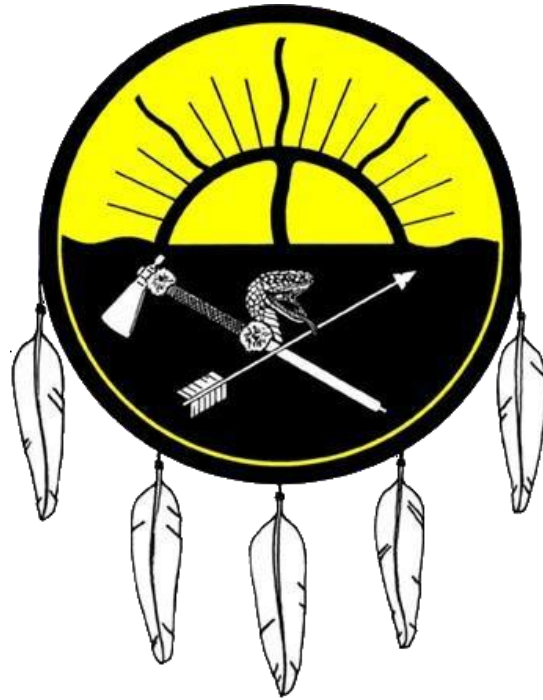


Serpent River First Nation



LAND CODE PARTS 1, 2 AND 3

(Draft #2)
August 17, 2016

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SERPENT RIVER FIRST NATION LAND CODE

PREAMBLE

Whereas the Serpent River First Nation has a historic and legal interest in its traditional lands and its reserve land, based on values and principles of sustainability, and wishes to manage its lands in order to ensure a healthy ecosystem for future generations,

And Whereas Serpent River First Nation asserts its right to govern itself in relation to matters that are integral to Anishnabe culture, identity, traditions, language, and with respect for its special relationship to the land and resources,

And Whereas fourteen First Nations and Canada concluded a government-to-government *Framework Agreement on First Nation Land Management* on February 12, 1996; providing an option for First Nations to withdraw their reserve land from the land management provisions of the Indian Act and exercise First Nation jurisdiction over reserve land,

And Whereas Serpent River First Nation, as the governing authority of Serpent River First Nation reserve lands will have recognized legal status and capacity to acquire and hold property, to borrow and contract and to expend and invest money and have status to become a party to legal proceedings for the benefit of band members.

And Whereas Canada ratified its commitment to the *Framework Agreement on First Nation Land Management* with the enactment of the *First Nations Land Management Act*, S.C. 1999, c.24;

And Whereas Serpent River First Nation became a signatory on SEPTEMBER 1, 2015 to the *Framework Agreement on First Nation Land Management*, as Serpent River First Nation wishes to govern its Land and resources under the *Serpent River First Nation Land Code*, rather than having its Land and resources managed on its behalf under the *Indian Act*;

And Whereas the *Framework Agreement on First Nation Land Management* acknowledges that Canada's special relationship with Serpent River First Nation will continue;

And Whereas the *Framework Agreement on First Nation Land Management* is ratified by Serpent River First Nation through community approval of the *Serpent River First Nation Land Code*;

**NOW THEREFORE, THIS LAND CODE IS HEREBY ENACTED AS THE
FUNDAMENTAL LAND LAW OF THE SERPENT RIVER FIRST NATION.**

Part 1
PRELIMINARY MATTERS

1. Title

Title

- 1.1 The title of this enactment is the Serpent River First Nation LAND CODE.

2. Definitions

Clarification

- 2.1 Any words or terms used in this *Land Code* which are defined in the *Framework Agreement* shall have the same meaning as in the *Framework Agreement*, unless the context otherwise requires.

Definitions

- 2.2 The following definitions apply in this *Land Code*:

“Canada” means Her Majesty the Queen in Right of Canada;

“Common-Law Partnership” means the relationship between two (2) persons who are cohabiting in a conjugal relationship;

“Community Land” means any Serpent River First Nation Land in which all Members have a common interest;

“Council” means the Chief and Council of the Serpent River First Nation or any successor elected government of the Serpent River First Nation;

“Eligible Voter” means, for the purpose of voting in respect of Land matters under this *Land Code*, a Member who has attained eighteen (18) years of age on or before 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 maintained by the Department of Indigenous and Northern Affairs Canada;

“*Framework Agreement*” means the *Framework Agreement on First Nation Land Management*, entered into between Canada and the signatory First Nations on February 12, 1996, and amended to include Serpent River First Nation on SEPTEMBER 1, 2015.

