

**SONGHEES FIRST NATION
LAND CODE**

Dated for Reference January 27, 2011

TABLE OF CONTENTS

PREAMBLE	4
PART I: PRELIMINARY MATTERS	4
1. Title	4
2. Interpretation	4
3. Authority to Govern.....	8
4. Purpose	9
5. Description of the Nation’s Land	9
PART II: LEGISLATION OF THE NATION	9
6. Law-Making Powers	9
7. Law-Making Procedure.....	12
8. Publication of Laws.....	12
PART III: COMMUNITY CONSULTATION AND APPROVALS	13
9. Rights of Eligible Voters.....	13
10. Community Input	13
11. Approval at a Meeting of Members	14
12. Procedure at a Meeting of Members	14
13. Ratification Votes.....	16
PART IV: PROTECTION OF LAND	16
14. Expropriation by the Nation.....	16
15. Voluntary Land Exchange and Protection	18
PART V: CONFLICTS OF INTEREST AND FINANCIAL ACCOUNTABILITY	20
16. Conflict of Interest	20
17. Financial Administration.....	20
PART VI: LAND MANAGEMENT	20
18. Lands Manager.....	20
19. Lands Advisory Committee	20
20. Registration of Interests and Licenses.....	21
PART VII: INTERESTS AND LICENSES IN LAND	22
21. Limits on Interests and Licenses	22
22. Existing Interests and Licenses	22
23. New Interests and Licenses	22
24. Allocation of Lots.....	23
25. Certificates of Permanent Interest	23
26. Transfer and Assignment of Interests and Licenses.....	23
27. Limits on Mortgages and Seizures	24
28. Residency and Access Rights.....	24
29. Transfers on Death or Mental Incompetence	25
30. Spousal Property Law	26
PART VIII: DISPUTE RESOLUTION	27
31. Informal Resolution of Disputes	27
32. Application of this Part	27
33. Mediation	28
34. Arbitration	28
35. Costs	29

PART IX: OTHER MATTERS..... 29

36. Liability 29

37. Offences 29

38. Amendment 29

39. Commencement..... 30

PREAMBLE

Whereas the people of the Songhees First Nation have occupied and benefited from their lands and resources since time immemorial;

Whereas the Members of the Songhees First Nation have a profound relationship with the land and its resources, a responsibility passed down through the generations;

Whereas the Council of the Songhees First Nation, as the government of the Songhees First Nation, has the jurisdiction and responsibility for land and resource Laws of the Songhees First Nation;

Whereas the Council of the Songhees First Nation is committed to providing dependable and efficient land management services to the Members of the Songhees First Nation;

Whereas Songhees First Nation traditions and cultural beliefs are the driving force of our success and destiny;

Whereas the Songhees peoples are descendants of the original signatories of the Douglas Treaties and hold and exercise their rights and title under the Douglas Treaties;

Now Therefore this Songhees First Nation Land Code is hereby enacted as the fundamental land law of the Songhees First Nation.

PART I: PRELIMINARY MATTERS

1. Title

1.1 The title of this enactment is the *Songhees First Nation Land Code*.

2. Interpretation

2.1 The following definitions apply in this Land Code:

“Act” means the *First Nations Land Management Act*;

“Certificate of Possession” means a document issued by the Minister in accordance with section 20 of the *Indian Act* prior to the coming into force of this Land Code;

“Common-law Marriage” means a union of two individuals not married to each other, who have lived together in a conjugal relationship for a period of not less than one year;

“Community Land” means any part of the Nation’s Land that is not subject to a Certificate of Possession or Permanent Interest created under this Land Code;

“Council” means the Chief and Council of the Nation, or any successor elected government;

“Douglas Treaties” means the applicable Douglas Treaties with the Lekwungen peoples of south Vancouver Island entered into by ancestors of the people of the Songhees First Nation;

“Easement” means a non-exclusive Interest in the Nation’s Land granted under paragraph 23.1(a) of this Land Code or, prior to the date of this Land Code, under the *Indian Act*, which gives the grantee the right to use the land of another for a right of way or to provide utility or other services to the land of the grantee, and which is limited to only such Interests as is necessary to give effect to the Easement granted;

“Eligible Voter” means, for the purpose of voting in relation to matters under this Land Code, a Member who has attained the age of 18 years on or before the day of the vote;

“Expropriation” means a taking of an Interest or all Interests in portions of the Nation’s Land for a community purpose through a process established by a Law of the Nation, in accordance with Part 4;

“First Nations Land Registry” means the register maintained by the Department of Indian Affairs and Northern Development under clause 51 of the Framework Agreement;

“Framework Agreement” means the *Framework Agreement on First Nation Land Management* entered into between the Government of Canada and 14 first nations on February 12, 1996, as amended;

“Individual Agreement” means the Individual First Nation Agreement made between the Nation and Her Majesty in right of Canada in accordance with clause 6.1 of the Framework Agreement;

“Institute” means the British Columbia Arbitration and Mediation Institute;

“Instrument” means a formal legal document;

“Interest” means any estate, right or interest of any nature in or to the Nation’s Land, but does not include title to the land;

“Land Code” means this *Songhees First Nation Land Code*;

“Land Use Plan” means a plan addressing housing, transportation, parks, economic development, infrastructure, social, cultural, environmental and other needs in the use and development of the Nation’s Land;

“Lands Advisory Committee” means the Lands Advisory Committee established under section 19.1;

