Referral Policy and Process Outline
Lower Similkameen Indian Band ("LSIB")

Definition of Terms

**Aboriginal Rights and Title**- practices, customs and traditions of LSIB that are protected by section 35 of the Constitution Act, 1982, including Aboriginal title to lands exclusively occupied at or prior to 1846.

**Activity**- any legislation, regulation, policy, procedure, plan, tenure, project, grant, license, permit, restriction, amendment, approval, authorization, transfer, transaction, operation, activity, decision or conduct that may affect LSIB’s Aboriginal Rights and Title. It also includes all other government actions, whether legislative, regulatory or administrative that affects LSIB customs, cultural practices and economy.

**Crown**- representatives of the Crown of Canada, the Crown of British Columbia, their Cabinets, Deputy Ministers, committees, Ministries, Crown corporations, agencies, employees, contractors, agents, representatives and delegates authorized to consult with First Nations, including local government (municipalities, regional districts).

**LSIB Territory**- is the area over which LSIB asserts Aboriginal Rights and Title under section 35 of the Constitution Act, 1982.

**Referral**- common term used to describe a document from a Crown agent or Third Party notifying a First Nation of a proposal and requesting information from the First Nation about any potential impacts of the decision on Aboriginal Rights and Title.

**Referring Agent**- all levels of government and any third parties who seek to utilize lands and resources subject to LSIB’s Aboriginal Rights and Title, or take any other action which may impact LSIB’s Aboriginal Rights and Title, who refer information to LSIB so that LSIB may assess the potential impact of the activity on LSIB Aboriginal Rights and Title.

**Third Party**- any individual, corporation, firm, industry, society or non-governmental organization proposing or carrying out Activities in LSIB Territory.
1.0 Vision and Purpose

1.1 LSIB Vision

The LSIB vision for the lands and waters states:

*We the Sovereign and respected Smalqmix of the Sukwnagin-x are committed to preserve our Land, History, Culture and Traditions, to enhance the quality of life for ourselves and future generations.*

The LSIB holds Aboriginal Rights and Title to our land. These rights are recognized in Section 35 of the *Constitution Act, 1982* and in the *United Nations Declaration on the Rights of Indigenous Peoples*. LSIB has never signed a treaty with the Crown modifying or extinguishing its Aboriginal Rights and Title. LSIB’s expectation is to be adequately consulted regarding any use or decisions affecting LSIB and Aboriginal Rights and Title.

1.2 Legal Framework

Nothing in this Referral policy shall limit the Crown’s obligation to consult and accommodate under the *Constitution Act, 1982*, legislation and/or common law. Similarly, this policy is without prejudice to LSIB Aboriginal Rights and Title, and to any future settlement intended to reconcile pre-existing LSIB sovereignty with the asserted sovereignty of the Crown.

In 2002, in the case known as *Haida Nation v. British Columbia*, the B.C. Court of Appeal firmly established in law that any Crown agency that is considering permitting a land or water use has a special legal duty to engage in good faith consultation with Aboriginal groups with distinct rights that may be impacted by the permit. The duty applies whether or not the First Nation has proven a right in court, or is in possession of a treaty or other form or legal recognition of rights.

When it upheld the B.C. Court of Appeal’s decision in 2004, the Supreme Court of Canada made the following pronouncement of the law on the duty to consult and accommodate:

*The duty to consult arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.*

This legal framework offers an important guidepost. The LSIB developed this Referral policy in order to ensure the protection of LSIB Territory and Aboriginal Rights and Title, in particular with regard to decisions that may adversely impact LSIB Territory and Aboriginal
Rights and Title including natural and cultural heritage, so that we are sustained as a Nation for generations to come.

1.3 Purpose of the Policy

This Referral policy provides a procedural framework for meaningful consultation and accommodation of LSIB Aboriginal Rights and Title by Crown and Third Parties seeking to utilize land and/or resources in LSIB Territory.

2.0 LSIB Traditional Territory

The LSIB Traditional Territory is consistent with the Okanagan Nation Territory as described on voicesontheland.org.

3.0 What is Meaningful Consultation?

3.1 While the legal duty to consult rests with the Crown, meaningful consultation requires good faith on the part of the Crown, Third Parties and LSIB. LSIB’s meaningful engagement in consultation requires that LSIB is able to fully participate in decisions that may affect its and Aboriginal Rights and Title. LSIB must be involved in determining the consultation process, which must be agreed to before consultation begins. Informal discussions and/or mere submission of a Referral to LSIB are not considered by the LSIB to be consultation and must not be construed by the Crown as fulfillment of its duty to consult with the LSIB.

3.2 Adequate information on which to base consultation and Referrals — LSIB is only able to assess potential impacts on our Aboriginal Rights and Title if all available and relevant information has been shared (see section 5.0 for required information).