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

“Individual Agreement” means the Individual Agreement made between Serpent River First Nation 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;

“Land” or “Serpent River First Nation Land” means any reserve Land that is subject to this *Land Code*;

“*Land Code*” means the *Serpent River First Nation Land Code*, and sets out the basic provisions regarding the exercise of the Serpent River First Nation’s rights and powers over its Land;

“Land Law” means a law, including, but not limited to, policies, regulations, standards, restricted to Serpent River First Nation Land, enacted in accordance with this *Land Code*;

“Lands Authority” means the Lands Authority established under **Error! Reference source not found.** of this *Land Code*;

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

“Long-Term Debt Liability” means a loan, guarantee, bond, debenture or other form of financial obligation that exceeds five (5) years;

“Meeting of Members” means a meeting under Part 3 of this *Land Code* to which the Members are invited to attend;

“Member” means a person whose name appears or is entitled to appear on the Serpent River First Nation Band Membership List;

“Serpent River First Nation” means the Serpent River First Nation and its Members;

“Panel” means the Dispute Resolution Panel established under **Error! Reference source not found.** of this *Land Code*;

“Resolution” means a band Council Resolution enacted under this *Land Code*;

“Riparian Rights” means the legal right of owners of land bordering on a river or other body of water, and any law that pertains to use of the water for that land; and

“Spouse” means a person who is married to another, whether by a traditional, religious or civil ceremony, and includes a Spouse by Common-Law Partnership.

3. Interpretation

Interpretation

3.1 In this Land Code:

- (a) the *Land Code* shall be interpreted in a fair, large and liberal manner;
- (b) the word “shall” signifies an obligation that, unless this *Land Code* provides to the contrary, must be carried out as soon as practicable after this *Land Code* comes into effect or the event that gives rise to the obligation;
- (c) 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”;
- (d) 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;
- (e) titles and headings of Parts and provisions have been inserted in the *Land Code* for convenience of reference only, and are not interpretive aids;
- (f) unless otherwise clear from the context, whenever the singular is used, it will include the plural, and the use of the plural includes the singular;
- (g) all references to a time period of days means consecutive days and not business days;
- (h) where the time limited for the doing of an act expires or falls on a Saturday or Sunday, or a First Nation, federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday;
- (i) where the time limited for the doing of an act in the Serpent River First Nation administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open;
- (j) where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded; and
- (k) the principles set out in the Preamble to this *Land Code* may be used to interpret this *Land Code*.

Principles

- 3.2 Serpent River First Nation has occupied and benefited from Serpent River First Nation traditional territory since time immemorial.
- 3.3 Serpent River First Nation maintains a legal interest in its traditional territory and has never relinquished aboriginal title to its lands.

- 3.4 Serpent River First Nation is committed to protecting the Aboriginal rights of Serpent River First Nation and its Members.
- 3.5 Serpent River First Nation will exercise its inherent right to self-government and provide for governance that is accessible, stable, effective, accountable and transparent.

Culture and traditions

- 3.6 The structures, organizations and procedures established by or under this *Land Code* shall be interpreted in accordance with the culture, traditions and customs of the Serpent River First Nation, unless otherwise provided.

Language

- 3.7 The language of the Serpent River First Nation 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.

Paramountcy

- 3.8 If there is an inconsistency or conflict between this *Land Code* and any other enactment of the Serpent River First Nation, 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*

- 3.9 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.

Rights not affected

- 3.10 This *Land Code* does not change:
- (a) the by-law powers of Council pursuant to the *Indian Act*;
 - (b) any Aboriginal, Treaty, inherent rights or other rights or freedoms that pertain now or in the future to the Serpent River First Nation or its Members; or
 - (c) the fiduciary relationship between Canada and Serpent River First Nation and its Members.

Lands and Interests affected

- 3.11 A reference to Land in this *Land Code* means all rights and resources in and of that Land, and includes:
- (a) The air, the water, beds underlying water, Riparian Rights, and renewable and non-renewable natural resources in and of that Land, to the extent that these are under the jurisdiction of Canada;
 - (b) all the Interests and Licences granted by Canada listed in the Individual Agreement; and

- (c) all the Interests and Licences granted by Serpent River First Nation after this *Land Code* comes into effect.

Natural Resources

- 3.12 Subject to applicable law, all natural resources on Serpent River First Nation Lands belong to Serpent River First Nation.

Eligible Reserve Land

- 3.13 Only Land that has reserve status is eligible to be governed under this Land Code.

Title

- 3.14 Title to all Serpent River First Nation lands shall continue to be held in the name of Her Majesty the Queen in Right of Canada for the use and benefit of the people of Serpent River First Nation.