“Lands Manager” means the person appointed by the Council in accordance with section 18, who is responsible for the administration of the Nation’s Land;

“Law” or “Law of the Nation” means a Law enacted under this Land Code but does not include a Resolution;

“Lease” includes a Sub-lease, and means a written Instrument granting a Leasehold;

“Leasehold” means an Interest in the Nation’s Land that allows the holder an exclusive right of use and occupation to a parcel of land for a specified period of time;

“License” means any right of use or occupation of the Nation’s Land, other than an Interest in the Nation’s Land;

“Lekwungen” means the ancestors of the Songhees peoples, whose traditional territories included South Vancouver Island and San Juan Island;

“Meeting of Members” means a meeting of the members of the Nation held in accordance with Part 3;

“Member” means an individual whose name appears or who is entitled to have their name appear on the Nation’s membership list;

“Mortgage” means a charge on an Interest in the Nation’s Land in favour of another as security for a debt;

“the Nation” means the Songhees First Nation as named in the Act;

“the Nation’s Land” means any portion of a reserve of the Nation that is subject to this Land Code;

“Natural Resources” means any minerals, oil, gas, substances, groundwater, water, vegetation or animals found on or in the Nation’s Land which, when removed, have economic or other value;

“Permanent Interest” means an Interest granted under Part VII of this Land Code held by a Member, which can be transferred or willed in accordance with this Land Code;

“Permit” means an Interest in a specified area of the Nation’s Land other than a Leasehold, Easement or License, that gives a person the right to non-exclusive use of a specified area of the Nation’s Land for a specified purpose;

“Person” includes a partnership, syndicate, association, corporation and the personal or other legal representatives of a person;

“Ratification Vote” means a vote under section 13;

“Registered Interest” means an Interest in the Nation’s Land registered in accordance with section 20;

“Resolution” means a formal, written motion passed by a quorum of the Council at a duly constituted meeting of the Council;

“Society” means the British Columbia Mediator Roster Society;

“Spouse” means an individual who is married to another, whether by a traditional, religious or civil ceremony, and includes a spouse by Common-law Marriage; and

“Sub-lease” means a portion of that Interest held under Lease; and

“Verifier” means a verifier appointed in accordance with clause 8.1 of the Framework Agreement.

2.2 A reference to “land” or “Land” in this Land Code is, unless the context otherwise requires, a reference to the Nation’s Land and includes all rights and resources in and of the Nation’s Land, including:

- (a) the water, beds underlying water, riparian rights, minerals and subsurface resources and all other renewable and non-renewable natural resources in and of that land, to the extent that these are under the jurisdiction of Canada or the Nation; and
- (b) all the Interests and Licenses granted to the Nation by Her Majesty in right of Canada as listed in the Individual Agreement.

2.3 In this Land Code:

- (a) the use of the word “must” denotes 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;
- (b) 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”;
- (c) headings and subheadings are for convenience only, do not form a part of this Land Code and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Code;

- (d) a reference to a statute or Law of the Nation includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;
 - (e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and
 - (f) unless stated otherwise, a reference to an enactment is a reference to an enactment of the government of Canada.
- 2.4 The structures, organizations and procedures established by or under this Land Code must be interpreted in accordance with the culture, traditions and customs of the Nation, unless otherwise provided.
- 2.5 This Land Code must be interpreted in a fair, large and liberal manner.
- 2.6 This Land Code is not intended to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain now or in the future to the Nation or its Members.
- 2.7 This Land Code is not intended to affect the eligibility of the Nation or any Member to receive services or participate in such public or aboriginal programs as may be established from time to time to the extent that the Nation has not assumed responsibility for such services or programs.
- 2.8 This Land Code is not intended to abrogate the fiduciary relationships between Her Majesty the Queen in Right of Canada, the Nation and its Members.
- 2.9 If there is an inconsistency or conflict between this Land Code and any other enactment of the Nation, this Land Code must prevail to the extent of the inconsistency or conflict.
- 2.10 If there is an inconsistency or conflict between this Land Code and the Douglas Treaties, the Douglas Treaties must prevail to the extent of the inconsistency or conflict.
- 2.11 If there is an inconsistency or conflict between this Land Code and the Framework Agreement, the Framework Agreement must prevail to the extent of the inconsistency or conflict.
- 2.12 If there is an inconsistency or conflict between this Land Code and regulation made under section 42 or 73 of the *Indian Act*, this Land Code must prevail to the extent of the inconsistency.
- 3. Authority to Govern**
- 3.1 The authority of the Nation to govern its land and resources flows from its inherent right of self-government and its rights, including Aboriginal title and those rights defined in the Douglas Treaties.

3.2 For any purpose related to the Nation's Land, the Nation must have legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise its powers and to perform its duties.

4. Purpose

4.1 The purpose of this Land Code is to set out the principles and legislative and administrative structures that apply to the Nation's Land and through which the Nation exercises its authority over those lands.

4.2 The Framework Agreement is ratified by the Nation when the Nation approves this Land Code.

5. Description of the Nation's Land

5.1 The Land Code governs all of the land legally described in the Individual Agreement.

5.2 The following lands may be made subject to this Land Code if they are, or become, reserve lands and the relevant conditions are met:

- (a) lands owned jointly or in common by the Nation and one or more other First Nations, if the First Nations agree upon a joint management scheme for those lands; and
- (b) any land or Interest acquired by the Nation after this Land Code comes into effect, whether by land claim, purchase or other process, when an environmental audit declares it free of environmental hazard and safe for community use.

