

Upper Nicola Band

**CULTURAL HERITAGE RESOURCES POLICY**

April 27, 2006

Accepted in Principle April 25, 2006

Moved: Councillor David Coutlee  
Seconded: Councillor Charleen Alexander

Ratified September 11, 2006

UNB Sux<sup>w</sup>txtEm Committee

# UPPER NICOLA BAND CULTURAL HERITAGE RESOURCES POLICY

## UPPER NICOLA BAND MISSION STATEMENT

The people of the Upper Nicola Band, in unity and respect for our traditional values, are creating an environment that promotes a higher quality of life for all, through responsibility, accountability, social health, education, and economic development.

### 1.0 UPPER NICOLA BAND CULTURAL HERITAGE PRINCIPLES

The Upper Nicola Band affirms our aboriginal title and rights, as unconquered Aboriginal Peoples of this land, as the basis for the protection and preservation of our cultural heritage resources. Upper Nicola Band's aboriginal title as recognized and affirmed in Section 35 of the *Canada Constitution Act*, is a right to the land itself and encompasses the right to exclusive use and occupation of the land.

As guardians of our traditional territory, Upper Nicola Band has the right to control and make decisions about the development, transport, study, management, use or sale of our cultural heritage resources; and control the dissemination of our knowledge.

The Upper Nicola Band will exercise jurisdiction and stewardship over **all** of our cultural heritage resources located within our asserted territory. They include traditional use areas, areas of historical significance, sacred and spiritual sites, archaeological sites, and cultural materials.

We further assert that *in situ* conservation is the best method to conserve and protect cultural heritage resources, and encourage the use of Indigenous knowledge in the implementation of cultural heritage resource management by all relevant institutions.

The underpinning philosophy of this cultural heritage policy is based on Sux<sup>w</sup>tx̓em and what is best for the land, as well as the fundamental principles stated in:

a) The *Okanagan Declaration* which asserts that we are the unconquered aboriginal people of this land, who have the rights to govern our lands and resources as we see fit, which also applies to our cultural and heritage resources.

b) The *Upper Nicola Band Sux<sup>w</sup>txEm Consultation Policy and Principles* which sets out how the Upper Nicola Band, governments and third parties will fulfill their legal and fiduciary obligations to meaningfully consult with each other in good faith on decisions pertaining to the use and management of lands and resources in the Band's traditional territory.

c) The *Upper Nicola Band Declaration: Exclusive Ownership and Rights to our Cultural, Heritage and Intellectual Property* which asserts our rights to protect and benefit from the use of our traditional knowledge.

The Upper Nicola Band asserts jurisdiction over its traditional territory, both on and off currently registered Indian Act Reserve lands, including former reserves and expropriated lands. For greater clarity, a map of UNB's traditional territory is included in this policy. Where cultural materials and resources have been removed from our territory without the explicit consent of the Band, steps will be taken to repatriate these materials.

## 2.0 CULTURAL HERITAGE RESOURCES POLICY

The Upper Nicola Band is committed to the protection, management and interpretation of its cultural heritage. Protection of our cultural heritage resources is central to our community life and cultural survival. This document outlines the Upper Nicola Band's Cultural Heritage Resources Policy. It includes our philosophy of cultural heritage preservation, outlines the nature of cultural heritage resources that are covered in the policy, and provides a process for the identification, protection and interpretation of these resources.

This policy is also intended to address growing concerns over increasing pressures caused by land and resource developments within Upper Nicola Band's traditional territory, and the effects these will have on archaeological remains, burial sites and traditional hunting and gathering areas – both off and on Upper Nicola Band Indian Reserves.

This Cultural Heritage Resources Policy shall be managed by the Upper Nicola Band Sux<sup>w</sup>txEm Committee, which consists of representatives from the following:

- Upper Nicola Band Chief and Council (appointed)
- Land Claims
- Natural Resources
- Aboriginal Interest and
- Forestry Departments.

## 3.0 DEFINITIONS

**Consultant:** the principal investigator(s) carrying out the work authorized under this policy, usually working on behalf of a proponent.

**Cultural heritage resources:** traditional use areas, areas of historical significance, sacred and spiritual sites, archaeological sites, and cultural materials. These include but are not limited to the following cultural resources:

**Traditional Use Areas:** fishing sites and places, hunting areas and places, plant procurement areas, berry picking places and drying rocks, Culturally Modified Tree sites including pine, birch and many others, medicinal plant gathering area, and food preparation sites.

**Areas of Historical Significance (which may also be archaeological sites):** place name locations, trap-lines, weirs and fish traps, village and camp sites, trails and trail markers, quarries, battle locations, hunting fences and blinds, ochre procurement places, and boundary markers.

**Sacred and Spiritual Sites:** places of mythological/legendary significance, including Coyote transformer sites, cultural landscape features e.g. waterfalls, burial sites and cemeteries, rock cairns and alignments, fasting/vision quest sites, youth spiritual training areas, sweathouse locations.

**NOTE:** some sacred and spiritual sites are of such a sensitive nature that provenance and descriptive information about them is not to be made public.

**Archaeological Sites:** pithouse sites, mat lodge sites, caves and rock shelters, pictographs, petroglyphs, petroforms, cache pits, caves and rock shelters, burial sites, roasting pits and associated features, processing sites and associated features, quarry sites, surface lithic scatters, buried archaeological sites, and earthworks.

