

Leq'á:mel First Nation  
LAND CODE – Summary  
17 April 2007

## **A. INTRODUCTION**

### ***Background***

The Leq'á:mel First Nation has prepared for review and endorsement by members of Leq'á:mel First Nation (“Members”) a LEQ'Á:MEL FIRST NATION LAND CODE (the “Land Code”). It is the result of over two years of extensive review by Chief and Council, the Leq'á:mel Family Advisory Committee, and consultants. The draft Land Code dated April 2, 2007 was finalized and approved by Chief and Council on April 4, 2007.

### ***What is the Land Code?***

The Land Code is a Leq'á:mel law that will allow Leq'á:mel First Nation to manage and administer Leq'á:amel reserve lands (“Leq'á:mel Lands”), and replace the role played by the Minister of Indian and Northern Affairs (the “Minister”). The parts of the *Indian Act* that currently authorize the Minister to manage Leq'á:mel Lands will be replaced by a combination of the Land Code, the Individual Agreement, Leq'á:mel Land Laws, the *First Nations Land Management Act* (the “Act”) and the Framework Agreement on First Nation Land Management between Canada and fourteen First Nations dated February 12, 1996 (the “Framework Agreement”).

### ***How does the Land Code work?***

The Land Code governs the way in which Leq'á:mel Lands and interests in land are to be managed by Leq'á:mel. It authorizes actions of Council, Members, and staff. It determines who may hold interests in Leq'á:mel Lands and provides that those interests are valid only if registered in the Indian Lands Registry in Ottawa. It authorizes Council to pass Leq'á:mel Land Laws which create the regulatory framework for the management of Leq'amel Lands. A Leq'á:mel Lands Office and Lands Manager, reporting to Council, will carry out the actual land management work. The Land Code also provides for the collection and use of revenues generated by Leq'á:mel Lands, and for the protection of natural resources.

### ***Will the Indian Act apply at all?***

Where the actual management and administration of Leq'á:mel Lands is concerned, the *Indian Act* will no longer apply and the Minister will no longer manage. The one exception is that the *Indian Act* will continue to apply where Leq'á:mel Lands are affected by wills or estates.

General provisions contained in the *Indian Act* continue to apply. For example, Leq'á:mel Land cannot be sold to anyone who is not a Member. Another example is that the *Indian Act* provisions prohibiting seizure by a non-Member of a Member's assets on Leq'á:mel Lands will continue.

### ***What are Leq'á:mel Land Laws for?***

Leq'á:mel Land Laws give more specific direction for the management of Leq'á:mel Lands. The Land Code sets out the general principles, authorities and responsibilities; Leq'á:mel Land Laws fill in the details. For example, the Land Code says that Council may expropriate Leq'á:mel Lands for a Community Purpose (defined as "a facility, benefit or support for the Members or persons residing on Leq'á:mel Lands and may include utility or transportation corridors"). However, the Land Code also says that before an expropriation can take place there must be a Leq'á:mel Land Law enacted which provides for a fair process, a method of determining compensation, and a dispute resolution process.

### ***Can individual Members hold an interest in Leq'á:mel Lands?***

Members who have valid Certificates of Possession will continue to have possession of the lands that have been allotted to them. The rest of Leq'á:mel Lands will be Community Lands. Under the Land Code, Certificates of Possession are replaced by the term "Allotments". New Allotments may be given to Members but only if there is a Leq'á:mel Land Law which addresses how this is to be done. New Allotments will not include any right to take or dispose of Natural Resources unless in accordance with the Land Code and Leq'á:mel Land Law.

## **B. SUMMARY OF THE LEQ'Á:MEL LAND CODE**

This summary is designed to guide you as you review the Land Code. Neither it nor the Introduction above is a substitute for reading the Land Code itself. If there is a mistake in this summary about a provision in the Land Code, the Land Code itself will be the final authority on what that provision says.

The Land Code has 11 Parts. These are:

Part I	Principles
Part II	Definitions and Interpretation
Part III	Administration of Leq'á:mel Lands
Part IV	Enactment of Leq'á:mel Land Law
Part V	Special Membership Meetings
Part VI	Officers and Employees
Part VII	Amendment of Land Code
Part VIII	Referenda

Part IX	Conflict of Interest Guidelines
Part X	Financial Management and Accountability
Part XI	General

## ***Part I Principles***

This Part lays out the overarching principles that guide Leq'á:mel in the management and administration of Leq'á:mel Lands. It states that Leq'á:mel holds aboriginal title, and that managing the Leq'á:mel Lands is an extension of self-government. It says Leq'á:mel Lands must be managed in a way that respects and preserves Leq'á:mel Lands for the benefit of all Members, past, present and future.