5.3 For greater certainty, section 5.2 does not apply to land acquired by voluntary land exchange, which is governed by the process in section 15.

5.4 If the relevant conditions in section 5.2 are met, the Council must call a Meeting of Members and, after receiving input at that meeting, may enact a Law or pass a Resolution declaring the land or Interest to be subject to this Land Code.

5.5 The definition of "the Nation's Land" in section 2.1 and the description of the Nation's Land in section 5.1 are not intended, and should not be construed, as an admission by the Nation that those lands are the only lands to which the Nation is entitled under its Aboriginal title or treaty rights.

PART II: LEGISLATION OF THE NATION

6. Law-Making Powers

6.1 The Council may, in accordance with this Land Code, make Laws respecting:

- (a) the development, conservation, protection, management, use and possession of the Nation's Land;
- (b) Interests and Licenses in relation to the Nation's Land;
- (c) any matter necessary to give effect to this Land Code;
- (d) any matter necessary or ancillary to a Law respecting the Nation's Land.

6.2 For greater certainty, and without limiting the generality of section 6.1, the Council may make Laws in relation to the Nation's Land including:

- (a) zoning and land use planning;
- (b) economic development;
- (c) regulation, control, authorization and prohibition of residency, access and the occupation and development of land;
- (d) creation, regulation and prohibition of Interests and Licenses;
- (e) environmental assessment and protection;
- (f) provision of local services and the imposition of user charges, including development cost charges or other similar charges;
- (g) provision of services for the resolution, outside the courts, of disputes;
- (h) administrative appeals from a decision to grant or refuse to grant Interests in the Nation's Land;
- (i) authorization and regulation of subdivisions;
- (j) the conduct of surveys;
- (k) setting aside, protection and regulation of parks, parklands, and recreational lands;
- (l) setting aside, protection and regulation of heritage sites, cultural sites, traditional sites, spiritual sites and wildlife refuges;
- (m) creation of management and administrative bodies or agencies;
- (n) removal and punishment of persons trespassing upon the Nation's Land or frequenting the Nation's Land for prohibited purposes;

- (o) public nuisance and private nuisance;
 - (p) regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
 - (q) construction and maintenance of boundary and internal fences;
 - (r) construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works;
 - (s) setting aside of lands for community purposes or works;
 - (t) regulation of traffic and transportation;
 - (u) procedures that apply to the transfer, by testamentary disposition or succession, of an Interest in the Nation's Land;
 - (v) the purchase, acquisition or sale of lands in accordance with the *Indian Act* and this Land Code;
 - (w) hunting, fishing, management and protection of fish, wildlife and their habitat on the Nation's Land;
 - (x) use and storage of firearms, fireworks, weapons and hazardous materials or substances on the Nation's Land;
 - (y) the setting of fees and rents for Interests and Licenses in the Nation's Land;
 - (z) archaeological assessment and protection of archaeological and cultural resources; and
 - (aa) enforcement of the Laws of the Nation.
- 6.3 The Council must perform all the duties and functions, and exercise all the powers, of the Nation that are not specifically assigned to an individual or body established under this Land Code.
- 6.4 Notwithstanding section 6.3, the Council may, by Resolution, delegate administrative authority in relation to a Law enacted under section 6.1 to an individual or body established or authorized under this Land Code.
- 6.5 Any power, authority or discretion exercised by the Council, the Lands Advisory Committee or other individual or body established or authorized under this Land Code must be exercised on behalf of, and for the benefit and protection of, the Nation.

7. Law-Making Procedure

- 7.1 The process for developing a Law of the Nation may be initiated by:
- (a) a Resolution, setting out the specific subject matter of the proposed Law;
 - (b) a report presented to the Council by the Lands Advisory Committee; or
 - (c) a written request to the Council, signed by at least 25 Eligible Voters, that sets out the request for development of a Law of the Nation addressing a specific subject matter or issue.
- 7.2 At least 30 days prior to a vote by the Council on a Law, the proposed Law must be:
- (a) tabled at a meeting of the Council; and
 - (b) posted in the Nation's administration office and other public places on the Nation's Land.
- 7.3 The Council must provide notice in accordance with Part III of this Land Code if community input or approval is required prior to voting on the Law.
- 7.4 The Council may enact a Law without the preliminary steps required under section 7.3 if the Council is reasonably of the opinion that the Law is needed urgently to protect the Nation's Land or Members.
- 7.5 A Law enacted under section 7.3 must be deemed to be repealed and of no force and effect 28 days after it is enacted, but may be re-enacted in accordance with sections 7.2 and 7.3.
- 7.6 A Law is enacted if it is approved by the Council.
- 7.7 The original copy of a Law or Resolution relating to the Nation's Land must be signed by the Members of the Council present at the meeting at which the Law is enacted.
- 7.8 A Law comes into force on:
- (a) the date it is enacted; or
 - (b) such other date as may be set by the Law.

8. Publication of Laws

- 8.1 All Laws must be published in the minutes of the Council.
- 8.2 The Council must post a copy of the Law

- (a) in the Nation's administration office within seven days after a Law has been enacted; and
 - (b) on the Nation's website within 14 days after a Law has been enacted.
- 8.3 The Nation must maintain a register of Laws at the Nation's administration office containing the original copy of all Laws and Resolutions, including Laws and Resolutions that have been repealed or are no longer in force.
- 8.4 Any person may, during normal business hours at the Nation's administration office, have reasonable access to the register of Laws.
- 8.5 Any person may obtain a copy of a Law or Resolution upon payment of such reasonable fee as may be set by the Council or a body designated by the Council.