3.3 Adequate resourcing — LSIB must have the financial capacity for appropriate Referral analysis and response. If LSIB does not have adequate resources for Referrals, the process will not be adequate. A lack of capacity or resources to respond to Referrals shall not be interpreted as consent to a proposed Activity.

3.4 Timelines — LSIB must participate in the setting of Referral timelines, so that LSIB can adequately inform and influence decisions about proposed Activities on our lands, waters and resources.

3.5 Delegation of authority — The Crown cannot delegate to Third Parties their ultimate legal responsibility to consult and accommodate. That said, we recognize that the Crown may delegate procedural aspects of consultations in some circumstances. In such circumstances, LSIB expects that consultations will not be complete until an agreement is reached between LSIB and the Crown.
3.6 Consultation is an ongoing process—LSIB expects that the consultation relationship does not end with an authorization or other decision, but is ongoing for the duration of an Activity. For example, in the event disputes arise over compliance, the LSIB expects the Crown, and Third Parties, to meaningfully engage in consultations until the dispute is resolved.

4.0 Referral Policy

4.1 Who does the policy apply to?

This Referral policy functions as a roadmap for the Crown and Third Parties to engage in meaningful consultation with LSIB. The LSIB expects the Crown, and Third Parties, to engage in consultation with LSIB, in accordance with this policy, in respect of any proposed Activities or decisions that may affect LSIB Territory and/or geographic areas outside the Territory that could affect LSIB’s Aboriginal Rights and Title.

4.2 What activities does the policy apply to?

This Referral policy relates to any legislation, regulation, policy, procedure, plan, tenure, project, grant, license, permit, restriction, amendment, approval, authorization, transfer, transaction, operation, activity, decision or conduct that may affect LSIB’s Aboriginal Rights and Title. It also includes all other government actions, whether legislative, regulatory or administrative.

This policy does not apply to current projects or initiated projects active at the date of Council ratification of this policy except with the consent of all parties.

4.3 When should consultation first occur?

The LSIB expects Crown and Third Parties to initiate consultation with LSIB at the earliest stage possible. In *Haida v. British Columbia (2004)* the Supreme Court of Canada clearly stated that, "...the duty [to consult] arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.”

LSIB’s interest is to be involved at the strategic planning level and with key decision makers for any proposed Activity, ensuring consultation occurs throughout the process of generating ideas related to a proposed Activity and before Crown review for permitting, licensing, etc.

Regarding individual Referrals, LSIB encourages key Crown decision makers and Third Parties to engage in consultation with LSIB at the earliest stage possible.
4.4 Who should be contacted?

The LSIB Referrals Coordinator is the first point of contact for Referrals provided to the LSIB. LSIB’s Referral process involves a broad-range of internal input and guidance, ranging from Chief and Council, Band administration and staff, Land and Resources and Economic Development departments and Traditional Knowledge experts, to input from the community. The Referrals Coordinator, located at the LSIB office is the primary administrative liaison to ensure effective internal coordination of research, evaluation, and decision-making. The LSIB Consultation Team, which includes members of the LSIB Chief and Council, has authority to make decisions on behalf of the LSIB.

5.0 Information Requirements (See Appendix A: Referral Information Requirements Checklist, Appendix B: Map Template)

5.1 LSIB requires that any Referring Agent submit all Referral information to be evaluated by LSIB in writing. LSIB mailing address and contact information can be found in section 5.3.

5.2 In addition to the information requirements set out in section 5.1, consultation may also involve technical, community and/or stakeholder group meetings. Consultation must be scheduled at least two weeks before a proposed meeting date. All information must be provided at least four weeks before consultation occurs.

5.3 Contact Information:

LSIB Chief and Council
% Referrals Coordinator
517-7th Avenue
PO Box 100
Keremeos, BC V0X 1N0
Phone: (250) 499-5528 ext. 126
Fax: (250) 499-5538

6.0 Funding and Capacity Requirements (See Appendix C: LSIB Administrative and Non-Administrative Fee Schedule)

The Proponent of an Activity and/or the Crown is expected to provide LSIB with funding to cover the cost incurred by participating in the Referral process as outlined in this policy.

A $500 administrative processing fee will be applied to all Referrals and must be paid upon submission. Additional administrative, research and meeting fees may apply and are outlined in Appendix C.
The provision of capacity funding to LSIB shall have no influence on LSIB’s response to a Referral, and there shall be no expectation that financial support will result in approval of a Referral.

The Proponent of an Activity and/or the Crown is expected to pay for reasonable external costs for studies or reviews of technical reports that may be required for the LSIB to carry out its due diligence work.

