

LNIB Allotment and Custom Family Lands Law Application Guide to Schedule 2 on Custom Family Allotments

This document makes connections between Schedule 2 of the LNIB Allotment and Custom Family Lands Law, which deals with custom family lands, and the LNIB laws, protocols and preferences identified by the community through the LNIB Traditional Holdings Project. It also provides examples of how the LNIB Allotment and Custom Family Lands Law could apply to Members seeking formal Allotment of their custom family lands, and how LNIB laws, protocols, practices and preferences could inform the application and review processes.¹

Interpretation

Terms in this Application Guide have the same meaning provided in the Allotment and Custom Family Lands Law, including Schedule 2 on Custom Family Allotments.

Capitalized terms in this Application Guide have the same meaning as provided in the Land Code.

For ease of reference, please consult Appendix “A” to this Application Guide.

Traditional Laws and the LNIB Allotment and Custom Family Lands Law: Connecting the Past and the Present

In the past, our laws, values, principles and protocols guided how we lived together in families and communities. These laws, values, principles and protocols informed how we understood and carried out our roles and responsibilities to each other, to our ancestors and to the land. Some community Members were recognized as holding special cultural roles, and we looked to them to provide wisdom and guidance in applying our traditional laws, values, principles and protocols to decision-making.

Traditional laws, values, principles and protocols reflected cultural values and knowledge. They were deeply connected to identity, spirituality and the interconnectedness of people, the land and the xa?xa?. Our laws connect our present to both our past and to the future of our children and grandchildren. Our laws connect seven generations and beyond, reminding us that our past needs to be a part of our future. Our traditional laws were recorded orally and were

¹ In this document, *custom family land*, means *traditional holdings* or *family land* held by Members. These lands are not formally registered Allotments, but are recognized by the community, through traditional laws and customs, as belonging to Members. The term *custom family land* is used in this document in order to be in alignment with the language in the LNIB Allotment and Custom Family Lands Law.

shared through stories, songs, legends and other oral traditions and reflected in family, social and political life. Our traditional laws were lived and alive on the land and they showed us how to live in a good proper way. Traditional laws were taught by LNIB grandparents to their grandchildren in the traditional way – sharing stories and lessons out on the land so that children could listen and understand with their hearts, minds and bodies.

When decisions were to be made, we gathered together in family groups and with the community to discuss important issues and make decisions for the common good. All from the community were welcome at these gatherings and everyone had the opportunity to share their thoughts. This could take a long time, and there was not always agreement on all issues, but we shared a commitment to listen to each other with respect, and to continuing to meet until a consensus could be reached. If an issue could not be resolved in one gathering, we would agree to go away, do more work, and come back together at another time to discuss it once again. When the community gathered again, witnesses would be called upon to share their recollections, and to reintroduce the discussions. Gatherings started with prayer and ended with ceremony. Prayers, ceremonies and celebrations were central to LNIB protocols, traditional laws and decision-making processes.

Beginning in the mid-1800s, our traditional laws and systems were systematically dismantled and replaced by colonial policies and laws. The rights and responsibilities LNIB had to each other, to the land, to the water, to the animals, the plants, the birds and all other human and non-human beings in our tmíx^w were disrupted. Missionaries and government officials reinterpreted our traditional governance structures and imposed new orders, new roles and new laws. Through our oral traditions, we have kept our knowledge of these laws and are in the process of revitalizing and reintroducing them to our ways of doing things today. LNIB has not forgotten our past. LNIB has not forgotten our laws. The work ahead includes finding ways to connect our traditional laws to contemporary governance, decision-making and dispute resolution.

Land, family and connections are important to LNIB. From the mid-1800s to the present, traditional systems were disrupted and dismantled creating confusion around land and land use. The process to address unregistered custom family land holdings under a new LNIB Allotment and Custom Family Lands Law is one instance of where the Band is working to connect traditional laws and ways of doing things with contemporary land management and planning efforts for the shared benefit of the community.

Custom Family Lands and the LNIB Allotment and Custom Family Lands Law

When LNIB passed the Land Code in 2016, control over our reserve lands was returned to the Band, meaning that management of these lands is no longer subject to the *Indian Act*. The LNIB Land Code gives the Band authority to pass laws that deal with the administration and care of our reserve lands. It is a responsibility that LNIB has not been able to exercise since the

introduction of the first *Indian Act*. The LNIB Allotment and Custom Family Lands Law is one such law.

The Allotment and Custom Family Lands Law presents a structure and process for legally recognizing Allotments on reserve lands. Only Members (individuals and families) are eligible to hold Allotments on LNIB reserves (“LNIB Land”). Allotments registered pre-Land Code (under the *Indian Act*) continue as legally recognized Allotments by the Band. These were formerly known as locate lands or individual land holdings and were formally recognized by the Government of Canada with the issuance of Certificates of Possession. While historically, LNIB recognized many individual and family interests to reserves lands, the Government of Canada did not. In the past, a Certificate of Possession (“CP”) was required to hold a legal interest in LNIB Land. Today, under the Land Code, the LNIB Allotment and Custom Family Lands Law and custom family land Allotment process provides a new way forward. For Allotments that were not formalized pre-Land Code, Members must work through the Allotment and Custom Family Lands Law and LNIB community process in order to formally register these Allotments.

LNIB recognizes that some portions of reserve lands are held by Members and families as custom family lands, or traditional holdings. Many of these holdings go back generations, and some even predate the establishment of LNIB Land. Resolving outstanding issues related to custom family lands through formal Allotment of these lands to the traditional holders has been a high priority of the community and Band administration for many years.

A number of attempts to address unresolved custom family holdings have been undertaken over the years, but none have been successful in resolving these issues. An important difference today is that LNIB Land is no longer under the *Indian Act*. The Land Code presents a new opportunity to address Allotment of custom family lands through a process that reflects LNIB history, protocols, principles, values and laws, and is inclusive of all Members. Schedule 2 of the Allotment and Custom Family Lands Law was written specifically to address the Allotment of custom family lands through culturally appropriate processes.

