



Lower Nicola Indian Band

*Lands Management Advisory Committee
Terms of Reference*

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1.0 Statement

1.1. We, the people of the Lower Nicola Indian Band, commit ourselves to being a peaceful, prosperous and secure community made up of healthy individuals rooted in the Nlaka’pamux culture, respecting ourselves, each other, the environment and all of Creation. We will honor and protect our children, the sacred gifts from the Creator, and our elders, the wisdom keepers.

Together as one, we will take responsibility to regain control of our own destiny and rebuild our relationships with other people on a firm footing of respect and justice.

We will possess our traditional territories and defend our hereditary and Aboriginal rights as Nlaka’pamux people, and promote the unity and strength of the Nlaka’pamux Nation as a whole.

We will be a sovereign community with a government based on traditional values, guided by leaders who know and respect the language, culture, and people.

We recognize that injustices have been committed against our people: our lands have occupied, our culture eroded, and our sovereignty denied. We will not allow this to continue and will ensure that it never happens again.

In this, the Lower Nicola Indian Band will be a model community that others look to for direction and inspiration. We will realize true power, fulfill our responsibility to our ancestors, and create peace and prosperity for future generations.

Vision Statement of the Lower Nicola Indian Band December 1996

2.0 Name

2.1. The name of the committee shall be the Lower Nicola Indian Band Lands Management Advisory Committee as defined in the LNIB Land Code or abbreviated as ‘LMAC’.

3.0 Interpretation and Definitions

“Council” means the elected Chief and Council of the Lower Nicola Indian Band;

“Chairperson” means the member of Council who is appointed by Council BCR to sit on the Committee and act as the chairperson;

“Committee Member” means one of the LNIB members who is appointed by Council BCR to sit on the Committee;

“Community Meeting” means a meeting under the Terms of Reference or the Lower Nicola Indian Band Land Code to which Members are invited to attend;

“Conflict of Interest” means a situation where a person or his or her Immediate Family has or had a private or personal interest in a matter that is, or was, in the two (2) years immediately following that person’s office, sufficiently connected to his or her official duties and responsibilities that it has the potential to influence the exercise of these duties and responsibilities to the detriment of the LNIB;

“Eligible Voters” means, for the purpose of voting in respect of land matters under the Lower Nicola Indian Band Land Code, a Member who has attained the age of 18 years on or before the day of the vote;

“First Nations Land Registry System (FNLRS)” means the register maintained by the Department of Indian Affairs and Northern Development under the Framework Agreement;

“Framework Agreement” means the Framework Agreement on First Nation Land Management entered into between the Minister of Indian Affairs and Northern Development Canada and 14 First Nations on February 12, 1996 as amended from time to time;

“Immediate Relative” in respect of an individual, means the individual’s child (natural or adopted pursuant to either the laws of the Province of British Columbia or Nlaka’pamux tradition), spouse, parent, sibling, aunt, uncle, niece, nephew, persons living in the same dwelling, any corporation in which the person owns shares comprising more than ten (10) percent of the issued and outstanding voting shares, partner, joint venture partner, co-owner or Affiliate as that term is described in the *Income Tax Act*;

“Land Code” means the Lower Nicola Indian Band Land Code;

“Lands Manager” means the person employed or otherwise engaged by LNIB to oversee the day to day operations of the Lands Department and the administration of this Land Code;

“Lands Management Advisory Committee” means the Lands Management Advisory Committee (LMAC) established under the Lower Nicola Indian Band Land Code;

“Law” means a Law enacted pursuant to the Lower Nicola Indian Band Land Code;

“LNIB” means the Lower Nicola Indian Band;

“LNIB Community Land” means any LNIB Land in which all Members have a common interest but does not include LNIB Land subject to an Allotment;

“Member” means an individual whose name appears on the Lower Nicola Indian Band Membership List;

“Transfer Agreement” means the Individual First Nation Agreement made between the Lower Nicola Indian Band and Canada in accordance with section 6.1 of the Framework Agreement;

4.0 LMAC and the LNIB Land Code

4.1. The Lower Nicola Indian Band ratified the LNIB Land Code in August 2016 and became effective as of December 01, 2016. In doing so *the “the Lower Nicola Indian Band membership has chosen to manage its lands and resources under the First Nations Land Management Act”* and as such *“the Lower Nicola Indian Band Land Code is hereby enacted as the fundamental land law of the Lower Nicola Indian Band.”*

4.2. The Lands Management Advisory Committee is a body established under the LNIB Land Code to assist in the administration and management of LNIB Lands.

4.3. The LNIB Land Code identifies the membership, roles, responsibilities and the limitations of the Lands Management Advisory Committee.

5.0 Description of LNIB Land

5.1. The LNIB Lands subject to the Land Code and fall under the responsibility of the Lower Nicola Indian Band consists of:

- a) Nicola Mameet IR No.1
- b) Joeyaska IR No.2
- c) Pipsuel IR No.3
- d) Zoht IR No.4
- e) Zoht IR No.5
- f) Logan’s IR No.6
- g) Hamilton Creek IR No.7
- h) Speous IR No.8; and
- i) Zoht IR No.14

As the lands are described in the Land Descriptions referred to in Annex “G” of the Individual Agreement on First Nation Land Management between Lower Nicola Indian Band and Her Majesty the Queen in Right of Canada.

5.2. The lands described as follows are excluded from the LNIB Land Code:

- a) Hihium Lake IR No.6; and
- b) The lands identified in Section 2 Part B in the Land Descriptions referred to in Annex “G” of the Individual Agreement on First Nation Land Management between Lower Nicola Indian Band and Her Majesty the Queen in Right of Canada being lands excluded pursuant to Section 7 or 7.1 of the First Nations Lands Management Act.