If LSIB identifies that additional funding is required, the Proponent of an Activity and/or the Crown are expected to discuss and attempt to reach agreement on a revised funding level.

7.0 Process of LSIB Review

7.1 Within 30 days of receipt of a Referral, LSIB will provide the Referring Agent with an acknowledgement letter and request for the processing fee if the fee was not provided with the original Referral.

7.2 Once a Referral has been processed, LSIB will provide a response to the Referring Agent. LSIB engages spatial and non-spatial criteria and methods to evaluate all Referrals, based on decision support tools and the internal evaluation of the Referral Team and Consultation Team. The decision support tools support LSIB’s objective of timely evaluation of Referrals. LSIB may wish to engage Referring Agents in further discussions, meetings, and correspondence. Such activities will support LSIB’s collection of information to evaluate the Referral, and must not be construed as finalizing consultation.

7.3 A preliminary assessment of a proposed Activity may include, but is not limited to, the following questions:
   a) Is the land being alienated and/or severing the LSIB connection to the land?
   b) Is the effect on the land temporary or permanent?
   c) How much land is being affected?
   d) What is the proximity of the Activity to the LSIB community?
   e) What are the cultural implications of the proposed Activity?
   f) What are the economic implications of the proposed Activity?
   g) How does it impact the LSIB community?
   h) How does it impact LSIB cultural resources and values?
   i) How does it impact LSIB Aboriginal Rights and Title?
   j) Are there any negative impacts on sacred sites, pictographs, petroglyphs, pit house remains, burial sites, traditional use sites, or any other sites that have cultural value to LSIB?
   k) What are the impacts on traditional use activities?
   l) What is the timeline for the consultation process?
m) What is the preferred land use according to the LSIB vision for the land?
n) What are the overall impacts on the environment and ecosystems?
o) Will the Activity have a cumulative effect impact in relation to other Activities?

7.4 Consultation shall not be considered complete until the LSIB provides the Referring Agent with notice in writing that it considers the process closed.

7.5 The following are examples of possible responses, depending on the circumstances of the Referral, the interests of the community affected by the Referral, and assessment of the impacts of from the proposed Activity:

   a) further information and consultation is required;
   b) mitigation measures and/or economic measures for impacts on LSIB Aboriginal Rights and Title or interests are required, which may be encapsulated in an accommodation agreement;
   c) approval, with or without conditions; or
   d) rejection of the Activity as proposed due to unacceptable impacts on LSIB values and interests and/or the inability or refusal of the Referring Agent to adequately accommodate the LSIB’s Aboriginal Rights and Title and interests.

8.0 Accommodation

8.1 The duty to consult may result in a duty to accommodate, which may include a change of plans or policy, revenue or benefit sharing agreements, and/or many other potential actions in response to LSIB concerns. Determinations on accommodation options can only be achieved after meaningful consultation. Substantive negotiations about accommodation will occur on a case by case basis, after initial LSIB review as outlined in section 7.

9.0 Dispute resolution

9.1 The LSIB expects that should a dispute arise about the interpretation of this policy or whether there has been a breach of this policy, the parties will first engage in informal discussions in an attempt to resolve the matter amicably. The LSIB expects all parties to recognize that building cooperative working relations will depend upon their ability and willingness to recognize, explore and resolve differences which arise between them.

9.2 The parties will endeavour to resolve issues which may arise in a manner that allows for and fosters an improved ongoing respectful Government to Government relationship between the Crown and LSIB, and a positive working relationship between Third Parties and LSIB.
9.3 Where a dispute between the parties has not been resolved with informal communication, the parties, with reasonable notice, may call a special meeting to resolve the dispute. Decisions about the appropriate method to resolve disputes must be collaborative and will consider:

a) traditional and modern forms of resolving disputes utilized by LSIB;
b) the benefits and restrictions of using different types of facilitated and other nonbinding mediation conducted by a neutral party;
c) the benefits and restrictions of using arbitration, court proceedings and other binding decision-making processes; and
d) the identification of people and resources that may be helpful to successfully implement such dispute resolution processes.

10.0 Council Ratification

This policy was adopted by a Band Council Resolution BCR No.2011/2012-36.
Ratified: Sept. 26, 2011
Appendix A: Referral Information Requirements Checklist

The following checkbox information is missing from your letter and/or map project application and needs to be included for LSIB to be able to proceed with our assessment of potential infringement on our Aboriginal Rights.

