater i n dispute, taking into account the values which distinguish dispute resolution from litigation.

- ✦ Disputes relating to matters under the Land Code may be resolved by:
 - ✓ Facilitated discussions,
 - ✓ Negotiation,
 - ✓ Mediation; or
 - ✓ Final arbitration by the Dispute Resolution Panel.
- ✦ A Dispute Resolution Panel will be established with jurisdiction to resolve disputes in relation to FLFN land.
- ✦ This part sets out the procedures, powers and decisions making process of the Dispute Resolution Panel.

PART 9 OTHER MATTERS

Liability Coverage

- ✦ Council shall arrange, maintain, and pay insurance coverage for its officers and employees engaged in carrying out any matter related to Fishing Lake First Nation Land to indemnify them against personal liability arising from the performance of those duties.

Application of the Criminal Code

- ✦ Unless some other procedure is provided for by a Fishing Lake First Nation Land Law, the summary conviction procedures of part XXVII of the *Criminal Code*, as amended from time to time, apply to offences under the Land Code or under a Fishing Lake First Nation Land Law.

Amendments and Revisions to Land Code

- ✦ A community vote is not required for revisions made to the Land Code that are not Substantive Amendments.
- ✦ Council may, from time to time, arrange and revise the Land Code for grammatical, numbering errors, and minor improvements in language.
- ✦ All other amendments to, repeal, and re-enactment of this Land Code must be recommended by the Lands Committee, approved by Chief and Council and have received community approval by community vote in accordance with the Land Code.

Commencement

- ✦ The Land Code shall take effect if the community approves this Land Code and the Individual Agreement with Canada, and the Land Code has been certified by the verifier pursuant to the *Framework Agreement*.
- ✦ If approved, the Land Code shall take effect on the first day of the month following the certification of the Land Code by the verifier.

**FOR A FULL VERSION OF THE LAND CODE, PLEASE CONTACT THE BAND OFFICE AT
1 (306) 338-3838
BY EMAIL AT: landcode@flfn.ca; OR VISIT OUR WEBSITE AT www.flfn.ca**