4. Authority to Govern

Origin of authority

- 4.1 The traditional teachings of the Serpent River First Nation are historical evidence of the inherent and inalienable right and responsibility of the people of the Serpent River First Nation to manage and care for the Land and protect it for the benefit of future generations. By enacting this *Land Code*, the Serpent River First Nation is reclaiming its responsibility, rights and jurisdiction. This Land Code is adopted without prejudice to Serpent River First Nation's legal and historical interests in its Treaty territory.

Flow of authority

- 4.2 The authority of the Serpent River First Nation to govern its Land and resources flows from the Creator to the people in common of the Serpent River First Nation This authority is exercised by the people through the Council of Serpent River First Nation according to the culture, traditions, customs and laws of the Serpent River First Nation.

5. Purpose

Purpose

- 5.1 The purpose of this *Land Code* is to set out the principles, rules and administrative structures that apply to Serpent River First Nation Land and by which the Serpent River First Nation will exercise authority over that Land in accordance with the *Framework Agreement*.
- 5.2 The use and development of Serpent River First Nation land is subject to this Land Code, Serpent River First Nation Law and other applicable laws.
- 5.3 The Individual Transfer Agreement is ratified and confirmed when this Land Code comes into effect.

6. Description of Serpent River First Nation Land

Serpent River First Nation Land

- 6.1 The Serpent River First Nation Land that is subject to this *Land Code* is that Land known as Serpent River Indian Reserve No. 7
- 6.2 Serpent River First Nation Lands are “lands reserved for the Indians” under subsection 91(24) of the Land Code Act, 1867, and is a reserve set apart by Her Majesty the Queen In Right of Canada for the use and benefit of the people of Serpent River First Nation.

Description of Land

- 6.3 The Serpent River First Nation Land includes all reserve Lands shown on a copy of the Reference Plans prepared by the Office of the Surveyor General of Canada, Natural Resources Canada and listed in the Individual Agreement and such other Lands as may be described in the Individual Agreement as amended from time to time, and more particularly described in Appendix “A”.

Exclusion of Land

- 6.4 Notwithstanding section 5.1, the land described as follows is excluded from the application of this Land Code and may only be included after it is cleaned up and a full environmental assessment declares it to be free of environmental hazard and safe for community or other use, or it is designated as a reserve, as the case may be.

Additional Lands

- 6.5 Council shall receive Community consultation in accordance with section 14, prior to the amendment of the description of Land or addition of reserve Land to the *Land Code*.
- 6.6 Additional lands may be made subject to this Land Code including any land or interests acquired by Serpent River First Nation after this Land Code takes effect, whether by land claim, purchase or other process, when an environmental assessment declares it free of environmental hazard and safe for community use.

No Approval Required

- 6.7 For greater certainty, a community approval or ratification vote is not required for amending the description of reserve Land in the *Land Code* and Individual Agreement.

Inclusion or Exclusion of Land or Interest

- 6.8 Council may, by Resolution, declare the Land or Interest to be subject to this *Land Code*.
- 6.9 Any Serpent River First Nation reserve lands that are excluded from the Individual Transfer Agreement are excluded without prejudice to the legal right of Serpent River First Nation to seek recompense for the loss of use of those lands.

Part 2

FIRST NATION LEGISLATION

7. Law-Making Powers

Council may make Land Laws

- 7.1 Council may, in accordance with this *Land Code*, make Land Laws respecting:
- (a) the development, conservation, protection, management, use and possession of Serpent River First Nation Land;
 - (b) Interests including Allotments, Leaseholds, Easements, Permits, Mortgages, and Licences in relation to Serpent River First Nation Land; and
 - (c) any matter necessary or ancillary to the making of Land Laws in relation to the Serpent River First Nation Land.

Examples of Land Laws

- 7.2 For greater certainty, Council may make Land Laws including, but not limited to:
- (a) regulation, control and prohibition of zoning, Land use, subdivision control and Land development;
 - (b) the creation, regulation and prohibition of Interests and Licences in relation to Serpent River First Nation Land;
 - (c) environmental assessment and protection;
 - (d) provision of local services in relation to Serpent River First Nation Land and the imposition of equitable user charges;
 - (e) enforcement of Serpent River First Nation Land Laws; and
 - (f) provision of services for the resolution, outside the courts, of disputes in relation to Serpent River First Nation Land.

Regulatory Instruments

- 7.3 For greater certainty, in addition to Land Laws, Council may make other regulatory instruments, including, but not limited to, rules, regulations, standards, codes and policies.