PART III: COMMUNITY CONSULTATION AND APPROVALS

9. Rights of Eligible Voters

- 9.1 Every Eligible Voter has the right to vote at a Meeting of Members and in a Ratification Vote.

10. Community Input

- 10.1 The Council must call a Meeting of Members to receive input prior to voting upon a Law in relation to:
- (a) a land use plan;
 - (b) a subdivision plan;
 - (c) declaring land or an Interest in land referred to in section 5.2 or 5.3 to be subject to this Land Code;
 - (d) a heritage site, cultural site, traditional site, spiritual site or wildlife refuge;
 - (e) an environmentally sensitive property;
 - (f) environmental assessment;
 - (g) the transfer or assignment of Interests in the Nation's Land;
 - (h) spousal property under section 30; and

- (i) any other matter or class of matters that the Council by Resolution declares to be subject to this section.
- 10.2 The Council must convene a Meeting of Members to receive their input prior to passing a Resolution declaring land or an Interest referred to in section 5.2 to be subject to this Land Code.
- 10.3 Within a reasonable time after this Land Code takes effect, the Council must establish a community process to develop and implement the Laws referred to in section 10.1.
- 10.4 Nothing in this Land Code precludes the Council, or other individual or body established or authorized under this Land Code from consulting with other advisors or representatives of other jurisdictions, including other First Nations, municipal corporations and regional districts, to develop and implement the Laws referred to in section 10.1.

11. Approval at a Meeting of Members

- 11.1 Community approval at a Meeting of Members must be obtained for the following:
- (a) a land use plan;
 - (b) amendment of a land use plan;
 - (c) subject to section 11.2, amendments to this Land Code;
 - (d) a charge or mortgage of a Leasehold exceeding a term of 25 years;
 - (e) a spousal property law under section 30; and
 - (f) a Law or class of Law that the Council, by Resolution, declares to be subject to this section;
 - (g) any matter in relation to the Nation's Land that the Council by Resolution declares to be subject to this section.
- 11.2 Notwithstanding paragraph 11.1(c), the Council may, in consultation with the Lands Advisory Committee and in accordance with section 12(3)(a)(iii), require that an amendment to this Land Code be approved by a Ratification Vote.

12. Procedure at a Meeting of Members

- 12.1 Subject to section 12.3, decisions at a Meeting of Members must be made by a majority vote of the Eligible Voters present at the meeting.
- 12.2 Voting at a Meeting of Members must be by secret ballot.

- 12.3 The Council may, by Resolution,
- (a) provide that any matter that requires approval at a Meeting of Members must be decided by:
 - i. a majority vote by mail in ballot;
 - ii. a majority vote at a Meeting of Members in conjunction with a mail-in ballot; or
 - iii. a Ratification Vote in accordance with section 13, or
 - (b) set a quorum for any Meeting of Members.
- 12.4 The Council must give written notice of a Meeting of Members that:
- (a) specifies the date, time and place of the meeting; and
 - (b) contains a brief description of the matters to be discussed and decided at the meeting.
- 12.5 Written notice of a Meeting of Members under section 12.4 must be given by:
- (a) posting the notice in public places on the Nation's Land at least 21 days before the meeting;
 - (b) mailing the notice to Eligible Voters at their last known address at least 21 days before the meeting;
 - (c) publishing the notice in a community newsletter or local newspaper at least ten days before the meeting; or
 - (d) such other methods as the Council may consider appropriate.
- 12.6 A Member has a right to attend a Meeting of Members.
- 12.7 A person who is not a Member may not attend a Meeting of Members except at the invitation of the Council.
- 12.8 The Council may schedule more than one Meeting of Members to discuss and decide a matter that requires a Meeting of Members, provided that any vote taken at a Meeting of Members must not be accumulated with any vote taken at a subsequent Meeting of Members.
- 12.9 The Council may make Laws respecting procedures for Meetings of Members.

13. Ratification Votes

- 13.1 Approval by a Ratification Vote must be obtained for:
- (a) a voluntary exchange of the Nation's Land under section 15.1;
 - (b) an amendment of the Individual Agreement that reduces the amount of funding provided by Canada by 10% or more; and
 - (c) the enactment of a Law or class of Laws that the Council, by Resolution, declares to be subject to this section.
- 13.2 The Council may, by Resolution in accordance with section 12.3(a)(iii), require that an amendment to, or renewal of, the Individual Agreement be approved by a Ratification Vote if, in the Council's opinion, the amendment or renewal significantly impacts the community.
- 13.3 A Ratification Vote required under this Land Code must be conducted, with any necessary modifications appropriate in the circumstances, in the same manner as that provided in the *Songhees First Nation Community Ratification Process* that was used to ratify this Land Code.
- 13.4 A matter must be considered approved by a Ratification Vote if a majority of the Eligible Voters participates in the vote and at least a majority of the participating Eligible Voters cast a vote in favour of the matter.
- 13.5 A Verifier is not required in a Ratification Vote.