6.0 Purpose

6.1. The purpose of the Lands Management Advisory Committee is to assist with:

- a) The development of the land administration system;
- b) Advise Council and its staff on matters respecting LNIB Land;

- c) Recommend to Council Laws, resolutions, policies and procedures respecting LNIB Land;
- d) Hold regular and special meetings of Members to discuss land issues and make recommendations to Council on the resolution of these land issues;
- e) Assist in the flow of information on land issues between Members and Council;
- f) Oversee Community Engagement and Community Approvals under the Land Code;
- g) Oversee other consultations under the Land Code; and
- h) Perform such other duties and functions as Council may direct.

7.0 Goals and Objectives

7.1. The Lands Management Advisory Committee may make recommendations to the Chief and Council on establishing rules, procedures, criteria, policies, plans, laws and bylaws in accordance with the Lower Nicola Indian Band Land Code that address the following matters but are not limited to:

- a) The process and criteria for granting Interests and Licenses in LNIB Land;
- b) The process and criteria for granting of licenses to take natural resources from LNIB Land;
- c) A proposed Law or Policy;
- d) Environmental protection and assessment in relation to LNIB Land;
- e) Resolution of disputes in relation to LNIB Land;
- f) Land Use Planning and Zoning; and
- g) Spousal Property Law.

8.0 Composition of the Lands Management Advisory

8.1. Pursuant to Part 6 Section 33.1 of the LNIB Land Code, the Lands Management Advisory Committee shall be composed of an uneven number of no less than five (5) and no more than seven (7) members, including the Chairperson, all of whom must be Eligible Voters.

8.2. The Lands Manager is an *ex officio* member of the Lands Management Advisory Committee who, for greater certainty is not included in the number of Lands Management Advisory Committee members referred to in Section 8.1.

8.3. Any Eligible Voter, whether on or off LNIB Land, is eligible for appointment to the Lands Management Advisory Committee, except for the following:

- a) Any Eligible Voter convicted of an offence that was prosecuted by way of indictment except for a conviction for an offence where the person was involved in the support or defense of an aboriginal right or title;
- b) Any undischarged bankrupt or an individual that owes money to LNIB; and
- c) Any Eligible Voter convicted of a corrupt practice in connection with an election, including but not limited to, accepting a bribe, dishonesty or wrongful conduct.

9.0 Selection and Tenure

9.1. The term of office of a member of the Lands Management Advisory Committee appointed under section 9.3(c), shall not exceed four (4) years, but nothing precludes such member from being elected for further terms.

9.2. The appointment under section 9.3(a) shall be made as soon as practicable after an election of Council.

9.3. The members of the Lands Management Advisory Committee shall be appointed by Council so as to ensure a broad representation of the LNIB membership, and shall be composed of the following:

- a) One member of Council as determined by Council;
- b) The Lands Manager, *ex officio*; and
- c) A minimum of 4 and a maximum of 6 additional Eligible Voters who meet the eligibility requirements set out in section 8.3.

9.4. In the first appointment of Lands Management Advisory Committee members:

- a) Half of the appointees under section 9.3 (or in the case of an uneven number of appointees under section 9.3, the majority of the appointees) shall be appointed for a term commencing at midnight of the appointment date and terminating at midnight four (4) years following appointment date; and
- b) The remaining appointees under section 9.3 shall hold office for a term commencing at midnight of the appointment date and terminating at midnight two (2) years following the appointment date.

9.5. Subject to Section 10.2.4, in all appointments subsequent to the first appointment of Lands Management Advisory Committee members, appointees under section 9.3 will hold office for a term commencing at midnight on the date of their appointment and terminating at midnight four (4) years following that date.

10.0 Resignations, Dismissals and Vacancies

10.1 Resignations

10.1.1. Resignations from the Lands Management Advisory Committee:

- a) Shall be submitted, in writing, to the Chairperson, and
- b) Should allow for thirty (30) days' notice.

10.2 Vacancies and Dismissals

10.2.1. The office of a member of the Lands Management Advisory Committee becomes vacant or may be subject to dismissal if the Committee Member, while holding office;

- a) Is or becomes ineligible to hold office under section 8.3;

- b) Ceases to be a Member because of a transfer of membership from LNIB;
- c) Is absent for three consecutive meetings of the Lands Management Advisory Committee for a reason other than illness or incapacity without being authorized to be absent by Majority of the Lands Management Advisory Committee;
- d) Dies or becomes mentally incompetent;
- e) Is dismissed by Council for contravention of conflict of interest rules established under the LNIB Land Code, a Law, a by-law or policy approved by Council;
- f) Resigns in writing; or
- g) In the case of the member of the Lands Management Advisory Committee appointed under section 9.3(a), ceases to be a member of Council.

10.2.2. A position on the Lands Management Advisory Committee shall by motion of the LMAC, be declared vacant if the member falls under any of the clauses in section 10.2.1.

10.2.3. Pursuant to Part 6 Section 33.10 of the LNIB Land Code, where the office of a member of the Lands Management Advisory Committee becomes vacant more than 90 days before the date when another appointment would be made, an appointment shall be made by Council to fill the vacancy.

10.2.4. The term of a Member of the Lands Management Advisory Committee appointed to fill a vacancy under section 10.2.3 is the balance of the term in respect of which the vacancy occurred.

10.2.5. Any appeals of decisions to dismiss a Lands Management Advisory Committee member shall be directed to Council and/or the dispute resolution body created within the Land Code.