How does the LNIB Allotment and Custom Family Lands Law connect with traditional laws and decision-making?

The Allotment process described in Schedule 2 is meant to connect traditional laws and protocols with contemporary LNIB laws and decision-making. Members who choose to apply for an Allotment of their custom family land will notice some familiarities and some new processes when it comes to applications and decision-making, including:

--> In the past, surveys and maps of land holdings were sketched by hand. This created some confusion when these sketches were poorly drawn or understood. The Allotment and Custom Family Lands Law will require official registered surveys and land descriptions. This will ensure clarity of parcel boundaries and consistency between all land descriptions so that the community is clear on what lands are being applied for. Custom land holders applying for an

Allotment can work with the Lands Department to ensure their land is properly surveyed and recorded.

--> In the past, ownership of custom family lands was recognized in a variety of ways, including evidence of working and living on the land, improvements such as ditches, fences and clearing, written documentation, photos/drawings and sketches and oral verification by the community recognizing the history of the land and its owners. Unfortunately, under the *Indian Act* evidence was required to include things like BCRs, approved survey plans, Indian agent correspondence and records and registered documents. The Allotment and Custom Family Lands Law also provides greater opportunities for land holders to provide written and oral testimony demonstrating their connections to their land.

--> In the past, important decisions were made by community Members who were recognized as leaders and decision-makers by the community. Decisions were made in discussions with families and the larger community. Under the *Indian Act* this role was taken away from the community, and the approval of the federal government was required before decisions could be formalized. Ultimately, prior to Land Code, the decision-making power was vested in the Minister in charge of administering the *Indian Act*. The Allotment and Custom Family Lands Law identifies a new recommending body, called the Custom Family Lands Resolution Committee, comprised of community Members to consider evidence of custom family land holdings. The composition of this new recommending body will be determined through discussions with the community and with the LNIB Lands Department. It will aim to be inclusive and include a diverse representation of community Members and be more aligned with LNIB traditional decision-making processes.

Custom Family Lands Resolution Committee

Schedule 2, Section 3 of the LNIB Allotment and Custom Family Lands Law describes the establishment of a new community-led recommending body to be responsible for considering Members' applications and evidence for Allotment of their custom family land. The Custom Family Lands Resolution Committee will also make recommendations to the LNIB Lands Management Advisory Committee (LMAC), a community-led committee previously established under the Land Code, on the approval of applications.

This section of the Allotment and Custom Family Lands Law also states that the LNIB Council will approve and apply terms of reference to appoint Members to the Custom Family Lands Resolution Committee. In this way, there will be a link created between the work of the Custom Family Lands Resolution Committee, the Lands Management Advisory Committee, the LNIB Chief and Council, the community and the LNIB families. During Phase 1 of the LNIB Traditional Holdings Project, community Members shared knowledge and gave advice about the composition of a decision-making body to consider evidence and make recommendations about custom family land Allotments. It is important to the community that Custom Family Lands Resolution Committee Members are familiar with traditional ways of hearing and

considering evidence and making decisions. The selection of Members should also reflect traditional ways that people in decision-making roles were recognized and chosen in the past.

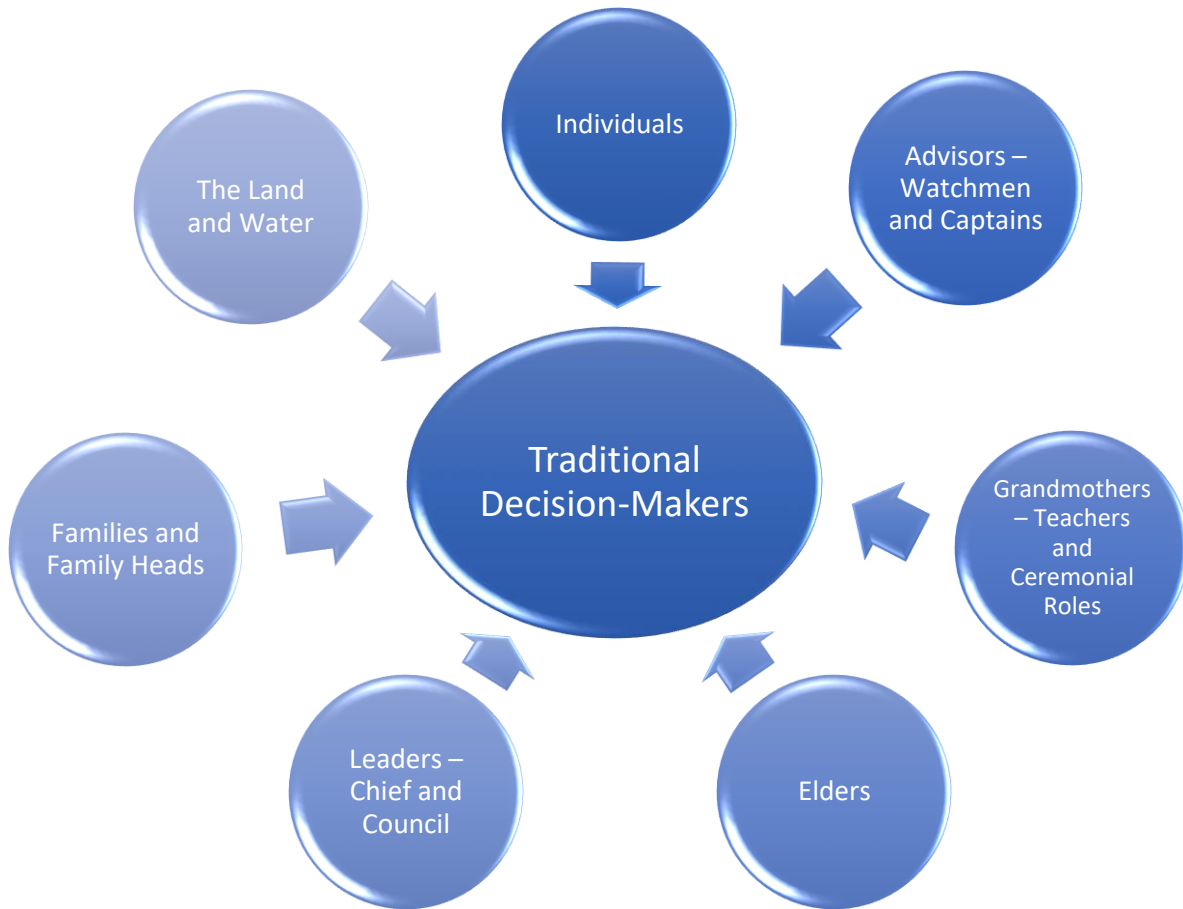
Why are the composition and deliberation processes of the Custom Family Lands Resolution Committee important?

