

BY-LAW NO. 02

MUSKODAY FIRST NATION

LAW ON INTERESTS IN MUSKODAY FIRST NATION LAND

WHEREAS the Muskoday First Nation has taken control of its reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management*, and has enacted the *Muskoday First Nation Land Code* which came into force and effect on January 1, 2000;

AND WHEREAS, pursuant to the *Framework Agreement* and the *Muskoday First Nation Land Code* the Council may make laws respecting the development, conversation, protection, management, use and possession of Muskoday lands, and interests and licences in relation to those lands.

IT IS THEREFORE ENACTED AS A LAW OF THE MUSKODAY FIRST NATION

READ A FIRST AND SECOND TIME THE 24TH DAY OF AUGUST, 2001

READ A THIRD TIME ON THE 5TH DAY OF OCTOBER 2001

FINALLY PASSED ON THE 5TH OF OCTOBER, 2001



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**Law on Interests
in
Muskoday First
Nation Land**

MUSKODAY FIRST NATION

The Chief and Council of the Muskoday First Nation, in accordance with the *Muskoday First Nation Land Management Code*, hereby enacts the following land law:

1.0 Title

Title

1.0 The title of this enactment is the *Law on Interests in Muskoday First Nation Land*.

2.0 Interpretation

Definitions

2.1 In this Law, the following definitions apply:

“Land Code” means the *Muskoday First Nation Land Management Code*.

Other terms

2.2 Terms that are defined or used in the *Framework Agreement* and the Land Code have the same meaning in this Law, unless the context otherwise requires.

3.0 Interests, Licences and Consents

Standards

3.1 The Council may, by resolution, establish mandatory standards, conditions, criteria and prescribe forms for allocating, granting, transferring or assigning interests and licences in Muskoday First Nation land.

Compliance with Standards

3.2 No person shall grant, transfer or assign an interest, licence or permit in Muskoday First Nation land that does not comply with a mandatory standard, condition, criterion or form established by the Council.

Authority to make
dispositions

- 3.3 A resolution of the Council is required for the following actions of Council:
- (a) an allocation of Muskoday First Nation land to a member;
 - (b) a grant of a customary interest in Muskoday First Nation land to a member;
 - (c) a grant of an interest or licence in community lands,
 - (d) a grant of a permit to take resources from community lands;
 - (e) a consent to transfer an interest or licence in Muskoday First Nation land.

Conditions

- 3.4 The Council may, by resolution, establish procedures for the actions referred to in section 3.3 and may make them subject to the satisfaction of written conditions.

General rules

- 3.5 In accordance with the Land Code and for greater certainty,
- (a) no community approval is required for the allocation of, or grant of a customary interest in, Muskoday First Nation land to members;
 - (b) no community approval is required for the issuance of a certificate of allocation or certificate of customary interest to members; and
 - (c) a person who is not a member is not entitled to be allocated or granted a customary interest in Muskoday First Nation land or to hold a certificate of allocation or certificate of customary interest.
- 3.6 Where an allocation or grant is made under this enactment to a member who is married to another member, the allocation or grant shall be made to both members as tenants in common.
- 3.7 An allocation or grant of a customary interest made under this enactment shall be subject to any law of the First Nation made in respect of the spousal rights of non-members.
- 3.8 An allocation or grant of a customary interest made under this enactment shall be subject to all prior encumbrances, licences, rights-of-way or easements made in

favour of any person other than the member to whom the allocation or grant is made.

4.0 Certificate of Allocation

Issuance of Certificate

- 4.1 The Council may issue a certificate of allocation to a member to whom it has allotted a parcel of Muskoday First Nation land.

Signing a Certificate

- 4.2 The Lands Manager may sign a certificate of allocation on behalf of the Council.