## ***Part II Definitions and Interpretation***

This Part does two things. First, it defines all of the terms that are used in the Land Code. (In this summary, a capitalized term is one that has been defined in **section 4.0** of this Part.)

Secondly, **section 5.0** of Part II gives rules of interpretation to help read the Land Code correctly. It says that the Land Code is not to be interpreted in a way that undermines Leq'á:mel First Nation's aboriginal rights and title, Leq'á:mel First Nations specific claims, current services and programs, or the Crown's fiduciary duty.

## ***Part III Administration of Leq'á:mel Lands***

This is the biggest Part of the Land Code because it contains all of "the processes, rules and administrative structures by which Leq'á:mel will exercise its jurisdiction over Leq'á:mel Lands".

**Section 6.0**, confirms what lands are included in Leq'á:mel Lands (described in detail in Annex "C" to the Land Code); authorizes Council to pass Leq'á:mel Land Laws "for the development, conservation, protection, management, use and possession of Leq'á:mel Lands, Interests and Licences"; and otherwise authorizes Council to do what is necessary to implement the Land Code and Leq'á:mel Land Laws.

As well, section 6.9 says that, within 2 years of the Land Code coming into effect, Council will ask Members at a Special Membership Meeting to consider a draft Land Use Plan and, within 1 year, a draft Leq'á:mel Land Law that addresses land distribution on marriage breakdown.

Section 6.10 contains a long list of the kinds of matters that Leq'á:mel Land Laws may regulate. The Stó:lō Heritage Policy will apply to aspects like artifacts and sacred sites.

Council may delegate some of its responsibilities and authorities through a Leq'á:mel Land Law.

**Section 7.0** authorizes the Leq'á:mel Lands Office to administer Leq'á:mel Lands in accordance with the Land Code and Leq'á:mel Land Laws. It gives the Lands Manager responsibility for the day-to-day management of the Leq'á:mel Lands Office, reporting to Council.

**Section 8.0** lists the kinds of Interests that the Land Code recognizes. These are Allotments, Leases, Easements, Licences, Mortgages and traditional interests. While Licences are recognized, they are treated as a right to do something on Leq'á:mel Lands, not an interest in the land itself. All Interests which were recognized by the *Indian Act* will continue to be recognized under the Land Code.

**Section 9.0** says that an Interest is valid only if was created by an agreement or other Instrument that complies with the Land Code or a Leq'á:mel Land Law.

**Section 10.0** sets out principles for ownership, use and disposal (sale) of Natural Resources found on Leq'á:mel Lands. All Natural Resources are owned by Leq'á:mel and any use of them, or any activity on Leq'á:mel Lands that affects them, must be approved by Council Resolution or a Leq'á:mel Land Law. If there is no Leq'á:mel Land Law, Council may set interim measures or policies to regulate a Natural Resource.

Only Leq'á:mel can use or dispose of gravel.

Allotments under the Land Code will not include Natural Resources. However, those who hold their Interests by *Indian Act* certificates of possession may extract and dispose of Natural Resources provided they pay royalties to Leq'á:mel. This right to deal with Natural Resources cannot be passed on to the next holder of that Interest.

Anyone who causes damage to a Natural Resource or uses it without Council permission is guilty of an offence.

**Section 11.0** contains development principles that must be followed by anyone who undertakes development activity on Leq'á:mel Lands, including standards and legislation that must be complied with. It also allows Leq'á:mel to take over the financial obligations of a developer Allotment holder and in exchange take the Allotment holder's Interest in Leq'á:mel Lands back into Community Land status.

**Section 12.0** says only a Member can hold an Allotment and must do so in compliance with the Land Code and Leq'á:mel Land Law. Council can grant an Allotment but only in accordance with a Leq'á:mel Land Law that has been

passed by a Referendum, or if necessary to comply with a court order or a pre-Land Code agreement. An Allotment may be transferred to another Member but the transfer is effective only if registered.

**Section 13.0** sets out the process for approving the grant of a Lease, Licence or Easement in Community Lands. A Council Resolution approves any grant for a term of up to 15 years, including renewals and extensions. Members must approve, at a Special Membership Meeting, any grant for a term more than 15 years but less than 50 years. If the term is for more than 50 years, a Referendum is required.

A Special Membership Meeting to approve of a grant of Lease, Licence or Easement in Community Lands must follow the process requirements of the Land Code.

If approval is not achieved on a vote at a Special Membership Meeting, a second Special Membership Meeting can be called by Council Resolution or a petition from 25% of Eligible Voters.