11.0 Liability Coverage

11.1. Council shall arrange, maintain and pay, out of the transfer payments received from Canada or other source, insurance coverage for:

- a) Liability of LNIB in relation to LNIB Land; and
- b) LNIB's Councilors, members of the Lands Management Advisory Committee and officers and employees engaged in carrying out any matter related to LNIB Land to indemnify them against personal liability arising from those activities.

12.0 Chair of the Lands Management Advisory Committee

12.1. The member of Council who is appointed under Section 9.3(a) shall be the Chair of the Lands Management Advisory Committee.

12.2 The Chair of the Lands Management Advisory Committee shall appoint one committee member to act as the Alternate Chairperson in the event he/she is unable to attend a meeting or perform the functions of office on a temporary basis.

12.3 If the Chair is unable to perform the functions of office on a long-term basis, Council shall appoint another member of the Lands Management Advisory Committee to act as the Chair.

12.4 It is the Chairpersons duty to:

- a) Dedicate 2 days per week (14 hours total) in addition to regular Council duties;
- b) Chair meetings of the Lands Management Advisory Committee;
- c) Ensure that there is an agenda prepared and circulated to Lands Management Advisory Committee Members in advance of each meeting and that the agenda is followed, as amended, at each meeting;
- d) Ensure the preparation of financial statements in relation to all activities of the Lands Department, including any applicable revenues and expenditures concerning LNIB Land;
- e) Table any financial statements of the Lands Department with Council;
- f) Report to the Council and Members on the activities of the Lands Management Advisory Committee and Lands Department;
- g) Ensure the audited annual financial statements are presented under Part 7 Section 40.6 [Explanation of auditor's report] of the LNIB Land Code; and
- h) Perform such other duties as Council may reasonably prescribe.

13.0 General Duties of the Lands Management Advisory Committee

13.1 Be respectful and accessible to all Lower Nicola Band Members and staff.

13.2 Be open and willing to hear and understand membership concerns about LNIB Land issues.

13.3 Review, amend and advise Council on the development of policies, plans, procedures, laws and by-laws as defined in the LNIB Land Code or as requested by Chief and Council.

13.4 Regularly attend Committee Meetings and important related meetings.

13.5 Make a serious commitment to participate actively in Committee work.

13.6 Volunteer for and willingly accept assignments and complete them thoroughly and on time.

13.7 Stay informed about Committee matters, prepare well for meetings, review and comment on minutes and reports.

- 13.8. Be an active participant in the Committee's evaluation and planning efforts.
- 13.9. Abide by the policies and codes set out by Council that apply to the position of a Lands Management Advisory Committee member.
- 13.10. Prepare reports as requested.
- 13.11. Dedicate 1 day per week (7 hours total) to the committee.

14.0 Meetings

- 14.1. The Lands Management Advisory Committee will collectively schedule regular meetings in the LNIB community and convene a quorum not less than twice per month to conduct its business.
- 14.2. The Lands Management Advisory Committee will receive adequate notice in writing of the date, time and location of any changes to LMAC meeting dates and other meetings which LMAC is expected to attend.
- 14.3. The Chair or any Committee Member of the Land Management Advisory Committee may call an emergency meeting to discuss important business which cannot wait until the next regular meeting.
- 14.4. The Chair and each Committee Member of the Land Management Advisory Committee will attend all meetings and follow all approved meeting procedures.
- 14.5. If absent, the Chair or Committee Member of the Lands Management Advisory Committee must provide legitimate reasons for his/her absence, including: illness, weather, LNIB related travel or meetings, and family emergency; and this absence will be recorded in the minutes.
- 14.6. If the Chair or any Committee Member of the Lands Management Advisory Committee is incapacitated for health reasons or cannot otherwise be contacted, the Lands Management Advisory Committee has no obligation to contact the absent Chair or Committee Member and may make decisions without that absent Chair or Committee Member during the period of incapacity provided all other Lands Management Advisory Committee procedures, including rules governing quorum, are followed.
- 14.7. Neither the Chair or Committee Member may be absent for more than three (3) consecutive meetings of the Lands Management Advisory Committee without being authorized by way of valid motion.

14.8. If the Chair or Committee Member is absent for more than three (3) consecutive meetings of the Lands Management Advisory Committee without authorization, they will be dismissed and removed from their office immediately.

14.9. The Chair or Committee Member may attend a meeting by way of teleconference.

14.10. All Lands Management Advisory Committee Meetings may only be adjourned by way of a valid motion.

14.11. All regular meetings of the Lower Nicola Indian Band Lands Management Advisory Committee shall be open to any member of the Lower Nicola Indian Band.

15.0 Quorum

15.1. A quorum shall exist when:

- a) At least 4 (four) voting members of the Lands Management Advisory Committee are present.
- b) One of the following is present: Chairperson or Alternate Chairperson.

15.2. If a quorum is not present within one (1) hour of the time appointed for the meetings, the names of the Committee Member(s) present will be recorded and the Lands Management Advisory Committee will adjourn all matters until the next meeting.

16.0 Decision Making and Voting

16.1. All Committee Members present shall vote unless they abstain due to conflict of interest.

16.2. Consensus shall be used to decide all matters when possible.

16.3. On every vote taken, Committee Members shall declare their vote by a show of hands unless secret ballot is requested.

16.4. In order to ensure the minutes are clear and concise, and that all decisions are registered, the Chairperson shall describe the decision that has been made for the recording secretary to enter it into the minutes.

16.5. A motion is passed on a majority vote.

16.6. Lands Management Advisory Committee members shall refrain from participating in discussion and matters where potential, perceived or real conflict of interest exists.