**A. Referral Letter**

For all proposed activity letters, the information listed below should be included in addition to any other information and attachments needed to completely describe the proposed activity.

| ☐ Proposal description |
| ☐ Location |
| ☐ Response Requested By |
| ☐ Decision to be made |
| ☐ Proponent |
| ☐ Background/context |

| ☐ BCGS (1:20,000) Map sheet Reference |
| ☐ Legal Description |
| ☐ Size (Area in Hectares) |
| ☐ Proposal Schedule/Term |

Other Information including other relevant information:

| ☐ Known information on ecological species, systems and condition |
| ☐ Past consultation conducted over the same area as the new application |
| ☐ Other known decisions/activities related to this proposal |
| ☐ Contact Person(s) |

**B. Map Layout Elements**

For all maps, the elements below should be included in the layout or map surround for printing.

| ☐ Proponent Name |
| ☐ Description of proposal/application type |
| ☐ General location description |
| ☐ Map Type (Location Map, General Site Map, or Specific Site Map) |
| ☐ Submitting Agency (if different than Proponent) |
| ☐ File# (Agency of Gov’t) if known |
| ☐ Reference# (multi-agency shared project number) if known |
| ☐ Date |
| ☐ Imagery Date (if applicable) |
| ☐ Mapsheet Number(s) |
Appendix A: Referral Information Requirements Checklist

☐ Logo (optional)
☐ North Arrow
☐ Legend
☐ Scale (text) and Scale bar
☐ Datum/Projection information
☐ Disclaimer
☐ Key Map
☐ Graticule – UTM (preferred) or latitude/longitude grid

B-1 General site maps to indicate the location and/or size of the site or proposal area and provide more details. The following is a list of specific data layers (also see the map template).

Scale is either, 1:30,000 OR 1:50,000

☐ Site or Proposal Area identified
   (outlined in heavy red line and labelled as appropriate)
☐ TRIM 1:20,000 base data (contour lines to be included where appropriate)
☐ Digital Road Atlas (DRA)
☐ Parks, PAs, Indian Reserves, and municipal boundaries
☐ Forest Roads - Current (FTEN)
☐ Forest Administrative Areas (Forest District boundaries, Timber Supply Area boundaries, Special Protection Areas, BCTS Operating Areas
☐ Forest Tenure Boundaries (if scale is suitable, otherwise Location or Specific Site Maps can be used)
☐ Survey Parcel Fabric/Primary Cadastre
☐ Clearly labelled site or proposal area boundaries, and property or survey boundaries (i.e. DL, Plan, Lot). Add custom labels if necessary.
☐ Length (meters) of each perimeter line of site or proposal area
☐ If digital data not provided: metes & bounds description with point of commencement (POC) at known point (length and compass bearing of each side of application boundary).

B-2 Specific proposal scale maps to locate the site or activity area within the LSIB traditional territory in relation to the major landmarks. The following is a list of specific data layers (also see the map template MXD file for use in ESRI GIS).

Scale is either 1:2000; OR 1:5,000; OR 1:10,000
Appendix A: Referral Information Requirements Checklist

Additional project specific data layers for:

**Provincial public highway permit**
- The boundaries of highway right-of-way affected (Tantalis ROW included in template)
- The position of all existing public and private works within these boundaries (where the proposed development is on or above ground level, show only works that are on or above ground level, or that the proposed development may interfere with below ground)
- The proposed position of works within the right-of-way boundaries
- The details of any structures and appurtenances used to support traffic, including: tanks, manholes, lamp poles, surface boxes, bridges, culverts, retaining walls

**Roads / Utilities**
- Location of all improvements (including at development stage):
  - storage areas for machinery
  - bridges, culverts, stream crossings (including side views)
  - slope of terrain
  - if crosses stream-provide side view of culverts, bridges, etc.

**Allowable Annual Cut (AAC) Administrative Decisions**
- Forest Tenure Boundary (if scale is suitable, otherwise General Site Map will be used)

**Community Forest Agreements**
- Community Forest Agreement Area Boundary

**Forest Tenure Decisions**
- Forest Tenure Boundary (if scale is suitable, otherwise General Site Map will be used)
- Cut block Boundary
- Forest Roads

**Woodlot Tenure Decisions**
- Woodlot License Boundary (including private land portion)
- Forest Roads

**Forest Health and Silviculture Decisions**
- Forest Cover
- Proposed Treatment Areas
- Forest Roads

**Range Decisions**
- Range Tenure Boundary and Range Tenure ID
- Range Management Areas
Appendix B: Map Template
# Appendix C: LSIB Administrative and Non-Administrative Fee Schedule

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<th>Position Title</th>
<th>Hourly Rate per Person</th>
<th>Daily Rate per Person</th>
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<tr>
<td>Project Manager/Band Manager</td>
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<td>LSIB Referrals Coordinator</td>
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<td>Cultural Heritage Resource Manager</td>
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<td>Project Technician GIS</td>
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<tr>
<td>GIS Assistant</td>
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* Day rates only will apply

Administration Fee 15%

Fees are subject to change without notice

Approved by LSIB Chief and Council April 8, 2015