Nature of interest

- 4.3 Subject to the Land Code and to section 3, a certificate of allocation in respect of a parcel of Muskoday First Nation land is an interest that entitles the member holding it to
- (a) possession of the land, for residential purposes only, for a period of 15 years commencing on the date the land was first occupied by the member (which date shall be entered on the certificate of allocation);
 - (b) transfer the interest to the Muskoday First Nation or to another member, subject to the proviso that the member has occupied the land for at least 15 years, and subject to the consent of Council and to the performance of any condition which Council may, acting reasonably, impose upon such transfer;
 - (c) lease the interest to another member for a period not exceeding the lesser of 3 years or the balance of the lessor's interest, subject to the consent of Council and to the performance of any condition which Council may, acting reasonably, impose upon such lease;
- 4.4 Council may, by resolution, extend the term of a certificate of allocation within 60 days prior to the expiry of the original 15 year term or to the expiry of any prior extension.
- 4.5 A certificate of allocation, and the interest in Muskoday First Nation land it represents, do not form part of the estate of the member who holds the certificate and interest, but Council may authorize a transfer to the First Nation or to another

member in accordance with the wishes of a deceased member as expressed in the terms of any valid will.

- 4.6 For greater certainty, all interests not expressly granted to a member by way of a certificate of allocation in accordance with this enactment are retained by the Muskoday First Nation and may be dealt with by Council as community lands.

5.0 Certificate of Customary Interest

Issuance of Certificate

- 5.1 The Council may issue a certificate of customary interest in Muskoday First Nation land to a member for specified purposes.

Signing a Certificate

- 5.2 The Lands Manager may sign a certificate of customary interest on behalf of the Council and shall ensure that the specified purposes for which the land may be used are clearly stated in the certificate.

Nature of interest

- 5.3 Subject to the Land Code and to section 3, a certificate of customary interest in respect of a parcel of Muskoday First Nation land is an interest that entitles the member holding it to
- (a) possession of the land for the specified purposes only, and not for any other purposes or for any period after the lands cease to be used for the specified purposes; and
 - (b) subject to paragraph (a), possession of the land for any term of years that Council may designate.
- 5.4 A certificate of customary interest is not transferable, except to the Muskoday First Nation.
- 5.5 Council may, by resolution, determine that the land is not being used for the specified purposes and such determination terminates the certificate of customary interest.
- 5.6 When a certificate of customary interest expires or is terminated for any reason, Council shall afford the member holding the certificate a reasonable opportunity to remove his or her improvements from the land. After that time has passed, all improvements become the property of the Muskoday First Nation and Council

may, in its absolute discretion, determine whether any compensation in respect of such improvements is to be paid to the member. Should Council determine that compensation is to be paid, it may fix the amount of compensation or prescribe a process by which such amount is to be ascertained, subject to its approval of that amount.

- 5.7 When a certificate of customary interest expires or is terminated for any reason, and the land has not been left in a safe, environmentally sound and fit condition, Council may, by resolution, require the member holding the certificate to restore the land to a proper condition and give him or her, in the circumstances, a reasonable opportunity to do so. If the member does not perform the requirements to the satisfaction of Council within the period allowed to him or her for that purpose, Council may direct that all necessary work be done at the cost of the First Nation to fulfil its requirements and direct that the member reimburse the First Nation for that cost. A direction of Council to pay pursuant to this section shall have the same force and effect as an order from a court of competent jurisdiction and may be enforced by the First Nation in the same manner as a judgment, together with interest and costs.
- 5.8 Lands which are occupied by members for specified purposes prior to the enactment of this law shall be deemed to be subject to customary interests for the life of the member, and Council may direct by resolution a procedure for issuing certificates of customary interest in respect of such lands.
- 5.9 For greater certainty, all interests not expressly granted to a member by way of a certificate of customary interest in accordance with this enactment are retained by the Muskoday First Nation and may be dealt with by Council as community lands.

6.0 Corrections, Amendments and Cancellations

- 6.1 Where Council is satisfied that any certificate authorized by this enactment contains an error or ambiguity, it may by resolution direct that the certificate be amended to correct the error or resolve the ambiguity.
- 6.2 Where Council is satisfied that any certificate authorized by this enactment was issued as the result of a misrepresentation or fraud on the part of the certificate holder, it may by resolution cancel the certificate.
- 6.3 When Council makes a resolution under this section, that resolution shall include appropriate directions to the Land Manager to give effect to the resolution.

7.0 Amendments To This Law

Amendments

7.1 This Land Law may be amended from time to time.