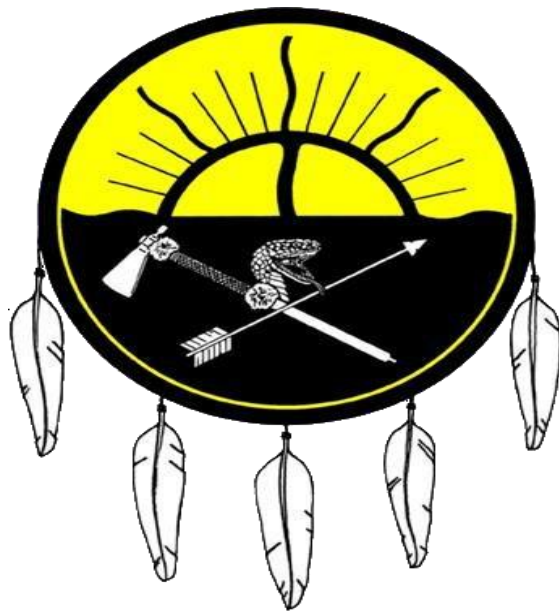


# SUMMARY

## SERPENT RIVER FIRST NATION LAND CODE



## SUMMARY OF THE SERPENT RIVER FIRST NATION LAND MANAGEMENT CODE

### INTRODUCTION

The Land Code was drafted under the *Framework Agreement on First Nation Land Management*. The purpose of the Land Code is to set out the principles, guidelines and processes by which Serpent River First Nation will exercise control and management over reserve lands and resources consistent with the *Framework Agreement*.

### RATIFICATION

The Land Code has been developed by Land Code Development Committee of the Lands Working Group in consultation with the Community. The Land Code does not come into force unless the Members approve both the Land Code and the Individual Agreement with Canada in a ratification vote. If the Land Code is approved, Serpent River First Nation will manage its own reserve lands, and Serpent River lands and resources will no longer be managed by the Minister under the *Indian Act*.

The Land Code contains nine sections following the preamble.

### PREAMBLE

**Whereas** the Serpent River First Nation has a historic and legal interest in its traditional lands and in its Reserve land, based on traditional cultural values and the 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*, and 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**

This section of the Land Code deals with the title, definitions and interpretation. It describes the purpose of the document and the authority to govern. This introduces the Land Code to the reader and defines how the document should be read. There is a description of the terms that will be used in the document, an explanation of where the authority to govern comes from, what the purpose of the Land Code is and what lands the Land Code applies to (the reserve land description).

***Authority to Govern:*** The Land Code establishes Serpent River's jurisdiction over all rights and resources in the Land, natural resources, and land revenues of Serpent River First Nation and all rights and resources in Land Interests and Licenses.

***Serpent River First Nation Land:*** that is subject to the Land Code includes the Indian Reserve known as Serpent River Indian Reserve No.7. Other lands may be included in the Land Code in the future.

## **Part 2: First Nations Legislation**

This section outlines what law making powers the First Nation will have out of the Land Code and the procedure for how new land laws will be created and implemented (including where they will be published and when they take effect) under the Land Code.

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***Law-Making: Powers, Procedures, and Publication:*** Council may, subject to the terms of the Land Code, make laws respecting the reserve lands subject to the Land Code. The law-making power is as comprehensive as possible in respect of land matters and replaces the powers set out in the Indian Act. Land Laws may be proposed by a member of Chief and Council, a representative of any group or authority composed of Members, staff authorised in writing by Chief and Council, or any adult member of Serpent River First Nation. Members must be given notice before laws are passed, and may be involved in the development or approval of certain types of laws. Approved laws must be posted in the administration office and be made available electronically.

### **Part 3: Community Meetings and Approvals**

This section defines how and what the process is for implementing various elements of the Land Code. For example, approving a land use plan or enacting land laws requires community approval under the conditions defined in this section. Furthermore, this section touches on the procedures for a “meeting of members”, and the ratification process and approval thresholds for passing laws or other matters such as: i.e. development of a heritage site, amendment to the Land Code, or any other matter.