PART IV: PROTECTION OF LAND**14. Expropriation by the Nation**

- 14.1 An Interest or License in the Nation's Land or in any building or other structure on such land may be expropriated by the Nation in accordance with the Framework Agreement and a Law enacted in accordance with section 14.5 of this Land Code.
- 14.2 An Expropriation may be made only if the Council considers it necessary for community works or other purposes, including but not limited to the construction or relocation of fire halls, sewage or water treatment facilities, community centers, public works, roads, schools, day-care facilities, hospitals, health care facilities or retirement homes.
- 14.3 Notwithstanding section 14.2, an Interest granted by a Member in the Nation's Land may be expropriated if:
- (a) the Interest to be expropriated is determined to be fraudulent or to have been granted for an illegal purpose; or

- (b) the granting of the Interest is determined to be not in the best interests of the Nation.
- 14.4 No Expropriation may be made under section 14.3 unless:
- (a) the holder of the Interest is given a reasonable opportunity to address and rectify the concerns of the Member or the Nation and fails within a reasonable time to do so;
 - (b) the expropriated Interest reverts to the Member; and
 - (c) the Expropriation is carried out in accordance with this Part.
- 14.5 The Council may enact a Law respecting the rights and procedures for Expropriation, including provisions in relation to:
- (a) taking possession of the expropriated Interest or License;
 - (b) transfer of the expropriated Interest or License;
 - (c) notice of Expropriation;
 - (d) service of the notice of Expropriation;
 - (e) entitlement to compensation;
 - (f) determination of the amount of compensation; and
 - (g) the method of payment of compensation.
- 14.6 A Law enacted under section 14.5 must include provisions having the following effect:
- (a) an Expropriation must be made only for the smallest Interest necessary and for the shortest time necessary; and
 - (b) where less than a full Interest is expropriated, a person whose Interest is expropriated may continue to use and occupy the land for purposes that are not inconsistent with the Expropriation.
- 14.7 An Interest of Her Majesty the Queen in right of Canada, or an Interest previously expropriated under section 35 of the *Indian Act*, is not subject to Expropriation by the Nation.
- 14.8 The Nation may expropriate an Interest or License only after a good faith effort to acquire the Interest or License by mutual agreement.

- 14.9 The Nation must, in accordance with its Laws and the Framework Agreement:
- (a) serve reasonable notice of the Expropriation on each affected holder of the Interest or License to be expropriated; and
 - (b) pay fair and reasonable compensation to the holder of the Interest or License to be expropriated in accordance with the rules set out in the *Expropriation Act*, with such modifications as circumstances require.
- 14.10 An Expropriation of an Interest or License by the Nation must not take effect until:
- (a) the date the notice of Expropriation is registered in the First Nations Land Registry; or
 - (b) the 30th day after the day the last copy of the notice is served.
- 14.11 A dispute concerning the amount of compensation may be resolved in accordance with Part VIII of this Land Code.

15. Voluntary Land Exchange and Protection

- 15.1 The Nation may, in a written land exchange agreement, agree with another party to exchange a parcel of the Nation's Land for land from that other party in accordance with this Land Code and the Framework Agreement.
- 15.2 A land exchange is of no effect unless it receives approval by a Ratification Vote.
- 15.3 A land exchange may proceed to a Ratification Vote only if the land to be received by the Nation is:
- (a) of equal or greater area than the Nation's Land that is to be exchanged;
 - (b) of a value comparable to the appraised value of the Nation's Land that is to be exchanged; and
 - (c) eligible to become a reserve under the *Indian Act*, and the Nation's Land subject to this Land Code.
- 15.4 A person who negotiates a land exchange agreement on behalf of the Nation must be designated by Resolution.
- 15.5 In addition to the land referred to in section 15.3, the Nation may receive additional compensation, including
- (a) money; or

- (b) other land, which may be held by the Nation in fee simple or otherwise.
- 15.6 Before the Nation concludes a land exchange agreement, it must receive a written statement from Canada stating that Her Majesty in right of Canada:
- (a) consents to set apart as a reserve the land to be received in the land exchange, as of the date of the land exchange or such later date as the Council may specify by Resolution; and
 - (b) consents to the manner and form of the land exchange as set out in the land exchange agreement.
- 15.7 At such time as negotiation of a land exchange agreement is concluded, and at least 21 days before the Ratification Vote under section 15.2, the Council or the Lands Advisory Committee must provide the following information to Members:
- (a) a description of the Nation's Land that is to be exchanged;
 - (b) a description of the land to be received by the Nation;
 - (c) a description of any additional compensation to be received;
 - (d) a report of a certified land appraiser stating that the conditions in sections 15.3 (a) and (b) have been met;
 - (e) a copy of the land exchange agreement; and
 - (f) a copy of the statement referred to in section 15.6.
- 15.8 A land exchange agreement must provide that:
- (a) the other party to the exchange must transfer to Canada the title to the land that is to be set apart as a reserve;
 - (b) the Council must pass a Resolution authorizing Canada to transfer title to the parcel of the Nation's Land that is being exchanged, in accordance with the land exchange agreement; and
 - (c) a copy of the Instruments transferring title to the relevant parcels of land must be registered in the First Nations Land Registry.

PART V: CONFLICTS OF INTEREST AND FINANCIAL ACCOUNTABILITY**16. Conflict of Interest**

- 16.1 In the event of any real, perceived or potential conflict of interest that arises in any matter related to the Nation's Land, a Law, or this Code, the *Songhees First Nation Conflict of Interest Regulation* must apply.