In the past, community decision processes involved hearing from community Members with evidence and knowledge about the issue at hand and giving thoughtful consideration to this evidence before making a decision. Often, community Members were called to give witness and provide oral testimony. Good decisions were made when community Members trusted the decision-makers and could see how traditional laws and protocols were reflected in the decisions.

Today, it is just as important that community Members have trust in the people and decision-making process. Community Members must be able to trust that applications and evidence they submit for custom family Allotments will be fairly considered by a Custom Family Lands Resolution Committee that understands and applies traditional protocols and values and has a deep understanding of the contemporary land issues facing LNIB and the need to balance individual and family land ownership with sustainability and the community good.

Delegation

Schedule 2, Section 4 of the LNIB Allotment and Custom Family Lands Law deals with the delegation of responsibility for review and decision-making by LNIB Council to the Lands Management Advisory Committee. This is in line with preferences expressed by community Members during Phase 1 of the Traditional Holdings Project, as well as reflecting the historic role of Chief and Council as mediators who relied on trusted advisors to assist in the resolution of issues and make decisions. This arrangement provides space for the LNIB Chief and Council to participate in meetings and discussions about custom family land Allotments, and to provide advice and counsel. It introduces transparency to the process and provides additional measures to involve diverse community voices into decision-making. It is also consistent with the LNIB 2020-2023 Strategic Plan under *“Moving Forward Together”* and in Goal Statement #2 that states: *“Identify scenarios where “other decisionmakers” may more appropriately ensure impartiality on traditional land issues”*.



Basis for A Custom Family Allotment

Schedule 2, Section 5 of the LNIB Allotment and Custom Family Lands Law describes the types of connections to custom family land that the Custom Family Lands Resolution Committee will consider when reviewing Allotment applications and making recommendations. These reflect the types of historic and contemporary connections identified during community engagement and historical research during Phase 1 of the Traditional Holdings Project.

How will connections to family lands be considered?

LNIB families have enduring connections to their lands extending back generations. In the past, our population was smaller and more of our land was used for agriculture and ranching. Neighbours worked together to care for the land through actions like jointly building and maintaining ditches or breaking land. One of our early practices was to give land to those in need. This practice reflects our core values – caring for the land and for each other and making use of the gifts given by the Creator. Knowledge of family land boundaries was well-understood, and the circumstances of land Allotment were primarily recorded in the oral histories of our families and witnessed by the community.

Today, our community has grown but our land base on-reserve has not. It is largely unchanged since the allocation of reserves by the Indian Reserve Commission in 1878, and the additions and cut-offs made by the Royal Commission on Indian Affairs in 1916 or by the Ditchburn-Clark Commission in the mid-1920s. Few Members are interested, or able, in subsisting on agriculture or ranching alone, and our needs have changed.

As a result, we no longer have the ability to give land Allotments to all Members while still retaining enough land for the benefit of the whole community. It is hard work to balance the recognition and Allotment of custom family lands where Members have deep and documented connections to those lands, with ensuring all community Members can continue to access and use our shared reserve land. The process for considering Members' connections to their family lands strives to achieve this balance.

Families are having to make difficult decisions too. Traditional holdings, once large enough to sustain families, have been divided over time into smaller estates held by different family Members. LNIB and the community have said that we need to jointly consider the health of our tmíx^w and sustainability of the land.

Call for Applications and Providing Notice

Schedule 2, Sections 6 and 7 of the LNIB Allotment and Custom Family Lands Law describes how LNIB will provide notice to the community about opportunities to apply for custom family land Allotments within certain portions of LNIB Land. Applications will be accepted for defined areas of reserve lands in order to help LNIB staff and decision-making body to manage workloads and focus on areas that correspond with other LNIB priorities for land development and management. For instance, this may mean that the first “round” of applications accepted will be for lands on the southern portion of Nicola Mameet IR#1, while the next round of applications will focus on lands on another LNIB reserve.

This section also describes the steps to be taken to ensure transparency in this process; the call for applications for custom family land Allotments must be clearly stated and include maps and descriptions of the areas to be considered. Notice will be communicated to Members using a variety of methods, including online, in the LNIB newsletter and on bulletin boards in LNIB office buildings. Members choosing to apply will have at least 60 days from the time of the notice to submit their applications for consideration.

Seeking family land Allotments in the past and today

In the past, there were processes – both formal and informal – for Members to seek land Allotments, and for those requests to be considered. Central to these processes were commitments to openness and transparency.

One way that land was allocated was through family processes. For example, a family Member would meet with their family head to request a section of the family's existing land holding to build a house or to put in a hay field. The family would then meet to discuss the request and make a decision. Family lands were recognized by other families and the wider community as belonging to specific families, and family groups had the right and responsibility to care for the land and to make decisions about its use. We see the results of this family process today where multiple generations of families often have homes close to each other on the same reserves.