16.7. Once the Lands Management Advisory Committee reaches a decision, each member of the Lands Management Advisory Committee shall respect and support that decision, regardless of how any particular Lands Management Advisory Committee member voted.

17.0 Accountability and Conflict of Interest

17.1. Any person dealing with a matter; or making a recommendation or a decision that is related to LNIB land must, in addition to complying with the requirements of this section, comply with all applicable laws, by-laws, policies and procedures established by Council, including policies and procedures pursuant to the *Financial Administration Law* respecting the avoidance and mitigation of conflicts of interest as amended or replaced from time to time.

17.2. The rules in Section 17.3 apply to the following persons when dealing with a matter, interest or decision relating to LNIB Land:

- a) Each member of Council who is dealing with any matter before Council;
- b) Each Person who is an employee or contractor for LNIB; and
- c) Each Person who is a member of a board, committee or other body of LNIB.

17.3. If there is any interest, financial or otherwise, in the matter being dealt with that might involve the Person or his or her Immediate Relatives, that Person shall:

- a) Disclose in writing and/or orally at such meeting the interest to the Council and, if appropriate, to their employment, supervisor, board, committee or other body as the case may be;
- b) Take no part in any deliberations on that matter;
- c) Take no part in any votes, resolutions, decisions or recommendations on that matter; and
- d) Remove themselves from the room during deliberation and discussion amongst the remaining Council, board, committee, or other body, as the case may be.

17.4. Section 17.3 does not apply to any Interest that is held by a Member in common with every other Member. A Member shall not be considered to be in conflict if the proposed decision will benefit that Member in the same way it will benefit all Members.

17.5. If a committee is unable to act due to a conflict of interest, the matter shall be referred to Council.

17.6. In addition to any other penalty that may be prescribed by Council, by federal or provincial law or by a law for breach of this Section, a person is liable to LNIB to repay any benefit to himself or herself, an immediate family member or a business in which that Person holds an interest, resulting from violation of this Section.

18.0 Minutes

18.1. The Recording Secretary for LMAC meetings is to be a staff member from the LNIB Lands Department.

18.2. The Lands Management Advisory Committee will retain minutes of all Committee Meetings.

18.3. The Minutes of the Lands Management Advisory Committee meetings shall be made available to LNIB Membership upon request following their adoption at the next regular meeting.

18.4. Personal information about LNIB members or LNIB staff will not be disclosed in accordance with generally accepted protection of privacy measures unless otherwise agreed to by the Member or LNIB staff and approved by way of valid motion.

18.5. Lands Management Advisory Committee meeting minutes must include the following:

- a) Date, time and location of the meeting or special meeting;
- b) Committee Members present and absent;
- c) Other persons in an official capacity present for the duration of the meeting;
- d) Items dealt with by the Committee – agenda additions/deletions;
- e) Delegations who made representations to the Committee;
- f) Discussions of the items dealt with by the Committee;
- g) Recommendations of the Committee, which may include:
 - i. Approval with reasons
 - ii. Approval subject to conditions, and conditions to be stated
 - iii. Refusal and reasons for the refusal
- h) The mover and seconder of a motion; and
- i) Committee Members roundtable discussions/notices.

19.0 Remuneration

19.1. Remuneration for the LMAC Chair will be to a max of \$1,500 per month.

19.2. Remuneration for the LMAC members will be \$25.00 per hour.

19.3. Any Lower Nicola Indian Band Administration staff member who is elected to sit on the Lands Management Advisory Committee shall request to take time off for committee meetings or community engagement.

19.4. Committee Members shall be allotted a maximum of one (1) hour paid reading time per meeting.

20.0 Review and Amendment

20.1. The Lands Management Advisory Committee shall comprehensively review the terms of reference every two (2) years.

APPENDIX A

Procedures for Meetings

Opening the Meeting

Chairperson: “The meeting will come to order. The recording secretary will read the minutes of the last meeting OR Please take the next few minutes to read the minutes of the last meeting.”

Optional – Recording Secretary: [Reads the minutes]

Chairperson: “Are there any objections, additions, or corrections to be made to the minutes?”

If not, a motion is made to pass the minutes as read.

Conduction Routine Business

Making a Motion:

In most cases, a motion must be seconded and voted on.

Changing or Amending a Motion:

In some cases, it is desirable to change a motion so that it is clearer and more acceptable to the members. A motion may be changed or amended by adding, deleting, inserting or substituting words or dividing two or more parts.

Withdrawing a Motion:

A motion may be withdrawn by its mover at any time before it is voted upon providing no one objects to its withdrawal.

Voting on a Motion:

A majority vote is sufficient of most motions, unless otherwise stated by the terms of reference or by-laws of the organization.

Adjourning a Meeting:

A motion should be made to adjourn a meeting.

APPENDIX B

Financial Administration Law

Lower Nicola Indian Band

Conflict of Interest

Schedule A

Financial Administration Law

Schedule A No.2016-01

WHEREAS, at a Band general meeting held November 24th, 2014, the Membership of the Lower Nicola Indian Band ("LNIB") requested that the Council of LNIB establish a Committee to review and make recommendations for improving the provisions of Section 3.8 of the Council Policies governing Councillors' conflict of interest;

WHEREAS on December 2nd, 2014, Council established, by way of a Band Council Resolution, a Committee to review Section 3.8;

WHEREAS on February 24th, 2015, the Committee presented its report and initial recommendations for Council's consideration;

WHEREAS the Council, having reviewed and considered the report and the recommendations, considers it to be in the best interests of the LNIB to repeal the existing Schedule A dealing with conflicts of interest and to incorporate into the Financial Administration Law (the "FAL") a new Schedule A concerning conflict of interest;

NOW THEREFORE, be it resolved that the FAL be amended by repealing the existing Schedule A, 'Conflict of Interest' and substituting for it, as Schedule A, Chief and Council Conflicts of Interest, and 'Section 3.8 Committee Members Conflict of Interest to the FAL which Schedule A to the FAL is enacted as follows:

1. Citation

This By-Law may be cited as Amended Schedule A to the FAL, LNIB By-Law Number 1 – 2016.