17. Financial Administration

- 17.1 All financial matters in relation to the Nation's Land administered under this Land Code must be conducted in accordance with the *Songhees First Nation Financial Administration Law, 2009* and all regulations, policies or procedures enacted or approved under it.

PART VI: LAND MANAGEMENT**18. Lands Manager**

- 18.1 The Council must appoint a Lands Manager, who will be responsible for:
- (a) assisting with the development of the Nation's land administration system;
 - (b) advising the Council and Nation staff on matters related to the Nation's Land;
 - (c) recommending to the Council Laws, Resolutions, policies and procedures in relation to the Nation's Land;
 - (d) holding regular and special meetings of Members to discuss issues related to the Nation's Land and making recommendations to the Council on the resolution of such issues;
 - (e) assisting Members and the Council in the exchange of information in relation to the Nation's Land issues;
 - (f) overseeing other consultations under this Land Code;
 - (g) monitoring community approvals under this Land Code; and
 - (h) performing such other duties and functions as the Council may direct.

19. Lands Advisory Committee

- 19.1 The Council may, by Law or Resolution, establish a Lands Advisory Committee.

- 19.2 A Law or Resolution that establishes a Lands Advisory Committee will contain guidelines including but not limited to the following:
- (a) the composition of the Committee, including quorum;
 - (b) any eligibility criteria for Committee members;
 - (b) the process for selecting Committee members;
 - (c) the term of office for Committee members;
 - (d) the process for selecting the Chair of the Committee and the duties of the Chair; and
 - (e) policies for remuneration and recovery of expenses incurred by Committee members.
- 19.3 The Council may refer any matter in relation to the Nation's Land issues to the Lands Advisory Committee for their input and may request that a report on the matter be presented to the Council.
- 19.4 Recommendations of the Lands Advisory Committee must be given full and fair consideration by the Council, however the Council is not bound by any recommendation made by the Lands Advisory Committee.
- 20. Registration of Interests and Licenses**
- 20.1 An Interest or License in the Nation's Land created or granted after this Land Code comes into effect is not enforceable unless it is registered in the First Nations Land Registry.
- 20.2 An Instrument that requires the consent of the Council or approval by the Members must be registered in the First Nations Land Registry with a certified copy of the document that records the consent or approval attached to the Instrument, or it is void.
- 20.3 A document issued in relation to this Land Code that requires the consent of the Council by Resolution must be registered in the First Nations Land Registry with a certified copy of the Resolution recording Council's consent attached to the document, or it is void.
- 20.4 Every person who receives an Interest or License in the Nation's Land from a Member must deposit an original copy of the Instrument in the First Nations Land Registry.
- 20.5 Persons or entities involved in registering Interests or Licenses are responsible for ensuring the validity and accuracy of their documents and neither the Nation nor the Lands Manager must be responsible or liable for ensuring that a document which affects or purports to affect the Nation's Land:

- (a) is validly made;
- (b) complies with this Land Code;
- (c) should be registered or recorded; or
- (d) must be accepted by the Minister for registration or recording.

PART VII: INTERESTS AND LICENSES IN LAND

21. Limits on Interests and Licenses

- 21.1 An Interest or License in the Nation's Land may only be created, granted, disposed of, assigned or transferred by a written Instrument in accordance with this Land Code.
- 21.2 The Council may establish mandatory standards, criteria and forms for Interests and Licenses in the Nation's Land.
- 21.3 A deed, Lease, contract, Instrument, document or agreement of any kind, whether written or oral, by which the Nation, a Member or any other person purports to grant, dispose of, transfer or assign an Interest or License after the date this Land Code takes effect is void if it contravenes this Land Code.
- 21.4 A person who is not a Member may only hold a Lease, License or Permit in the Nation's Land.
- 21.5 The written consent of the Council must be obtained for any grant or disposition of a Lease, License or Permit in the Nation's Land to a person who is not a Member.

22. Existing Interests and Licenses

- 22.1 Any Interest or License in the Nation's Land that existed when this Land Code takes effect must, subject to this Land Code, continue in force in accordance with its terms and conditions.

23. New Interests and Licenses

- 23.1 On behalf of the Nation, the Council may grant:
 - (a) Interests and Licenses in Community Land, including Permanent Interests, Leases, Permits, Easements and rights-of-way; and
 - (b) Permits and Licenses to take resources from Community Land, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances.

- 23.2 The grant of an Interest or License in the Nation's Lands may be made subject to the satisfaction of written conditions.
- 23.3 The Lands Manager must advise the Council on the granting of Interests and Licenses and may be authorized to act as a delegate of the Council under this section.
- 23.4 No community approval is required for the granting of an Interest under section 24.1 or section 25.1.
- 23.5 A person who is not a Member is not entitled to be granted an Interest under section 24.1 or section 25.1.

24. Allocation of Lots

- 24.1 The Council may, by Lease or rental arrangement, allocate lots of available First Nation land to a Member in accordance with policies and procedures established by the Council.

25. Certificates of Permanent Interest

- 25.1 Subject to this Land Code and the Laws of the Nation, Council may issue a Certificate of Permanent Interest to a Member for a lot allocated to that Member.
- 25.2 A Certificate of Possession or Certificate of Permanent Interest is an Interest in the Nation's land that entitles the Member holding it to:
- (a) permanent possession of the land;
 - (b) benefit from the resources arising from the land;
 - (c) grant subsidiary Interests in the land, including Leases, Permits, Easements and rights-of-way;
 - (d) transfer, devise or otherwise dispose of the land to another Member;
 - (e) grant Permits to take resources from the land, including cutting timber or removing minerals, stone, sand, gravel, clay soil or other substances; and
 - (f) any other rights, consistent with this Land Code, that are attached to Certificates of Possession under the *Indian Act*.