8. Law-Making Procedure

Introduction of Land Laws

- 8.1 A proposed Land Law may be introduced at a duly convened meeting of Council by:
- (a) the Chief;

- (b) a Councillor; or
- (c) the representative of the Lands Authority or other body or authority composed of Members, that may be authorized by Council to do so.
- (d) Any member of Serpent River First Nation over the age of eighteen(18) who provides fifty (50) witnessed signatures of eligible voters who support the proposed law

Rationalization of Proposal

- 8.2 It shall be incumbent upon any proponent mentioned in clause 8.1 to submit a written explanation of the reason for the proposed Land Law.

Procedure upon receipt of Proposal

- 8.3 Upon receipt of a Land Law proposal, Council may:
- (a) table the Land Law proposal 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 Land Law proposal;
 - (c) undertake or direct the preparation of a draft Land Law concerning matters raised in the Land Law proposal, for consideration by Council; or
 - (d) decline the Land Law proposal.

Tabling and posting of proposed Land Laws

- 8.4 Before a proposed Land Law may be enacted by Council, it shall first be:
- (a) tabled at a duly convened meeting of Council held at least forty-two (42) days before the Land Law is to be enacted;
 - (b) deposited with the Lands Authority at least thirty-five (35) days before the Land Law is to be enacted;
 - (c) provided to the Members, posted in public places on Serpent River First Nation Land and publicly available online at least thirty-five (35) days before the Land Law is to be enacted; and
 - (d) any additional method as Council may consider appropriate.

Urgent matters

- 8.5 Council may enact a Land Law without the preliminary steps required under clause 8.4, if Council is of the opinion that the Land Law is needed urgently for public health and safety or to protect Serpent River First Nation Land or the Members.

Expiration

- 8.6 A Land Law enacted under clause 8.5 expires one hundred and twenty (120) days after its enactment unless re-enacted in accordance with clause 8.4.

Approval of Land Law

- 8.7 Subject to this *Land Code*, a Land Law is approved by a quorum of Council at a duly convened meeting of Council open to the Members.

Certification of Land Laws

- 8.8 The original copy of any approved Land Law or Resolution concerning Serpent River First Nation Land shall be signed by a quorum of Council.

Land Laws taking effect

- 8.9 A Land Law enacted by Council takes effect on the date of its enactment or such later date as specified by the Land Law.

9. Publication of Land Laws

Publication

- 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 Serpent River First Nation accessible to all Members, as soon as practicable after enactment and for a period of not less than thirty (30) days thereafter;
 - (c) by making it publicly available on the Serpent River First Nation website; and
 - (d) any additional method as Council may consider appropriate.

Registry of Land Laws

- 9.2 Council shall cause to be kept, at the administrative offices of the Serpent River First Nation, 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 for any Person

- 9.3 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.

10. Enforcement of Land Laws

Enforceability of Land Laws

- 10.1 To enforce its *Land Code* and its Land Laws, Serpent River First Nation 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; and
- (c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information.

Prosecuting Offences

- 10.2 For the purpose of prosecuting offences, Serpent River First Nation shall follow one or more of the following options, including but not limited to:
- (a) retain its own prosecutor;
 - (b) enter into an agreement with the government of the province of Ontario to arrange for a provincial prosecutor; or
 - (c) make laws with respect to the appointment of justices of the peace.

Part 3 COMMUNITY MEETINGS AND APPROVALS

11. Participation of Members

Participation of Members

- 11.1 Every Member is entitled to participate in the community meetings process set out in Part 3 of this *Land Code*.
- 11.2 The Council shall convene a Membership Meeting to receive input prior to the introduction of laws:
- (a) respecting a community plan or subdivision plan;
 - (b) declaring land or an interest referred to in 6.4 to be subject to the Land Code;
 - (c) affecting land previously defined as a heritage site or as environmentally sensitive property
 - (d) respecting environmental assessment
 - (e) respecting the transfer and assignment of interests in land
 - (f) respecting the rate and criteria for the payment of fees or rent for land; and
 - (g) respecting any other law or class of law that Council, by resolution declares to be subject to this Section.

12. Participation of Eligible Voters

Participation of Eligible Voters

- 12.1 Every Eligible Voter is entitled to participate in the community approval process set out in Part 3 of this *Land Code*.

13. Meeting of Members and Community Approval Procedure

Notice of meeting

- 13.1 Council shall give written notice of the Meeting of Members and/or community approval that shall include:
- (a) the date, time and place of the meeting or community approval;
 - (b) a brief description of the matter/s to be discussed and/or decided on at the meeting or community approval; and
 - (c) such other information and material that Council may consider appropriate.