2. Scope and Purpose

This By-Law applies to

- a) all members of Council and of any Committee of the LNIB in respect of the performance of their duties as Members.
- b) All Officers and any employee of the LNIB that have authority to make an Award.

The purpose of this By-Law is to Amend Schedule A to the FAL in order to better protect the Band's interests when it is contemplating or making a decision, transaction or arrangement that might benefit the private interest of a Member and to provide guidance to Members to avoid Actual Conflicts of Interest or Potential Conflicts of Interests.

3. Key Definitions

In this By-law:

"Actual Conflict of Interest" means a situation where a person or his or her Immediate Family has or had a private or personal interest in a matter that is, or was, in the two (2) years immediately following that person's office, sufficiently connected to his or her official duties and responsibilities that it has the

potential to influence the exercise of these duties and responsibilities to the detriment of the LNIB, and, without limiting the generality of the foregoing, includes

- a) the failure or refusal to properly enforce this Schedule A to the FAL; and
- b) without limiting the generality of the foregoing, examples of Conflicts of Interest are set out in the Chief and Council Policy November 20/12, pages 29, 30 and 40.

“Apparent Conflict of Interest” means a situation where a reasonably informed person would perceive that a person or his or her Immediate Family has a private or personal interest in a matter, either during the term of office of that person, or in the two (2) years immediately following that is or was sufficiently connected to his or her official duties and responsibilities that it has the potential to influence the exercise of these duties and responsibilities to the detriment of the LNIB, but a Councillor is not in an Actual or Apparent Conflict of Interest if his or her private or personal interest in a matter:

- 1) Is the same as that of a broad class of LNIB members;
- 2) Relates to remuneration, benefits, or expenses payable to a class of public officers;
- 3) Is so remote or insignificant that the interest cannot reasonably be regarded as likely to influence the Councillor;
- 4) Is of a value, in the case of two (2) contracts, not exceeding Five Hundred (\$500) Dollars each, per fiscal year, or if only a single contract, then One Thousand (\$1,000) Dollars for the fiscal year; or
- 5) Is a prescribed interest.

“Immediate Family” means spouse, child, parent, sibling, aunt, uncle, niece, nephew, person living in the same dwelling, any corporation in which the person owns shares comprising more than ten (10) percent of the issued and outstanding voting shares, partner, joint venture partner, co-owner or Affiliate as that term is described in the *Income Tax Act*.

“Member” means any or all members from time to time of the Chief and Council, and any member of any committee.

4. Other Definitions and Interpretation Rules

- 1) Appendix A to this Schedule A establishes other definitions and terms used in this Schedule A and Rules of Interpretation and are hereby incorporated into this Schedule A.

5. Disclosure and Absence from Discussion and Vote at Meetings

- 1) At every meeting, the Chief, or if the Chief is not present at the meeting, then the Councillor chairing the meeting, or the Chair of the Committee meeting (the “Chair”), shall ask whether any Councillor or Committee member (the “Member”) has an Actual Conflict of Interest or Apparent Conflict of Interest to declare with respect to any approved agenda item.
- 2) The Chair must also declare so if he or she has an Actual Conflict of Interest or Apparent Conflict

of Interest with respect to any approved agenda item.

- 3) As soon as a Member becomes aware of circumstances at the meeting which may place the Member in an Actual Conflict of Interest or an Apparent Conflict of Interest, the Member shall disclose immediately, at the Meeting the existence and the circumstances of the Actual Conflict of Interest or Apparent Conflict of Interest.
- 4) A Member must withdraw from and leave any part of a Meeting during which any matter in respect of which the Member has an Actual Conflict of Interest or an Apparent Conflict of Interest is being discussed.

The minutes of a Meeting must record a Member's disclosure under subsections (1), (2) or (3) and note the Member's absence from the Meeting room when the matter in respect of which the Member may be in an Actual Conflict of Interest or an Apparent Conflict of Interest was being discussed or voted on. The Member shall be required to provide written disclosure of the existence of the Actual Conflict of Interest or Apparent Conflict of Interest to the Meeting prior to the adjournment of the Meeting.

- 5) A Member must not influence or attempt to influence in any way before, during or after a Meeting, any discussion or vote on any decision respecting the matter in which the Member has an Actual Conflict of Interest or an Apparent Conflict of Interest.

6. Appointment of Committee Members

- 1) Prior to appointing any person to a Committee, Council of the Lower Nicola Indian Band shall provide the Potential Committee Member with Terms of Reference for the Committee or, if the Terms of Reference as then unavailable, draft Terms of Reference, so that the individual may consider whether he or she would have an Apparent Conflict of Interest or Actual Conflict of Interest if he or she were to be appointed to the Committee.
- 2) The potential committee member shall declare, in writing, in the form attached as Appendix B to this Schedule A, whether he or she has an Apparent Conflict of Interest or an Actual Conflict of Interest. If the potential member declares he or she does not believe he or she has an Actual Conflict of Interest or an Apparent Conflict of interest and Council agrees with that assessment, then the potential committee member is eligible to be appointed.
- 3) If the potential committee member believes he or she may have an Actual Conflict of Interest or an Apparent Conflict of Interest, Council may make further inquiries of the potential committee member, as it deems necessary.
- 4) If, after considering the potential committee member's declaration and any additional information it has obtained, Council believes the potential committee member does not have an Actual Conflict of Interest or an Apparent Conflict of Interest, then the potential committee member is eligible to be appointed to the Committee.
- 5) If, after considering the potential committee member's declaration and any additional information it has obtained, Council believes the potential committee member would or may

have an Actual Conflict of Interest or an Apparent Conflict of Interest if appointed to the Committee, then Council may:

- a) Decide not to appoint the potential committee member to the Committee; or
 - b) Refer the matter, within seven (7) days, to a previously agreed upon third party lawyer for determination and the third party lawyer will be requested to provide a determination as to the existence of an Actual Conflict of Interest or an Apparent Conflict of Interest in as succinct a manner as possible, within fifteen (15) business days of the referral. If an Actual Conflict of Interest or an Apparent Conflict of Interest is found, the potential committee member shall not be appointed.
- 6) For a period of not less than two (2) years following the last day of his or her participation on Council or on any Committee, any person shall conduct himself or herself in such a manner following the said departure from Council or the Committee, as to ensure that he is not in an Actual Conflict of Interest, or in an Apparent Conflict of Interest, including, but not limited to the procurement of contracts for work or services that would, had the person actually remained a Member would have constituted an Actual Conflict of Interest or an Apparent Conflict of Interest.

7. Disputes Amongst Council Regarding Conflict of Interest

- 1) Once each Councillor has had the opportunity to declare whether he/she has an Actual Conflict of Interest or an Apparent Conflict of Interest with respect to any item on the approved agenda, any Councillor who reasonably believes that another Councillor may be in an Actual Conflict of Interest or an Apparent Conflict of Interest where none was declared shall be entitled to explain why he or she reasonably believes that the other Councillor may be in a conflict and with respect to which specific agenda item.
- 2) The Councillor against whom it is alleged there is an Actual Conflict of Interest or an Apparent Conflict of Interest shall be provided with the opportunity to deny or to declare the alleged conflict or explain why he or she does not believe he or she has any such conflict.
- 3) If the Councillor who raised the prospect of an Actual Conflict of Interest or an Apparent Conflict of Interest does not accept the explanation, then the Chair shall put the matter to a vote by the Council and the Councillor that is alleged to have a conflict shall not participate in that vote.
- 4) If Council is unable to agree as to whether there exists on the part of a Councillor an Actual Conflict of Interest or Apparent Conflict of Interest, at the election of the Councillor who is alleged to have the Actual Conflict of Interest or the Apparent Conflict of Interest, he or she may:
 - a) withdraw from the Council Chambers immediately following the point in time where it is declared by the Chair that an impasse on that question has been reached, at which point the remaining Councillors may decide the issue upon which the Councillor is involved, as if there were an Actual Conflict of Interest or an Apparent Conflict of

Interest; or

- b) the issue shall be referred, within seven days, to a previously agreed upon third party lawyer for determination and the third party lawyer will be requested to provide a determination as to the existence of an Actual Conflict of Interest or an Apparent Conflict of Interest in as succinct a manner as possible, within fifteen (15) business days of the referral.

In either event, the outcome of the procedure will be final and binding upon the parties involved.

8. Discovery of Conflict and Remedies After the Fact

- 1) Where a Member learns that he or she had an Actual Conflict of Interest or Apparent Conflict of Interest related to a matter at a prior Meeting and if Council determines that the involvement of said Councillor influenced the decision of the matter, Council, or the Committee, will
 - a) Re-examine the agenda item and rescind, vary, or confirm a decision, to ensure that the decision to rescind, vary or confirm the original decision was in the best interest of the LNIB.
 - b) In the event that there has been, or there is suspicion that there has been a detrimental outcome for the LNIB or an outcome that failed to be in the best interests of the LNIB, pursue recovery of the benefits paid to or otherwise enjoyed by the Member in conflict including recovery, by court order if necessary, including:
 - (i) an accounting for the work done or services performed, costs and expenses paid, and profits and benefits realized by the Member or his Immediate Family;
 - (ii) recovery of all benefits realized by the Member or his/her Immediate Family as a result of the work or contract awarded, and the Member shall comply with such request or demand.

9. Gifts and Benefits

- 1) A Member must not accept a gift or benefit that might reasonably be seen to have been given to influence the Member in the exercise of the Member's powers or performance of the Member's duties or functions.
- 2) Despite subsection (1), a gift or benefit may be accepted if the gift or benefit
 - a) would be considered within
 - (i) normal protocol exchanges or social obligations associated with the Member's office,

- (ii) normal exchanges common to business relationships, or
 - (iii) normal exchanges common at public cultural events;
 - b) is of nominal value;
 - c) is given by a close friend or relative as an element of that relationship; or
 - d) is of a type that the policies or directions of the Council have determined would be acceptable if offered to another person.
- 3) Where a gift falling within the criteria of subsection (2)(a) or (d) and with a value greater than \$50 is given to a Member, the Member must make a written disclosure of the gift to the LNIB Executive Director or other Designated Officer and the gift must be treated as the property of the LNIB.

10. Posting of Public Notice

- 1) Any public notice that is required to be posted under this Schedule to the FAL is properly posted with a written notice placed in a conspicuous and accessible place for public viewing in the principal administrative offices of the LNIB, and posted in the LNIB website.
- 2) Unless expressly provided otherwise, if a public notice of a meeting must be posted under this Schedule to the FAL, the notice must be posted at least fifteen (15) business days before the date of the meeting.