No grant of a Lease, Licence or Easement includes Natural Resources.

A Lease may be subleased or assigned (including mortgaged) on certain terms and conditions contained in section 13.10.

**Section 14.0** says an Allotment holder must conduct his or her activities in compliance with the Land Code, Leq'á:mel Land Law, the Land Use Plan, all environmental laws and any other applicable laws. The Allotment holder must seek the consent of other persons on Leq'á:mel Lands who are affected, release Leq'á:mel from liability, satisfy all environmental conditions, provide a detailed written proposal and any required security deposit or fee, and comply with the development principles in section 11.0 before undertaking activity on his or her lands. Council will either approve or reject the proposal, with written reasons, or ask for further information.

Allotment holders have the right to grant a Lease, Licence or Easement by registering that grant in the Leq'á:mel Lands Register, and may ask Leq'á:mel to manage that Lease, Licence or Easement, for a fee. An Allotment holder's lessee may grant a sublease, licence or easement.

Acceptance of a document for registration does not mean the Leq'á:mel Lands Office or Lands Manager warrant that the Instrument being registered is valid and enforceable.

**Section 15.0** allows Allotments, Leases or Subleases to be mortgaged. However, mortgages of Allotments can only be given to Leq'á:mel or another Member. Mortgages must be registered to be effective but just because it is

accepted for registration does not mean that the Instrument is valid and enforceable.

**Section 16.0** allows an Interest held under Certificate of Possession or Allotment to be transferred to a Member or Leq'á:mel. It must be registered to be effective. If the transfer is to Leq'á:mel, the Interest becomes Community Lands.

**Section 17.0** confirms the continued application of the *Indian Act* to transfers of Interests in Leq'á:mel Lands on death.

**Section 18.0** says an Allotment holder's Interest is transferred to Leq'á:mel on the first anniversary of that person ceasing to be a Member. Any debts or other obligations related to the former Member's Interest are not Leq'á:mel's responsibility.

**Section 19.0** describes the operation of the Leq'á:mel Lands Register. It says that any Instrument that affects Leq'á:mel Lands must be registered to be valid and that only those that comply with the Land Code and Leq'á:mel Land Law will be accepted for registration.

The Leq'á:mel Lands Register will continue to be administered in the same way the Indian Lands Register is currently administered under the *Indian Act*. The main difference will be that Instruments are submitted to the Leq'á:mel Lands Office rather than Indian Affairs' office in Vancouver. Once submitted, the Leq'á:mel Lands Office forwards the Instrument to Ottawa for registration in the Leq'á:mel Lands Register.

The Leq'á:mel Lands Register will accept Instruments of financial claims or other rights, such as liens, court orders, options to purchase, etc. See sections 19.10 and 19.11 for details. As before, acceptance for registration does not mean the Instruments are valid and enforceable.

## **Section 20.0**

The date of registration (not the date of submission) is when an Instrument becomes effective. Without registration, the Interest or Licence is void and of no effect.

**Section 21.0** says that in order to cancel or forfeit an Interest there must be a written agreement to that effect, a court or adjudicator's order, or conditions of cancellation or forfeiture that have been fulfilled. An Interest can't be cancelled if it will adversely affect a registered third party or Leq'á:mel Interest or financial claim.

**Section 22.0** provides for the creation of surveys and says that the boundaries identified in the surveys made by the Surveyor General of Canada are accurate

and conclusive unless they are the subject of a dispute between Leq'á:mel and the Minister. A survey is effective upon registration.

**Section 23.0** says Leq'á:mel Lands can only be sold if Leq'á:mel receives, at a minimum, other lands in exchange that are “of greater or equivalent size or value. In addition, Canada must be willing to turn the received lands into reserve, Council must have held at least 3 Members Meetings to discuss the proposed land exchange, and there must be approval by Referendum.

**Section 24.0** limits an Expropriation by Leq'á:mel, acting through Council, for a Community Purpose only. A Community Purpose is defined as “a purpose which is intended to provide a facility, benefit or support for the Members or persons residing on Leq'á:mel Lands and may include utility or transportation corridors”. No expropriation can take place without a Leq'á:mel Land Law that provides a fair expropriation process, a method for determining fair compensation to individuals who hold an affected Interest, and a dispute resolution process. Council must have tried to negotiate with affected Interest holders. If Council has failed to negotiate compensation, it must explain in writing to the Members why an Expropriation is necessary.