26. Transfer and Assignment of Interests and Licenses

- 26.1 A Member may transfer or assign an Interest in the Nation's Land to another Member without community approval or the consent of the Council.
- 26.2 Except the transfers under section 26.1 and transfers that occur by operation of law,

- (a) there must be no transfer or assignment of an Interest or License in the Nation's Land without the written consent of the Council; and
- (b) the grant of an Interest or License is deemed to include section 26.2 (a) as a condition on any subsequent transfers or assignments.

27. Limits on Mortgages and Seizures

- 27.1 In accordance with the *Framework Agreement*, section 29, section 87 and subsections 89(1) and (2) of the *Indian Act* continue to apply to the Nation's Land.
- 27.2 The holder of a Certificate of Possession or a Certificate of Permanent Interest may only grant a Mortgage of that Interest to a Member or to the Nation.
- 27.3 A Leasehold may be subject to charge or mortgage, subject to the approval of the Nation in accordance with section 11.1 of this Land Code or the written consent of the Council, as may be applicable.
- 27.4 The term of any charge or mortgage of a Leasehold must not exceed the lesser of
- (a) the term of the Lease; or
 - (b) 25 years, or such longer period as may receive community approval.
- 27.5 In the event of default in the terms of a charge or mortgage of a Leasehold, the Leasehold is not subject to possession by the charge or mortgage, foreclosure, power of sale or any other form of execution or seizure, unless
- (a) the charge or mortgage received the written consent of the Council;
 - (b) the charge or mortgage received community approval where required;
 - (c) the charge or mortgage was registered in the First Nations Land Registry; and
 - (d) a reasonable opportunity to redeem the charge or mortgage is given to the Council on behalf of the Nation.
- 27.6 If the Council exercises its power of redemption with respect to a Leasehold, the Nation becomes the lessee of the land and takes the position of the chargor or mortgagor for all purposes after the date of the redemption.

28. Residency and Access Rights

- 28.1 The following persons have a right to reside on the Nation's Land:

- (a) Members, who have been allocated a residential lot by the Council, their spouses and children, and their invitees;
 - (b) Members with a Registered Interest in the Nation's Land and their invitees; and
 - (c) lessees and permittees, in accordance with the provisions of the Instrument granting the Lease or Permit.
- 28.2 The following persons have a right of access to the Nation's Land:
- (a) lessees and their invitees;
 - (b) permittees and those granted a right of access under the Permit;
 - (c) Members and their spouses and children;
 - (d) a person who is authorized by a government body or any other public body, established by or under an enactment of the Nation or the province to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey; or
 - (e) a person authorized in writing by the Council, the Lands Manager or by a Law of the Nation.
- 28.3 Any individual may have access to the Nation's Land for any social or business purposes, if
- (a) the individual does not trespass on occupied land and does not interfere with any Interest or License;
 - (b) the individual complies with all applicable laws; and
 - (c) no Resolution has been enacted barring that individual.
- 28.4 Any person, who resides on, enters or remains on the Nation's Land other than in accordance with a residence or access right under this Land Code is guilty of an offence.
- 28.5 All civil remedies for trespass are preserved.
- 29. Transfers on Death or Mental Incompetence**
- 29.1 A Member who claims to be entitled to a Certificate of Possession or a Certificate of Permanent Interest by testamentary disposition or succession pursuant to the *Indian Act* is not entitled to such a Certificate until:

- (a) such Member has filed with the Council, or such person or body as may be designated by the Council, an Instrument in a form prescribed by the Council, duly executed by the personal representative of the estate of the deceased Member transferring such Certificate to the Member; and
 - (b) the Instrument referred to in subsection (a) is registered in the First Nations Land Registry.
- 29.2 A purchaser of a Certificate of Possession or a Certificate of Permanent Interest pursuant to subsection 50(2) of the *Indian Act* is not entitled to such Certificate until:
- (a) the purchaser has filed with the Council, or such person or body as may be designated by the Council, an instrument in a form prescribed by the Council, duly executed by the person authorized under the *Indian Act* to execute a transfer of a Certificate acquired pursuant to section 50(2) of the *Indian Act*; and
 - (b) the Instrument referred to in subsection (a) is registered in the First Nations Land Registry.

30. Spousal Property Law

- 30.1 Within 12 months after the date this Land Code comes into effect the Council must enact a spousal property Law providing rules and procedures applicable on the breakdown of a marriage to:
- (a) the use, occupancy and possession of the Nation's Land; and
 - (b) the division of Interests in that land.
- 30.2 The Council must develop the rules and procedures contained in the spousal property Law in consultation with the community.
- 30.3 The rules and procedures developed by the Council under section 30.2 must take into account the following general principles:
- (a) the best interests of any children of the Spouses;
 - (b) the rules and procedures must not discriminate on the basis of sex; and
 - (c) only Members are entitled to hold a Permanent Interest in the Nation's Land or a charge against a Permanent Interest in the Nation's Land.
- 30.4 The Council may enact an interim spousal property Law at any time within the 12-month period prescribed in section 30.1.