Another way that community Members acquired land in the past was to make a request to the Chief and Council. These requests would be considered during band meetings where other people in the community could hear the specifics of the request, ask questions and give oral testimony. Meetings were open to all, and sufficient time was given to ensure that all factors were considered. It was also common for the person requesting land to meet out on the land with the Chief and Council so that all parties had a shared understanding of the parcel location, boundaries, features and intended uses. Often, Elders or Knowledge Keepers would join in these land-based discussions to act as witnesses and advisors. By the time our reserves were established, these processes and their outcomes were often documented in writing, but not always. Some agreements were made by a handshake alone.

The LNIB Allotment and Custom Family Lands Law process of calling for applications reflects these same values and practices of openness, transparency and allowing Members sufficient time to submit applications and to have them thoughtfully considered. LNIB recognizes the importance of involving the community throughout the process. While the proposed LNIB Allotment and Custom Family Lands Law is more formal than a handshake, it is also more transparent, allowing the community to be witness.

Member's Application

Schedule 2, Section 8 of the LNIB Allotment and Custom Family Lands Law describes how Members can apply for an Allotment on their custom family land. Applicants are asked to submit information about the land, including a sketch or survey of the land, as well as descriptions of existing structures on the land. An application may be made by an individual Member, or by multiple Members together, such as by a family. An applicant must also demonstrate that they are aware of and can afford the costs involved with being granted a custom family Allotment, such as survey costs, and ensuring there is legal access to the land. An applicant should obtain quotes for this work so they have an idea of the costs involved.

Through the applications process, Members are also asked to indicate:

1. if they know if other Members or non-Members may have interests in the land for which an Allotment is being sought,
2. if they would like specific traditional or family protocols to be considered when they submit evidence of their connections to the land, and

3. if the Allotment they are seeking is over 10 acres, in which case a community review and approval process may be undertaken.

All of this information helps to clarify for the Lands Department, the Custom Family Lands Resolution Committee and the applicant what to expect when the Allotment application is submitted, and evidence is presented. This reflects the values of transparency, open information sharing and an awareness of the need to balance the formal recognition of family land holdings with the benefit of the whole community.

Land Allotments in the past, and today: Some similarities and differences

In the past, owners of some family land were not always formally recognized Members. Traditionally, Nlaka'pamux communities moved about the tmix^w. We were a polygamous society, a man could have more than one wife, and we had large families. These complex family ties gave people access and responsibilities to different parts of the tmix^w. When missionaries came into the Nicola Valley and established churches, monogamous marriages were required. This resulted in large changes to our traditional family structure and society.

In the past, families moved about a larger pre-colonial land base and families moved seasonally across the land, coming together in larger groups at certain times of the year, and living in smaller groups at others. Families from different communities were connected and may have held land in multiple locations, including on what are today lands held by different First Nations. For instance, some Members held land on Coldwater and LNIB reserves before they were made to relinquish these lands as a result of *Indian Act* provisions. Administratively, LNIB reserves once included Shackan and Nooaitch reserves. Decisions made in the past may have been influenced by these different circumstances. Our understanding of family groups was broader and more inclusive.

Today, our political structures and laws, along with the scarcity of available reserve land, have determined that only Members are eligible to hold Allotments on our reserves. However, there are some similarities in the ways that lands were allocated in the past and today. In both cases, family protocols are central, as are connections to land through families and through traditional roles, responsibilities and laws. In the past, Members sought consent from the community (through the recognized decision-making process) to hold land, and the application process established in the Allotment and Custom Family Lands Law reflects this protocol where Members ask for an Allotment and that request is considered by decision-makers and the broader community before consent is given. Providing enough time for careful consideration of land Allotments and the potential impacts of Allotments on all Members and on the sustainability of the community and the land is another way that our past ways of doing things are carried through in the new LNIB Allotment and Custom Family Lands Law.

Supporting Evidence for Application

Schedule 2, Section 9 of the LNIB Allotment and Custom Family Lands Law describes the types of evidence that applicants may submit in support of their application for an Allotment of custom family land. The LNIB Lands Department will help applicants identify supporting evidence that may be in the Lands Department's records. Evidence may include oral testimony and written documents like wills, BCRs, bills of sale, minutes from Council meetings, affidavits and others. To allow the Custom Family Lands Resolution Committee and the Lands Management Advisory Committee to have easy access to evidence, any oral testimony must be transcribed in writing in an affidavit, which is done before a notary public, a commissioner of oaths or a lawyer.

During the review process for custom family land Allotments, supporting evidence will be carefully considered by the Lands Department (preliminary review), the community (community review) and the Custom Family Lands Resolution Committee (review and recommendation.) Where uncertainties or conflicts arise around supporting evidence, applicants will be asked for clarification.

Oral and written evidence

There are many valid ways to show connections to land. Over time, as the community has grown and the branches of our family trees have extended, challenges have arisen around the allocation and ownership of family lands. Historical research and community engagement for the Traditional Holdings Project shows that strong evidence of connections to custom family lands includes a combination of oral testimony and written documents. Evidence is considered especially strong in cases where Elders who know the history of the land and the family can corroborate the applicant's connections to the land. As Elders pass away, much of this firsthand knowledge and memory is lost, making it more challenging for some land holders to document their connections to the land, particularly in cases where there are disagreements within and between families.

It's important to remember that the types of evidence available to Members may differ depending on factors such as the history of their land holding (for instance, does it pre-date or post-date the *Indian Act*?), their family's history in the community (for instance, does that family have a history of agriculture or ranching on large holdings?), and the gender of the applicant. Gender is relevant because women and men have historically had unique role and responsibilities within their families and the community, and these may affect how they witness their connections to their family land holdings. The Custom Family Lands Resolution Committee will consider the diversity of experiences and connections to land in their review.