11. Records of Proceedings

- 1) The minutes of all Meetings of Council and all Committees established by Council shall contain the details of any discussion concerning an Actual Conflict of Interest or Apparent Conflict of Interest, nature of the Actual Conflict of Interest or Apparent Conflict of Interest, any action taken to determine whether an Actual Conflict of Interest or Apparent Conflict of Interest was suspected and Council's decision as to whether an Actual Conflict of Interest or Apparent Conflict of Interest in fact existed. Any Member's absence from a Meeting arising from a declaration of or determination of a Member's Actual Conflict of Interest or Apparent Conflict of Interest shall be recorded in the minutes.

12. Conflict of By-Laws

- 1) Those provisions identified as sections 3.3, 3.4, 4.11(c) and 4.11(d) of The Lower Nicola Indian Band Chief and Council Policy (the "Policy") adopted November 20, 2012 and dealing with conflict of interest are hereby repealed. If there is any other conflict between this Schedule A to the FAL and the Policy or any other LNIB By-Law, policy or regulation, this Schedule A shall prevail.
- 2) If there is a conflict between this Schedule to the FAL and any legislation enacted by the Parliament of Canada, such legislation prevails.

13. Disclosure

- 1) No later than thirty (30) days from the date of the inaugural meeting of each Council, and when required herein, upon discovery at a Meeting, or as otherwise required, each Councillor shall disclose his or her interests in the form prescribed in Appendix “B”, attached to this Schedule.
- 2) The form of disclosure shall be in the form set out in Appendix B to this schedule, and shall be updated by the Member at any time the circumstances of the Member change so that there is an ongoing and continuous disclosure by the Member of the potential for an Actual Conflict of Interest or an Apparent Conflict of Interest. Nothing in this subsection 4 shall relieve the Member from his or her obligations as are set out in subsection 5)3) herein.
- 3) When a Councillor is awarded (the “Award”) a contract to supply goods and services to LNIB, the Executive Director of the Band shall (1) include the mandatory provisions; and (2) provide a notice, including the name of the Councillor and the description of the Award.

14. Sanctions for Breach of this By-Law

- 1) Where there has been a failure on the part of a Councillor to comply with this By-Law, unless the failure is the result of a bona fide error in judgment as determined by Council, the Council shall, at the next duly convened Council meeting and depending on the severity of the breach of this By-Law:
 - a) Issue a written reprimand to the Councillor in question and the minutes shall record that a written reprimand was issued; and/or
 - b) Suspend, with or without the payment of honorarium, the official duties and responsibilities of the Chief or Councillor for a specific term; and/or
 - c) Make a recommendation to the membership of the LNIB that the Councillor should be made to resign, which recommendation shall be referred for decision to the membership at a duly convened membership meeting; and/or
 - d) Demand return of all personal gain or advantage received or enjoyed by the Member and his Immediate Family arising out of the undeclared Actual Conflict of Interest or Apparent Conflict of Interest.
- 2) If the determination of the existence of an Actual Conflict of Interest or Apparent Conflict of Interest pursuant to subsection (1) was not made by Council with the benefit of a third party lawyer, the Councillor found to be in breach may, within two days of the finding, request that the matter be reviewed by a third party lawyer. Council will then appoint a third party lawyer to review and make a determination of the matter within seven (7) days of the appointment.

- 3) If a Councillor fails to resign after being requested to do so by a vote of the membership, Council may determine by a majority vote whether the Councillor's office is deemed vacant in accordance with the LNIB Custom Election Code.
- 4) The LNIB at all times reserves the right to take legal action against any Member in respect of unjust enrichment, damages to the LNIB, bribery, fraud, or any criminal infraction or indictable offense.

15. Education and Training

Within 30 days from the date of the inaugural meeting of each Council, Councillors shall attend an education and training session on conflict of interest facilitated by a qualified professional versed in the topic.

16. Mandatory Contract Conditions

Except where the Executive Director considers it to be in the best interests of the LNIB not to do so, every contract or agreement for the provision of goods and services that is awarded, despite the application of this Schedule A, shall be awarded only on condition that the LNIB may, not more than 30 days following the Award, withdraw from the agreement, and the agreement shall contain language permitting said withdrawal, all without further legal consequences or obligations of the LNIB.

17. Periodic Review of this By-Law

- 1) On a regular and periodic basis established by a policy of Council, Council must conduct a review of this Schedule to the FAL:
 - a) to determine if it facilitates effective and sound resolution of conflict of interest situations affecting the LNIB; and
 - b) to identify any amendments to this By-Law that may better serve this objective.
- 2) Within one year from the passing of this amendment to the FAL, the Council must establish policies or procedures or give directions for
 - a) the provision of information to members of the LNIB respecting any proposed amendment of this Schedule A to the FAL; or
 - b) the involvement of members of the LNIB in consideration of an amendment to this Schedule A.
 - (i) The Council must post a public notice of each Council meeting when a proposed amendment to this Schedule A is presented for approval.
 - (ii) Members of the LNIB may attend that part of the Council meeting when the matter referred to in this subsection (2) is being considered.

18. General Provisions

- 1) The Director of Finance or another Officer designated by Council must, on an annual basis, prepare a report listing the remuneration paid and expenses reimbursed by the LNIB to each Member.