- 30.5 A Law enacted under section 30.4 must be deemed to be repealed 12 months after the coming into force of this Land Code but may be re-enacted in whole or in part in accordance with section 30.1.

PART VIII: DISPUTE RESOLUTION

31. Informal Resolution of Disputes

- 31.1 The Nation intends that whenever possible, a dispute in relation to the Nation's Land must be resolved through informal discussion by the parties to the dispute and nothing in this part must be construed to limit the ability of the parties to a dispute to settle a dispute without recourse to this Part.
- 31.2 The Nation further intends that a dispute in relation to the Nation's Land that is not resolved by informal discussion must be resolved by the parties through the alternative dispute resolution mechanisms outlined in this Part.
- 31.3 Nothing in this Part precludes the Council from establishing additional processes or laws for resolving disputes involving the Nation's Land, or restricts the parties' right to pursue remedies in a court of competent jurisdiction at any time.

32. Application of this Part

- 32.1 This Part applies to the following disputes:
- (a) a Member who claims an Interest or License based on a Registered Interest;
 - (b) a person who has a dispute with another person or with the Nation in relation to the possession, use or occupation of the Nation's Land;
 - (c) the Nation when asserting an Interest in the Nation's Land;
 - (d) the Nation when disputing the possession, use or occupation of the Nation's Land; and
 - (e) a dispute over the amount of compensation in relation to an Interest or License expropriated by the Nation.
- 32.2 Dispute resolution is not available under this Part for disputes in relation to:
- (a) decisions relating to housing allocation;
 - (b) decisions of the Council to grant or refuse to grant an Interest or License in the Nation's Land; or
 - (c) decisions of the Council to expropriate an Interest or License.

32.3 Disputes that originated before this Land Code came into effect may be decided under this Part.

33. Mediation

33.1 Parties that have been unable to resolve a dispute through informal discussion in accordance with section 31.1 may attempt to resolve the dispute through mediation, in accordance with the following procedure:

- (a) the parties to the dispute must jointly select a mediator from the roster of mediators maintained by the British Columbia Mediator Roster Society;
- (b) if the parties are unable to agree on a mediator from the Society's roster, the parties may
 - i. request the Society to appoint a mediator; or
 - ii. select any other mediator by mutual agreement; and
- (c) the mediator to the dispute must set the rules and procedures for the mediation.

33.2 Should the British Columbia Mediator Roster Society cease to exist or become known by another name, Council may, by Resolution, establish an alternative process for selecting a mediator under this section.

34. Arbitration

34.1 If the parties are unable to resolve the dispute through mediation, or the parties are not able to agree on a mediation process, the parties may apply to the British Columbia Arbitration and Mediation Institute to start an arbitration proceeding.

34.2 The rules and procedures for proceedings under this section are those established from time to time by the Institute.

34.3 Subject to section 34.4, the decision of the arbitrator is final and binding on the parties.

34.4 Notwithstanding section 34.3, where there is an exception established by law, the decision of the arbitrator may be appealed to a court of competent jurisdiction.

34.5 Should the British Columbia Arbitration and Mediation Institute cease to exist or become known by another name, Council may, by Resolution, establish an alternative process for selecting an arbitrator under this section.

35. Costs

- 35.1 All parties to a dispute must bear their own costs in any dispute resolution process they undertake.
- 35.2 For greater certainty, the Nation is not liable or responsible for the costs of any dispute resolution process under this Part where the Nation is not a party.

PART IX: OTHER MATTERS**36. Liability**

- 36.1 The Council must arrange for, maintain and pay insurance coverage for:
- (a) liability of the Nation in relation to the Nation's Land; and
 - (b) the Nation's officers and employees engaged in carrying out any matter related to the Nation's Land to indemnify them against personal liability for acts done in good faith arising from those activities.
- 36.2 The Council must determine the extent of insurance coverage under section 36.1 and must ensure that the insurance coverage is adequate, and complies with the *Songhees Financial Administration Law, 2009*.
- 36.3 Every employee of the Nation whose responsibilities include administration of the Nation's Land or collecting or accounting for revenue from the Nation's Land must be bondable.

37. Offences

- 37.1 Unless otherwise provided by a Law, the summary conviction procedures of Part XXVII of the *Criminal Code* apply to offences under this Land Code and under a Law.
- 37.2 The Council may enact Laws respecting appointment of justices of the peace for the enforcement of this Land Code and Laws.
- 37.3 If no justice of the peace is appointed, this Land Code and Laws are to be enforced in the Provincial Court of British Columbia or the British Columbia Supreme Court, as the case may be.

38. Amendment

- 38.1 Subject to section 11.2, an amendment to this Land Code must receive approval at a Meeting of Members.

39. Commencement

39.1 This Land Code must come into effect if:

- (a) the Members approve this Land Code and the Individual Agreement with Canada by a Ratification Vote; and
- (b) this Land Code has been certified by the Verifier in accordance with the Framework Agreement.

39.2 This Land Code must come into effect on the first day of the month following certification of this Land Code by the Verifier.

THIS LAW IS HEREBY DULY APPROVED by the Council on the ____ day of _____, 2011, at Victoria, in the Province of British Columbia.

A quorum of Council consists of four (4) members of Council.

Chief Robert Sam

Councillor Gary Albany

Councillor Norman George

Councillor Frank George Sr.

Councillor Nicholas Albany

Councillor Ron Sam