Historically, there have also been decisions made based on incomplete evidence. A clear and transparent process, and the invitation for Members to bring forward diverse forms of evidence within a 60-day period is intended to prevent this from becoming an issue in the process moving forward. LNIB is seeking any and all evidence that the community and families feel are required to make informed decisions.

The process proposed in Schedule 2 of the LNIB Allotment and Custom Family Lands Law takes these challenges into account by encouraging Members to submit a variety of different types of evidence, all of which will be taken into account by the Custom Family Lands Resolution Committee. For instance, one Member might submit a signed BCR, a will and a survey of their family lands, while another Member might submit family letters addressing land allocation, and bring in Elders from the community to give oral testimony about the Members' connections to the land and the wishes of their family that the land should be transferred to them. The goal of this process is to bring forward all forms of evidence to inform the decision-making process.

Preliminary Application Review

Schedule 2, Section 10 of the LNIB Allotment and Custom Family Lands Law describes the preliminary application review process, which takes place after Members submit applications for an Allotment of their custom family land, but before the official review processes by the community and the Custom Family Lands Resolution Committee begin. The preliminary application review is an opportunity for the Lands Department to review Members' applications for completeness, to help a Member determine applicable costs, e.g. obtaining a quote for a survey, and to provide feedback, suggestions and to ensure that applicants have enough time to amend incomplete applications, or to submit additional evidence in order to strengthen their applications.

Making the application process accessible for all Members

Land is at the heart of LNIB families, identity, health, spirituality and connections between the past, present and future. The enormous importance of land and land holdings may result in apprehension by the community of a new formal process to determine Allotments. The success of the LNIB Allotment and Custom Family Lands Law in resolving unregistered family land holdings will depend on the participation of the community and their trust in the process. The preliminary application review by LNIB Lands Department staff is one way to help ensure that the application, review and decision-making processes for the Allotment of custom family lands are accessible to all Members.

Our traditional decision-making processes involved the participation of all adults in the community, with children always present to watch and learn the process. Members trusted that community leaders and others with recognized roles and responsibilities had the best interests of the whole community at heart, and that they had the knowledge to make fair decisions, even in challenging circumstances. The preliminary application review process reflects this commitment to transparent, accessible, inclusive participation by ensuring that all community Members have the chance – and the support – to put their strongest case forward for consideration.

LNIB has a strong vision for the future of the community. Central to this vision is the success and well-being of Members. LNIB Lands staff have a role to play in helping the community

achieve this vision. Working together, applicants and LNIB staff can ensure that procedural delays do not hinder progress. Resolution of these long-standing issues is important to LNIB families and to the community. Every effort will be needed to bring this about.

Member Comments on Applications and Community Meeting

Schedule 2, Sections 11 and 12 of the LNIB Allotment and Custom Family Lands Law describes how Members will have opportunities to learn about and comment on Members' applications for an Allotment of custom family lands, and applicants' responsibilities to present their request to the community in writing or orally. The LNIB Lands Department will provide notice to the community when an application has been accepted for consideration, and the applicant will be required to attend a community meeting to discuss their application and to answer questions from community Members. The applicant may designate another Member to speak on their behalf, if they wish.

The role of the community

LNIB protocols and practices have always involved meeting together and talking through issues, trying to reach resolutions to complex situations. It's important to recognize that Members of the community hold a lot of knowledge that may be applicable to a particular situation. Some families know different areas better than others because their families hold connections and responsibilities to these areas. At the same time, Members all belong to the same band and must consider band-level issues. In the case of custom family lands, one way that boundaries and ownership of these lands was demonstrated in the past was through a shared recognition among neighbours.

Traditionally, the LNIB land decision-making process was open, transparent and inclusive of all Members. Over time, it became structured and detached from other community business. In Phase 1 of the Traditional Holdings Project we learned there is some community frustration and distrust for land discussions that occurred without community or family witnesses. Staff turn over, and the amount of time it took to consider complex issues increased community frustration over the process.

It's also important to recognize that there are different ways to give evidence, including in-person and written evidence that is shared by a representative. It's important that everyone feels they have a chance to contribute to the process in a fair and comfortable way. This won't mean that everyone will always be satisfied with the outcome, but it should mean that Members feel that they are fairly heard, and their evidence and knowledge are considered thoughtfully and respectfully.

Referral to and Review by the Custom Family Lands Resolution Committee

Schedule 2, Sections 13 and 14 of the LNIB Allotment and Custom Family Lands Law describe how applications for Allotments of custom family lands will be referred to and reviewed by the Custom Family Lands Resolution Committee. Once an application is accepted as complete by the Lands Department, and after the community has had a chance to review and comment on the application, and the applicant has had a chance to respond to these comments, the application will be referred to the Custom Family Lands Resolution Committee for review.

In the interest of transparency and thoroughness, the Custom Family Lands Resolution Committee will have access to all available information about the application before they begin their review, including:

1. the application;
2. maps and descriptions of the parcel in question;
3. the applicant's supporting evidence; and
4. information shared and discussed during community review and community meetings.