**Section 25.0** creates a dispute resolution process for disputes in relation to Leq'á:mel Lands or Interests. The parties first try to resolve the matter in good faith and acting reasonably. If that fails, a mediator may be requested, or the matter could be referred to the Stó:lō Qui:quelstom. If the dispute continues to be unresolved after 30 days from the request for mediation, the parties may go to arbitration or court for a final determination.

**Section 26.0** tells how to appeal Leq'á:mel Lands Office or Lands Manager decisions. Council must receive a written appeal within 30 days of the decision and will give its written decision to the parties. Council's decision may be further appealed to a court.

**Section 27.0** allows Council to delegate by Council Resolution any authority under Part III to the Leq'á:mel Lands Office or Lands Manager. The exceptions are law making, prosecutions and anything required to be done in a specific manner. Council may also establish boards, tribunals and other bodies to carry out Part III duties.

**Section 28.0** provides that Council will review Part III with the Members within 2 years of the Land Code coming into effect. Any amendments proposed as a result will be dealt with under the Land Code's amendment process.

#### ***Part IV      Enactment of Leq'á:mel Land Law***

**Section 29.0** states that this Part tells how Leq'á:mel Land Laws are passed.

**Section 30.0** confirms that Leq'á:mel Land Laws, consistent with the Land Code, are developed by Council in consultation with the Family Advisory Committee. First, the Family Advisory Committee discusses a Leq'á:mel Land Law proposed by Council. If a Majority of the Family Advisory Committee recommend it, Council will either pass the Leq'á:mel Land Law, reject it, or send it back to the Family Advisory Committee for further consideration. This is the same process that applies if a Leq'á:mel Land Law needs to be amended.

Where Council believes urgent protection of Leq'á:mel Lands or Members is needed, it may enact an interim Leq'á:mel Land Law which will be effective for 27 days.

**Section 31.0** Leq'á:mel Land Laws that have been enacted are signed by Council within 30 days of the enactment and effective on that day, unless another date has been provided. Within 7 days, that Leq'á:mel Land Law is posted in the Leq'á:mel administration building and published in a local newspaper. An original and true copies are to be kept by Leq'á:mel and copies are available to Members or others.

#### ***Part V Special Membership Meetings***

**Section 32.0** says the Special Membership Meetings described in this Part V apply only to the Land Code.

**Section 33.0** provides that a Special Membership Meeting is initiated by Council Resolution, a Petition of 25% of Eligible Voters, or if required under the Land Code. Council determines the date, time and place on Leq'á:mel Lands. If Council doesn't do this within 7 days of receiving a Petition, the Band Manager must. Written notice of the date, time, place and business is provided to each Council member and each Member, and posted in the Leq'á:mel administration building at least 14 days before the Special Membership Meeting.

**Section 34.0** Each Council member is required to attend all Special Membership Meetings in the absence of a reason acceptable to the other Council members.

A quorum of Council is required at Special Membership Meetings and if not present, the meeting can go ahead but no business is to be transacted. If at least 15 Members are present at that meeting, the Band Manager must call a second Special Membership Meeting within a week, to deal with the business for which the original Special Membership Meeting had been called.

If a quorum of Council doesn't attend the second Special Membership Meeting, and if at least 15 Members (or 18 Members, if the business concerns finances) do, then the Family Advisory Committee conducts the Special Membership Meeting, in accordance with the Land Code.

Only Members can attend Special Membership Meetings, unless Council has invited others, and only Eligible Voters may vote on a question or resolution.

## ***Part VI      Officers and Employees***

**Section 35.0** authorizes Council to hire employees to administer the Land Code “in an effective and fiscally responsible manner”.

**Section 36.0** specifically authorizes Council to hire a Lands Manager and others, following Leq’á:mel hiring policies.

**Section 37.0** specifically authorizes Council to follow Leq’á:mel hiring policies that prefer qualified Members for employment positions.

## ***Part VII      Amendment of Land Code***

**Section 38.0** sets out the procedure for amending the Land Code. The process starts with a Council Resolution or a Petition signed by 25% of Eligible Voters, stating the proposed amendment and reasons for it. Council then works with the Family Advisory Committee and Members to develop the amendment, and holds a Special Membership Meeting to consider it. After the Special Membership Meeting, Council finalizes a draft of the proposed amendment and calls a Referendum.

## ***Part VIII      Referenda***

**Section 39.0** explains what must be done to notify Members of a Referendum. Notice must be at least 56 clear days prior to the date of the Referendum vote. Council appoints a Returning Officer and any deputy. If the Member wants to be notified of Referenda, it is the Member’s responsibility to ensure Leq’á:mel has his or her current mailing address.