WHEREAS the Lower Nicola Indian Band enacted by Band Council Resolution its Chief and Council Policy on the 20th day of November, 2012

WHEREAS, the Chief and Council Policy requires, in article 9 that amendments to the Policy shall be made by valid motion, and by resolution thereafter;

AND WHEREAS the Chief and Council have struck a committee (the 3.8 Committee) to review the conflict of interest policies and regulations in place for the Lower Nicola Indian Band;

AND WHEREAS the 3.8 Committee has prepared and recommended the adoption of an amendment to the Financial Administration Law that renders inapplicable and redundant certain portions of the Policy;


AND WHEREAS the Chief and Council have accepted the recommendations of the 3.8 Committee and have enacted by Band Council Resolution the proposed amendment to the Financial Administration Law, and so doing have accepted the recommendations of the 3.8 Committee to amend further the Policy to reduce and eliminate inapplicable and redundant sections of the Policy;

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1. All those sections of the Policy that conflict with or are redundant as a result of the amendments made to the Financial Administration Law are hereby repealed or amended, and without limiting the generality of the foregoing, the following sections of the Policy are amended as follows:
 - a. Section 3.3 of the Policy is hereby repealed and of no further force and effect;
 - b. Section 3.4 of the Policy is hereby repealed and of no further force and effect;
 - c. Section 4.11(c) of the Policy is hereby repealed and of no further force and effect;
 - d. Section 4.11(d) of the Policy is hereby repealed and of no further force and effect.
2. Appendix D, being incorporated by reference into the Policy and dealing with conflict of interest of members of the council is hereby repealed and of no further force and effect.
3. In the event of any further or other provisions of the Policy coming into conflict with the provisions of Schedule A to the Financial Administration Law, the provisions of the Policy so affected shall be interpreted to be consistent with the provisions of Schedule A to the Financial Administration Law, or, if such interpretations is not possible, then it shall have no force and effect, and the provision of the Financial Administration Law shall apply.

This Band Council Resolution is supported by a majority of a quorum of five (5) at a duly convened meeting of Chief and Council on July 19th, 2016.

Quorum of Council: 5



Aaron Sam, Chief

Clarence Basil, Jr., Councillor



Arthur Dick, Councillor



Harold A. Joe, Councillor



Nicholas Peterson, Councillor

Clyde Sam, Councillor

Robert Sterling, Jr., Councillor



Molly Toodlican, Councillor

**Lower Nicola Indian Band FAL Schedule A
Conflict of Interest Definitions and Interpretive Principles Appendix "A"**

1. In this By-Law:

- a) "Band" or "LNIB" means the Lower Nicola Indian Band;
- b) "Chief" means the Chief of the Lower Nicola Indian Band;
- c) "Committee" means any committee struck by or appointed by the LNIB;
- d) "Council" means the Council of the Lower Nicola Indian Band;
- e) "Councillor" means a member of the duly elected Council of the Lower Nicola Indian Band and includes the Chief of the Lower Nicola Indian Band;
- f) "Immediate Family" means the spouse, son, daughter, mother, father and any siblings of the person of interest, and "Extended Family" includes the members of the Immediate Family along with, mother-in-law, father-in-law, daughter-in-law, son-in-law, sister-in-law, brother-in-law, of the Councillor and includes an individual living within the same household of any of the aforementioned individuals and the nephew, niece, grandparent, grandchild, foster relation, aunt, and uncle of the Councillor;
- g) "Meeting" includes a meeting of Chief and Council or a meeting of any Committee of the LNIB;
- h) "Officer" means the Executive Director, Director of Finance and any other employee of the Lower Nicola Indian Band designated by the Council as an officer;

2. Interpretation

- 1) In this By-Law, the following rules of interpretation apply:
 - a) words in the singular include the plural, and words in the plural include the singular;
 - b) words importing female persons include male persons and corporate entities and words importing male persons include female persons and corporate entities;
 - c) if a word or expression is defined, other parts of speech and grammatical forms of the same word or expressions have corresponding meanings;
 - d) the expression "must" is to be construed as imperative, and the expression "may" is to be construed as permissive;
 - e) unless the context indicates otherwise, "including" means "including, but not limited to", and "includes" means "includes, but not limited to"; and
 - f) a reference to an enactment includes any amendment or replacement of it and every regulation made under it.

- 2) a) Except for the exclusions identified in section 2) b) of this section this By-Law must be considered as always speaking and where a matter or thing is expressed in the present tense, it must be applied to the circumstances as they arise, so that effect may be given to this By-Law according to its true spirit, intent and meaning.
- b) This Bylaw shall not apply and the Conflict of Interest procedures shall not be invoked if there is an award of work contemplated that is less than, in the case of two (2) contracts, Five Hundred (\$500) Dollars each, per fiscal year, or if a single contract, then One Thousand (\$1,000) Dollars to that person in any one (1) fiscal year.
- 3) Words in this Schedule referring to an officer, by name of office or otherwise, also apply to any person designated by the Council to act in the officer's place or to any person assigned or delegated to act in the officer's place under this Schedule.



Oath of Office



I hereby declare that I have been appointed as the Chair or a Member of the Lower Nicola Indian Band Lands Management Advisory Committee for the Term _____ to _____ and do declare that:

1. I will faithfully perform the duties of my office with dignity and respect for others and strive to earn the respect of others;
2. I will maintain confidentiality of all information that I obtain regarding any lands sensitive issues and keep all related documents secure whether paper or electronic.
3. I will not allow my business or personal affairs to influence my decision making and I will always consider the best interests of the community when making a decision;
4. I will resign from my appointed position whenever I have been found to be in contravention of the Lower Nicola Indian Band *Land Code*;
5. My term of office commenced on _____ and ends on _____.

This oath is in addition to all duties/obligations imposed on us by any applicable law.

SWORN at Nicola Mameet, Indian
Reserve #1 near the City of Merritt, BC
on _____.

(A Commissioner for taking Affidavits
In the Province of British Columbia)

Barrister and Solicitor

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}
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}
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}
}
}

Signature

Title

Print Name