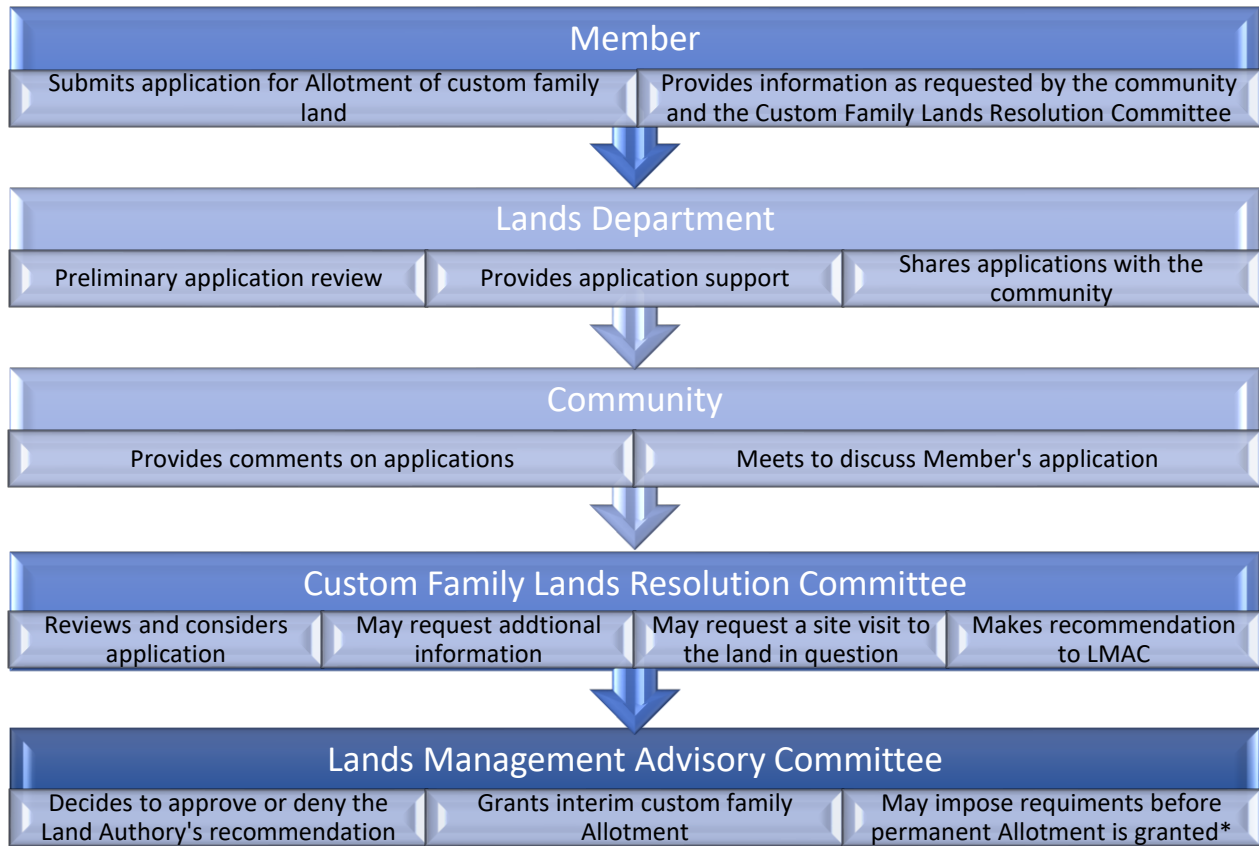
During the review process, the Custom Family Lands Resolution Committee may request additional information from the applicant or other community Members who presented information related to the Allotment application during the community meeting.

Decision-making on the land

Traveling out on the land to meet with families and community Members to discuss important issues has always been part of our traditional practices. Meeting on the land reflects the centrality of the land to culture and community, and the weight of land-related decisions. Being on the land is one way that decision-makers could gather more information and ensure that the well-being of the people and the land were central to their decisions. The Custom Family Lands Resolution Committee may choose to hold meetings and discussions with applicants and other community Members on the land, visiting their custom family lands to learn more about the boundaries, features and to hear about the history of the land over time.

Custom Family Lands Resolution Committee Recommendations

Schedule 2, Sections 15, 16 and 17 of the LNIB Allotment and Custom Family Lands Law describe what happens once the Custom Family Lands Resolution Committee has reviewed and considered a Member's application for an Allotment of custom family land. The Allotment and Custom Family Lands Law establishes the Custom Family Lands Resolution Committee as the body to review and make recommendations to approve or deny a Members' application for an Allotment, however, the Land Code provides that, where the Council has delegated their authority to grant Allotments to the Lands Management Advisory Committee (LMAC), the LMAC has the authority to approve the Custom Family Lands Resolution Committee's recommendations. The table below shows this process.



*Historically, LNIB has imposed certain requirements or conditions before formalizing decisions. For example, Members may have been given a certain amount of time to make improvements, build fences, dig ditches, use a field and build their homes. If Members were unable to meet the conditions, LNIB would consider whether or not the land should be open to other Members.

Interim Custom Family Allotment

Schedule 2, Section 18 of the LNIB Allotment and Custom Family Lands Law describes what happens when LMAC approves the Custom Family Lands Resolution Committee's recommendation to grant a custom family land Allotment. In all cases where a custom family land Allotment has been approved, an interim Allotment will be issued for one year. During this year, the land holder will have to ensure that any conditions or requirements associated with the Allotment approval are met before a permanent Allotment is registered.

Understanding parcel boundaries

In the past, LNIB families spent more time on the land together, harvesting plants and animals, fishing, raising hay and horses, and building houses, barns, fences and ditches. Neighbours relied on each other to help maintain ditches and fences and to share resources. As a result,

there were shared understandings of the boundaries and features of LNIB family lands, and of the people in each family whose role it was to make decisions about their lands. Today, some of that knowledge has been lost, though there are still some community Members who remember the histories of LNIB family lands.

In addition to traditional knowledge documenting family lands, surveys are another way that our community has recorded information about family lands. Since our first reserve was established in 1868, and the first rough sketch drawn by surveyor Mohun, a number of surveys have been carried out. The earliest typically only showed external boundaries, natural features and limited improvements. The “4900 Map,” familiar to many Members, is one example of an early survey of our reserves that shows some recognition of individual land holdings. We have learned that some historic surveys were inaccurate, based on incomplete information or other technical problems. Budgets for survey work were limited, and different parcels were surveyed at different times, resulting in a piecemeal approach to the survey of individual holdings.

As survey methods and technologies, and our understanding of reserve boundaries, have been refined over time, a number of inconsistencies have been identified between existing surveys. A clear and shared understanding of parcel boundaries on our reserves is important because it gives clarity to land holders and helps LNIB plan for future developments and infrastructure work. For these reasons, a current, official survey is a requirement before any new land Allotments can be registered, including custom family land Allotments.