***Community Approvals:*** Certain land laws and other important land matters must be approved by the community before they can take effect. There are two methods of community approval: community approval at a meeting of members and ratification vote. Every member of Serpent River First Nation who is 18 years of age or older, whether resident on or off reserve, can participate in a community approval at a meeting of members and a ratification vote to discuss and decide the following matters:

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 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.

#### **Part 4: Protection of Land**

This section outlines some of the key protections the Land Code offers and the special conditions by which the First Nation could expropriate land (only by community approval through ratification vote) and the conditions for calculating compensation, but also the rights that may not be expropriated. This section also defines the necessity for a law on heritage sites, and ensures no development or amendment can be made to the land use plan to get rid of a heritage site created under this law. Finally this section states that an agreement is necessary for the First Nation to exchange land with another party (i.e. First Nation, Province, and Federal Government) and there are conditions to be met for lands to be received (such as the need for an appointed negotiator, freedom of receiving additional compensation or land in trust, and federal commitment to add any lands to the existing reserve base).

***Expropriation:*** The right of the Serpent River First Nation to expropriate Reserve Land can only be exercised after a good faith effort to acquire, by mutual agreement, the Interest or Licence in Serpent River First Nation Land rather than by expropriation.

***Voluntary Exchange of Land:*** The Serpent River First Nation may exchange a parcel of reserve land for another parcel of land. The Land Code sets out the procedure for how this would happen. There are four important requirements in order for a land exchange to occur: 1) the new land must be at least as big as the land being exchanged, 2) the new land must be at least of comparable value, 3) the new land must be eligible to become reserve land, and 4) the land exchange must be approved by the Members.

#### **Part 5: Accountability**

This section really has to do with how the Land Code is administered by the First Nation including the rules for a “conflict of interest” and the duty to report and abstain from participation in land matters where there is a conflict. Also in the context of conflict of interest this section defines the non-application of these rules for common interests, dealing with disputes and penalties. This section also applies to how financial management, audit and financial

reporting will be conducted – establishing separate lands bank accounts, signing officers, bonding, signing authorities, and the adoption of the fiscal year for operations and reporting.

This section also goes into detail about the specific rules for a year to year lands budget and financial policy. The final part of this section is about financial records and the member's right to access information on year to year financial statements, audit report, the annual report on lands, and the penalties for interference or obstructing the inspection of these records by another member.

***Accountability of Council:*** Council is accountable to members for the management of moneys and land under the Land Code. An annual report will be prepared and published for the members. The audited financial report will be presented to the members at an annual community meeting of members.

### **Part 6: Land and Natural Resource Administration**

This section starts off by establishing the Lands Committee. It defines the composition, eligibility requirements, selection method, term of office and dealing with vacancies. This section also defines how revenue monies from lands will be handled (from fees, leases etc.), how the registration of land interests (leases, permits, licences) will be conducted and how transactions are captured through First Nations Land Registry System (FNLRs) and a duplicate register if directed.

***Lands Department:*** The Council may delegate administrative authority to a Lands Manager and Lands Management department staff who will assist with the day-to-day administrative operations Serpent River First Nation Lands and resources.

### **Part 7: Interests and Licences in Land**

This section relates more to the operation of the First Nation's lands administration and how it will address existing interests (e.g. CPs) and new land related interests (e.g. CPs or allocations). This section states that there will need to be written documents, standards created, and that consent will be necessary to process any granting or disposing of assignments of land. This section defines the rights of CP holders and the procedure for cancelling a CP, the transfer and use of a CP, and the situation when a CP holder ceases to be a member. This section also defines the limits on mortgages and seizures, transfers upon death, and the principles for spousal property law (to be made into a Matrimonial Real Property law)

***Registration of Interest:*** To be protected, Interests in and Licenses to use land must be registered. The Council will establish and maintain the Serpent River First Nation Land Register where all Interests or Licenses in reserve lands must be registered. All Interests or Licenses must also be registered with the Serpent River First Nations Land Register, maintained by the Department of Aboriginal Affairs.

***Existing Interests:*** Any Interest or License in Serpent River First Nation Land that exist when the Serpent River First Nation Land Code takes effect will, subject to the Land Code, continue in force in accordance with its terms and conditions.