**Section 40.0** makes each Member who wishes to vote in a Referendum solely responsible for providing the Returning Officer with the Member’s current mailing address, proof of membership in Leq’á:mel, and proof of eligibility to vote (defined as a Member who is at least 18 years of age). The list of registered Eligible Voters is posted in or around Leq’á:mel Lands.

**Section 41.0** sets out the process that the Returning Officer uses to conduct the Referendum vote.

**Section 42.0** requires a Majority (defined as 50% plus 1) of registered, Eligible Voters, who comprise at least 25% of all Eligible Voters, to vote in favour of the question for the Referendum to pass. After it passes, Leq’á:mel posts a notice, signed by Council, and mails a copy to each Member. Council then takes any actions authorized by the Referendum vote.

**Section 43.0** provides for a second Referendum if the first one fails, but in two circumstances only. If the first Referendum failed because it did not achieve a Majority but at least 25% of all Eligible Voters voted, then Council may call a second Referendum.

A second Referendum may also be called is if the first failed because fewer than 25% of all Eligible Voters voted, but a Majority of those who did vote, voted in favour.

In each case, the second Referendum must take place within 60 days of the first. It passes if a Majority of registered, Eligible Voters who comprise at least 25% of all Eligible Voters, vote in favour. In other words, the same standard is used as was used on the first vote.

### ***Part X Conflict of Interest Guidelines***

**Section 44.0** makes this Part X applicable to all members of Council, employees and officers of Leq'á:mel, members of the Family Advisory Committee and any individual or body who hears an appeal of a matter under the Land Code or a Leq'á:mel Land Law.

**Section 45.0** says if a person has a direct or indirect personal interest, including an interest of an Immediate Family Member (defined as a "spouse (including a common-law spouse), parent, grandparent, child, grandchild, sibling or any person living as a member of that household) in a matter for which that person has some discretionary or decision-making authority, that interest must be declared immediately to Council and the person must refrain from exercising that authority.

### ***Part XI Financial Management and Accountability***

**Section 46.0** makes this Part XI applicable only to financial matters related to Leq'á:mel Lands administered under the Land Code.

**Section 47.0** requires Council to maintain accounts in a financial institution into which all money received for or from the administration of Leq'á:mel Lands is to be deposited.

**Section 48.0** requires the revenues and expenditures related to management of Leq'á:mel Lands to be administered in accordance with the Land Code and Leq'á:mel Land Law. The fiscal year is from April 1 to March 31. In every year, Council adopts a budget for the use of money received for or from the administration of Leq'á:mel Lands, developed with the Family Advisory Committee. Supplementary budgets may be approved by Council, following this same process. Members may review copies of these at the Leq'á:mel

administration office. If a budget is not adopted, the previous year's budget will apply.

**Section 49.0** sets out basic financial policies until Council adopts more detailed ones. Cheques require two Council signatures; all funds must be authorized by a Leq'á:mel Land Law or under a budget; all fees, rent, royalties and other payments are to be determined by Council Resolution.

**Section 50.0** requires Leq'á:mel to keep financial records for the funds associated with the administration of Leq'á:mel Lands and cause financial statements to be prepared annually.

**Section 51.0** requires an audit to be prepared each year, within 120 days of the end of the fiscal year.

**Section 52.0** requires Council to prepare and share with Members an annual report concerning the administration of Leq'á:mel Lands. At a minimum that report will review Leq'á:mel Land management activities and include a copy of the auditor's report.

**Section 53.0** allows any Member to have reasonable access to the auditor's report and the annual report and to get a copy.

**Section 54.0** makes it an offence if a person who has control of financial records of Leq'á:mel does not allow a person to exercise a right to inspect those records.

## ***Part XI      General***

**Section 55.0** releases Leq'á:mel from liability for anything that Canada was responsible for prior to the effective date of the Land Code. Council must get insurance for the liability of Leq'á:mel in relation to Leq'á:mel Lands, and for the personal liability of individuals who are carrying out duties related to Leq'á:mel Lands.

**Section 56.0** makes the summary conviction procedures under Part XXVI of the *Criminal Code* of Canada apply to Land Code and Leq'á:mel Land Law offences. If Council doesn't provide for justices of the peace, the Land Code and Leq'á:mel Land Law will be enforced in the courts of British Columbia. Trespass remedies continue to apply as do all other remedies available to Leq'á:mel under laws of general application.

**Section 57.0** says the Land Code is ratified if the Members approve of it and the Individual Agreement by Referendum, and the verifier has certified the Land Code. The Land Code is effective on the later of the first day of the month following the verifier's certification, or the date the Individual Agreement is signed by Canada.