Custom Family Allotments Over 10 Acres

Schedule 2, Section 19 of the LNIB Allotment and Custom Family Lands Law describes the Community Approval process that must take place before an interim Allotment can be granted for custom family land over 10 acres. This section applies to Allotments recommended by the Custom Family Lands Resolution Committee and approved by LMAC. If the Allotment is approved during the community review process, an interim Allotment will be granted by LMAC. The community review process may result in denial of the large Allotment, in which case, the file will be sent back to the Custom Family Lands Resolution Committee for reconsideration and to proposed new (smaller) lot boundaries.

A balancing act

This part of the process recognizes LNIB families’ historical connections to ranching and agriculture in the valley, which have resulted in large family land holdings. It also recognizes that LNIB Land is community lands and that there is a need to preserve sufficient lands for community use. This balancing act becomes more and more difficult as our community grows but the land base does not. The type of community approval proposed in this section of the Allotment and Custom Family Lands Law is not a solution to this challenge; but rather it presents a process for addressing these issues in a clear and transparent way that

acknowledges both the rights and preferences of custom family and holders and the wider community.

Custom Family Allotment Decision

Schedule 2, Section 20 of the LNIB Allotment and Custom Family Lands Law describes the steps to be taken to approve or deny a permanent custom family Allotment once the one-year interim Allotment period is complete. If the conditions of the interim Allotment are met, then LMAC will submit a resolution to the Lands Department approving the Allotment and asking that a Certificate of Possession (CP) for custom family lands be issued to the land holder(s). The Allotment will then be officially registered with LNIB and in the First Nations Land Registry. The Allotment holder will receive confirmation of this registration from the Lands Department.

If the conditions of the interim Allotment have not been met, the land holder will be advised that their interim Allotment has expired, and the land will not be allotted. In cases where an Allotment is not granted, the Member will be given an explanation for this decision. During the one-year interim Allotment period, it is the responsibility of the land holder to communicate with the Lands Department to ensure that they are on-track to fulfil the requirements associated with their interim Allotment.

Decision-making, past and present

In the past, the community recognized certain Members as qualities that made them good leaders and decision-makers. Our k^wúk^wpi?, watchmen and captains were acknowledged decision-makers, but they did not make unilateral decisions for families and communities; they were counseled by Elders, matriarchs, family heads and others with specific knowledge about the decision to be made. They listened to the people and advised the Chief and other leaders on decisions to be taken. Through this process, we ensured that our laws and protocols were reflected in decisions.

Our traditional teachings tell us that our actions have consequences. In our stories, the consequences of not fulfilling responsibilities or acting in a good way can result in deprivation, transformation or redistribution of resources. In the case of land Allotments, Members have responsibilities to meet the conditions associated with their interim Allotments. In cases where these conditions are not met within a year, the consequence is the denial of a permanent Allotment.

The process for making decisions about granting Allotments on custom family lands is undoubtedly a modern legal process. Nonetheless, it is based in traditional processes for decision-making, and the central role of careful consideration by trusted and respected community Members.

The Traditional Decision-Making Process is understood as:

Member identifies issue or concern with the community. [This highlights the role of the individual as a decision maker]

Member may seek the consent of their family or community to have their issue addressed. [This demonstrates the role of family or family heads in the decision-making process]

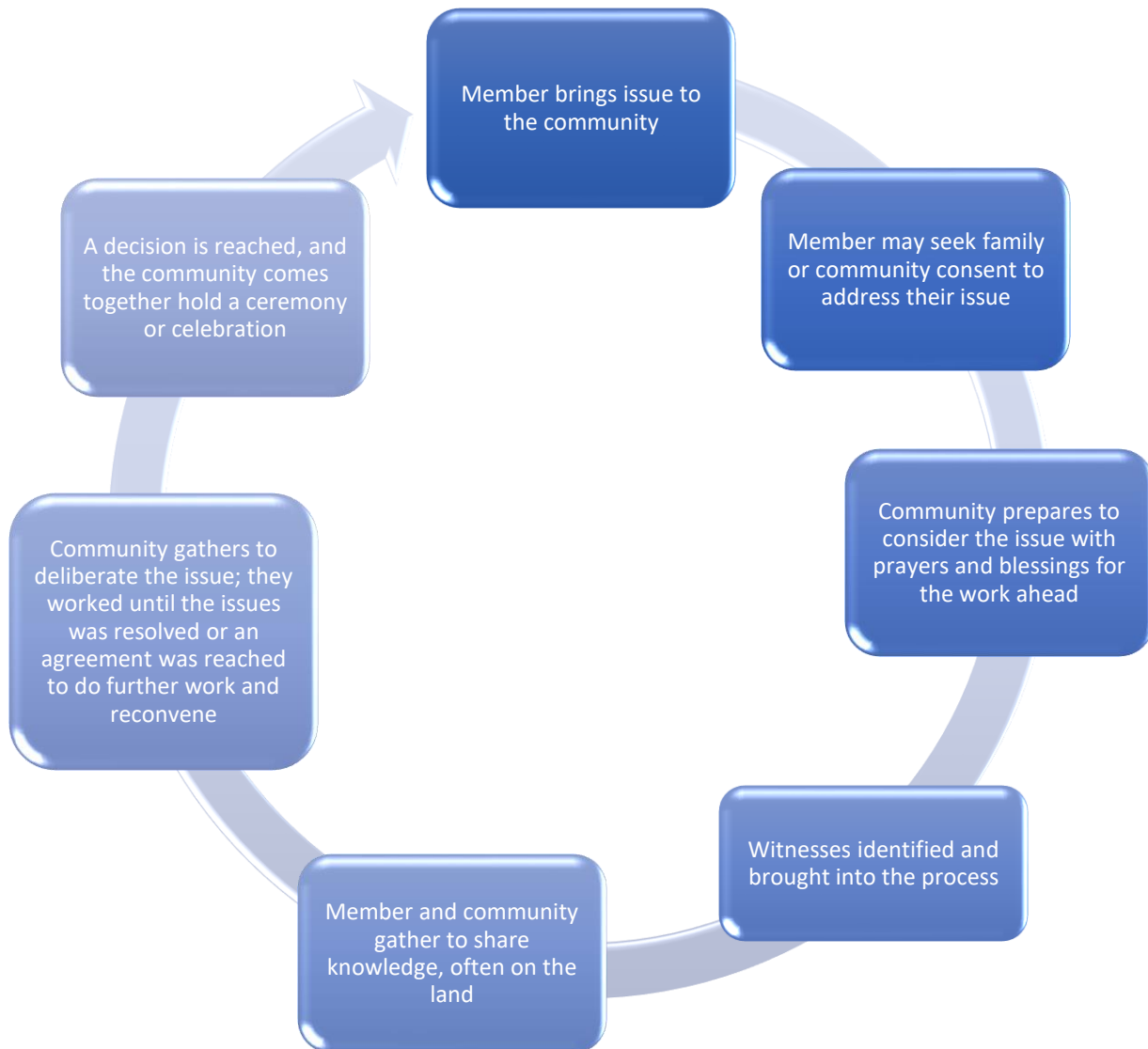
Community prepares to consider the issue or concern (The Nt̓eʔkepmx way to prepare is to prepare your body, heart and mind, or sx^wák^wuk^w). This may also include seeking an elder to say a prayer or bless the work ahead. [Role of elders or ceremonial knowledge holders to begin the work in a good way]