Manner of notice

- 13.2 The notice shall be given to the Members by:
- (a) posting the notice in public places on Serpent River First Nation Land at least forty two (42) days before the meeting or vote;
 - (b) mailing the notice to Members and taking reasonable steps to locate and inform Members who reside on and off-reserve at least forty two (42) days before the meeting or vote;
 - (c) posting the notice on a website maintained by the Serpent River First Nation that is open and accessible by any person who may be entitled to attend the meeting at least forty two (42) days before the meeting or vote;
 - (d) publishing the notice in the community newsletter or local newspaper at least thirty five (35) days before the meeting or vote; and
 - (e) such additional method as Council may consider appropriate in the circumstances.

Permission of Council

- 13.3 A person, other than a Member, may attend a Meeting of Members only with permission of Council.

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.

14. Community Meetings of Members

Community Meetings

- 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 heritage 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 Serpent River First Nation Land;
 - (f) enacting a Land Law respecting matrimonial real property on reserve under section **Error! Reference source not found.**;
 - (g) enacting a Land Law respecting the rate and criteria for the payment of fees or rent for Serpent River First Nation Land;
 - (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 For greater certainty, a community meeting for input purposes does not require a quorum.

15. Community Approval

Community approval

- 15.1 Community approval shall be obtained for the following:
- (a) any master Land use plan;
 - (b) any new grant or disposition of an Interest or Licence in any Serpent River First Nation Land exceeding a term of thirty five (35) years;
 - (c) any renewal of a grant or disposition of an Interest or Licence in any Serpent River First Nation Land that extends the original term beyond thirty five (35) years;
 - (d) any grant or disposition of any non-renewable natural resources on any Serpent River First Nation Land exceeding a term of five (5) years;

- (e) any deletion of a heritage site;
- (f) any voluntary exchange of Serpent River First Nation Land referred to in section **Error! Reference source not found.** of this *Land Code*; and
- (g) any Land Law or class of law that Council, by Resolution, declares to be subject to this section.
- (h) Any substantive changes made to this Land Code

Method of Voting

- 15.2 Community approval may be obtained by calling for a vote by one or more of the following methods, including:
- (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.

Quorum

- 15.3 In order to obtain a quorum for community approval, at least ten percent (10%) of Eligible Voters shall participate.

Approval by Majority

- 15.4 For community approvals, a matter shall be considered approved if a majority of fifty percent plus one (50%+1) of the Eligible Voters cast a vote to approve the matter.

Second Community Approval

- 15.5 If a quorum was not obtained pursuant to clause 15.3 a second community approval vote may be called.

Second Community Approval Quorum

- 15.6 In order to obtain a quorum for a second attempt at a community approval vote, at least five percent (5%) of Eligible Voters shall participate.

Approval by Majority

- 15.7 A matter shall be considered approved at a second attempt at a community approval vote, if a majority of fifty percent plus one (50%+1) of the Eligible Voters cast a vote to approve the matter.

Third Community Approval Vote

- 15.8 If a quorum was not obtained pursuant to clause 15.6 a third community approval vote may be called without any quorum requirement.

Approval by Majority

- 15.9 A matter shall be considered approved at a third attempt at a community approval vote, if a majority of fifty percent plus one (50%+1) of the Eligible Voters cast a vote to approve the matter.

16. Ratification VotesCommunity Approval by
ratification vote

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

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 **Error! Reference source not found.**; and
 - (c) an amendment to, or renewal of, the Individual Agreement.

Ratification process

- 16.3 Any ratification vote required under this *Land Code* shall be conducted in substantially the same manner as the *Serpent River First Nation Community Ratification Process*, which was used to ratify this *Land Code*.

No verifier

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

Quorum

- 16.5 In order to obtain a quorum for a community approval by ratification vote under this *Land Code* at least twenty percent (20%) of Eligible Voters shall register to vote.

Approval by majority

- 16.6 A matter shall be considered approved at a ratification vote if a majority of fifty percent plus one (50%+1) of the registered Eligible Voters cast a vote to approve the matter.

Second Ratification Vote

- 16.7 If a quorum was not obtained pursuant to clause 16.5 a second ratification vote may be called.

Second Ratification Vote Quorum

- 16.8 In order to obtain a quorum for community approval for a second attempt at a ratification vote under this *Land Code* at least ten percent (10%) of Eligible Voters shall register to vote.

Approval by Majority

16.9 A matter shall be considered approved at a second ratification vote if a majority of fifty percent plus one (50%+1) of the registered Eligible Voters cast a vote to approve the matter.

Policies Consultation, Approval
and Ratification

16.10 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 3 of this *Land Code*.