***New Interests and Licenses:*** All new allocation of land, Interests and Licenses, shall be granted in accordance with the Land Code once it takes effect.

***Transfers of Interests and Licenses:*** Members may transfer their Interests to other Members without community or Council approval, however all allocations must be documented and registered in the Serpent River First Nation Land Registry System. Other transfers, except those that occur by operation of law, require the consent of Council.

***Wills and Estates:*** The provisions of the *Indian Act* dealing with wills and estates shall continue to apply with respect to interests in Serpent River First Nation Land. A person who receives an Interest in Serpent River First Nation Land by testamentary disposition or succession in accordance with a written decision of the Minister, or his or her designate, pursuant to the *Indian Act*, is entitled to have that interest registered in the Serpent River First Nation Land Register.

***Mortgages and Seizures:*** Leases may be mortgaged for financing purposes, but only with the written consent of the Council. A mortgage on a leasehold interest can only be for as long as the lease term. If the lessee ever defaulted on a mortgage, Council could redeem the mortgage to prevent the bank from using the lease. A Certificate of Possession may be subject to a mortgage, but only to the Serpent River First Nation with the written consent of the Council.

***Residency and Access Rights:*** Members, who have been allocated a residential lot or a registered interest, and their spouse, children and invitees, have the right to live on the reserve and have a right of access to Serpent River First Nation Land. Lessees and permittees, and those persons authorized by a Land Law also have a right to live on the reserve and a right to access to Serpent River First Nation Land. Any individual may have access to Serpent River First Nation Land for any social or business purposes. However, individuals who trespass or interfere with occupied Lands, who do not comply with all applicable laws, who are barred from Serpent River First Nation Land, who reside on, or enter or remains on Serpent River First Nation Land other than accordance with a residency or access right is committing an offence subject to a fine and/or imprisonment.

***Matrimonial Real Property on Reserve Law:*** Within 12 months of the Land Code coming into force, Serpent River First Nation must pass a Spousal Property Law that must provide for the best interests of children, must not discriminate on the basis of sex, and must not allow non-Members to hold Certificates of Possession, or mortgages on those interests. In the event that the federal government passes spousal property legislation, the Serpent River First Nation Spousal Property Law would override the federal law.

## **Part 8: Dispute Resolution**

This section is created to address how possible disputes that could arise by any benefactor (e.g. First Nation member) of the Land Code and how the process for addressing disputes will be conducted. For example, an adjudicator would be established to resolve disputes in relation to lands unless members could come to some resolve by way of an informal resolution of disputes. The section sets out the powers for the adjudicator, adjudication procedures and decisions and the member's ability to appeal these decisions and expectations around costs.

The intent of this section is to ensure that all persons entitled to possess, reside upon, use or otherwise occupy Serpent River First Nation Land do so harmoniously with due respect to the rights of others and of Serpent River First Nation and with access to Serpent River First Nation procedures to resolve disputes.

## **Part 9: Other Matters**

This section deals with the following matters:

***Liability:*** Serpent River First Nation is not liable for anything done or omitted to be done by Canada or any person or body authorized by Canada in the exercise of any federal rights, powers or responsibilities prior to the date this Land Code comes into force.

***Offences:*** Any person who commits an offence under this *Land Code* or a Serpent River First Nation Land Law is liable to a fine not to exceed \$5,000 and to a term of imprisonment not to exceed six months or to both fine and imprisonment, provided however, that offences related to Serpent River First Nation environmental protection laws may carry penalties consistent with similar environmental protection laws in force in Canada.

***Revisions to Land Code:*** A ratification vote is not required for revisions made to this *Land Code* that do not change the substance of this *Land Code*. Council may, from time to time, arrange and revise this *Land Code*.

***Commencement:*** This *Land Code* shall take effect if the community approves this *Land Code* and the Individual Agreement with Canada and this *Land Code* has been certified by the verifier pursuant to the *Framework Agreement*.

***Environmental Protection:*** The Canadian Environmental Assessment Act, excluding section 10 of that Act, will apply to all land dispositions at Serpent River First Nation until Serpent River First Nation develops an environmental assessment process that is consistent with the requirements of the Canadian Environmental Assessment Act.