Witnesses are identified and brought into the process. [Role of the community as witnesses to the process]

Member and community gather and share knowledge (We know this as “k’wen’e’s”). Traditionally this involved going out onto the land to understand the issue. Chief and Council and Knowledge Keepers might assist in this work. [Role of Leaders and Advisors]

Community gathers to begin collaborative deliberation making process (our meetings). Traditionally this happened at specific places in the territory. People talk in circle for as long as required, until the issue is resolved, or an agreement is reached to come back at a later date to continue discussions. [Involvement of whole community in the process]

When a decision is reached and issue or concern is resolved, the community might hold a ceremony or celebration – share a meal and stories. [Returning back to ceremony]



Communication and Recognition of Custom Family Land Allotment

This proposed section would describe how the community is notified when custom family lands are allotted, and how the community will recognize these Allotments (and the land holders.)

Proposed steps may include:

- When an Allotment for a custom family land has been granted and registered, the Lands Department will share that information with the community (pursuant to Section 7);

- The Allotment will be recognized at the next community meeting that addresses lands issues;
- Members of the newly allotted land will be invited to speak about their land, sharing what they wish with the community;
- Periodically (4x per year/according to our seasonal calendar) we will reflect on the progress we have made together as a community; and
- Recognizing the complexity and challenges of this process, we will look back on our traditional processes to help us move forward together as individuals, families and communities. As in the past, seasonal updates might be opportunities for the community to gather, to share a meal, to visit, to share stories and to reconnect with each other and recognize the work that the community has done together for the future of our families and our community.

APPENDIX "A" – LIST OF DEFINED TERMS

In this Application Guide,

"Allotment" means:

- a) lawful possession of LNIB Land allotted to a Member by the Council and approved by the Minister of what is now Indigenous Services Canada pursuant to section 20(1) of the *Indian Act*,
- b) the Interest of a Member held pursuant to a location ticket issued under section 20(3) of the *Indian Act*, or
- c) equivalent tenure issued under the Land Code;

"BCR" means a band council resolution;

"Certificate of Possession" or **"CP"** means a certificate of possession in respect of LNIB Land issued prior to the coming into force of the Land Code under section 20(2) of the *Indian Act* or a certificate of possession in respect of LNIB Land issued after the coming to force of the Land Code under section 20 of the Land Code as evidence of an Allotment;

"Council" means the Chief and Councillors of LNIB or any successor elected government of LNIB;

"Custom Family Lands Resolution Committee" means the body established under section 3 of Schedule 2 of the *LNIB Allotment and Custom Family Lands Law*, which will be comprised of Members and will consider evidence of custom family land holdings;

"Easement" means a non-exclusive interest in LNIB Land granted under the Land Code or, prior to the date of the Land Code, under the *Indian Act*, giving one person (the grantee) the right to use the land of another (the grantor) for an easement or a right of way, or to provide utility or other services to the land of the grantor or other lands, and

- a) is limited only to such interest as is necessary to give effect to the easement granted, and
- b) despite any common law rule to the contrary, does not require that there be a dominant and a servient tenement;

"Interest" means an interest in LNIB Land, and includes an Allotment, Leasehold, and Easement, but for greater certainty does not include title to the land;

"LNIB" means the Lower Nicola Indian Band;

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

"LNIB Land" means any portion of a reserve of LNIB that is subject to this Land Code;

"Land Code" means the *Lower Nicola Indian Band Land Code*;

“Lands Management Advisory Committee” means the Lands Management Advisory Committee established under the Land Code;

“Leasehold” means an Interest in LNIB Land granted under the Land Code or, prior to the date the Land Code comes into force, under the *Indian Act*, including a Sub-Lease, giving a Person the exclusive right of use and possession of the lands, upon agreed conditions, for a specified time, calculated by including any renewal or extension period;

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

“Person” means an individual, corporation, body corporate, partnership, joint venture, association, trust, or unincorporated organization of any trustee, executor, administrator, or other legal representative;

“Sub-Lease” means a Lease executed by a lessee in LNIB Land to a third person, conveying the same interest that the lessee enjoys in all or a portion of a parcel, but for a shorter term than that which the lessee holds.