**Cultural Materials:** cultural heritage resources also include different types of cultural materials and documents found in libraries, archives, museum collections, universities and other repositories. They include but are not limited to archaeological collections and provenance documentation, ethnographic collections, linguistic collections and documentation, archival documents, photographic collections, genealogical records; archival maps and other graphic materials; soil samples, radiocarbon samples, faunal remains, and other archaeological materials; oral history recordings (audio and visual), notes and related materials; anthropological and other field notes, and archaeological reports.

**Develop lands:** any use of lands which involves an alteration, change, or expansion of an existing use different from that as of the application date of the permit.

**Proponent:** any person, firm, corporation, government or government agency seeking or proposing to develop lands within UNB's traditional territory.

**Sux<sup>w</sup>txtem:** an Upper Nicola term that means sustaining the diversity of species and their habitats in perpetuity for the well-being of future generations. From an Okanagan word for "taking care of" (stewardship).

#### **4.0 PROJECTS COVERED BY THIS POLICY**

This policy shall govern and apply to all projects or works that might impact the cultural heritage of the Upper Nicola Band in the Band's traditional territory. This covers all land developments and resource management projects, including those proposed for rivers and waterways, both off and on Upper Nicola Band Reserve lands. It specifically applies to the following processes:

- Development Referrals
- On Reserve Public Works Developments
- Archaeology Overview Assessments (AOA's)
- Preliminary Field Reconnaissance (PFR)
- Archaeology Inventory Surveys (AIS)
- Archaeological Impact Assessments (AIA)

It shall also apply to any and all research that may be proposed by anthropologists (ethnographers), archaeologists, ethnobotanists, linguists, historians, genealogists, social/cultural geographers or any other type of research where Upper Nicola Band cultural traditions are the subject of study.

All such investigations or research must first obtain the approval of the Sux<sup>w</sup>txtem Committee. Projects will be approved only if the proposed research is authentic and respectful of the Upper Nicola people. The researcher must also be committed to professional standards of work and ethical conduct, and produce high quality research.

#### **5.0 UPPER NICOLA BAND CULTURAL HERITAGE RESOURCES MANAGEMENT PROGRAM**

The Sux<sup>w</sup>txtem Committee shall regulate and manage all cultural resource related projects within Upper Nicola Band traditional territory. It will also be responsible for liaison activities between the Band membership, the Band Council, Band Elders, and all external agencies and governments in matters pertaining to the management of cultural heritage resources.

The cultural heritage resource management mandate of the Committee shall be based on the following objectives:

- to ensure the protection of all cultural heritage sites, areas, cultural landscapes, resources, and objects;

- to gain further knowledge about all aspects of our cultural heritage;
- to increase public awareness, understanding and appreciation of our cultural heritage sites and resources through educational programs and workshops;
- to advise Chief and Council on the preservation and fostering of Upper Nicola Band heritage and culture;
- to undertake other such activities related to our culture and heritage as directed by Chief and Council and Band Elders;
- to encourage and facilitate training of Band members in various aspects of history and cultural heritage resource management

The UNB Cultural Heritage Resources Policy takes precedence over any other heritage policy applicable to our asserted territory. The Band expects the Province of British Columbia to support the enforcement of our policy in areas outside of registered Reserve lands set aside for the Band. The Upper Nicola Band will consult with the Province without prejudice to its asserted rights and jurisdiction over all lands and resources within its traditional territory. We will also take all necessary steps to work with neighbouring First Nations to establish protocol agreements where common jurisdictional claims exist.

The Upper Nicola Band will continue to review and comment on Heritage Conservation Act permit applications in a timely manner. However, the Sux<sup>w</sup>txtEm Committee does not recognize the issuance of blanket permits to external agencies or governments that cover developments proposed by more than one proponent, and which include lands located outside the asserted traditional territory of the Upper Nicola Band or areas of shared interest with other First Nations.

Archaeologists and all other cultural researchers will clearly identify the work they intend to carry out in our lands. This will include proposed investigations in areas of shared interest with other First Nations, and a separate HCA or other required permit application(s) will be necessary.

Regardless of our cooperation in the review process of HCA or other permit applications, UNB Cultural Heritage Investigation Permits must be also taken out with the Upper Nicola Band according to the process outlined below.

The Upper Nicola Band maintains a list of preferred archaeologists and other cultural research professionals to carry out investigations within its territory. All proponents and/or forest licencees operating in UNB's traditional territory must enter into a Service Agreement with the Band. Unless archaeologists and/or other cultural researchers are working under contract to a proponent and/or licensee with a signed Service Agreement, they must enter into a Service Agreement with the Band. The Upper Nicola Band reserves the right to deny permits to archaeologists who do not respect the principles of

the Sux<sup>w</sup>txtem Committee, and do not maintain high professional standards of archaeological work.

## 6.0 PERMIT APPLICATION PROCESS

The Upper Nicola Band recognizes two basic categories of activities for which it considers Cultural Heritage Investigation Permits necessary:

- resource management projects
- academic research

Permits issued by the Upper Nicola Band shall stipulate that all cultural materials found as a result of cultural heritage investigations shall be the property of the Band.

There is a fee for permits, as identified in Section 8.0. Service Agreements, Permits and fees shall be subject to annual review and possible adjustment.

### 6.1 Resource Management Permits

Proponents and/or their consultants will consult with the Upper Nicola Band during the initial planning stages of any development and/or project requiring an Upper Nicola Band Cultural Heritage Investigation Permit, Heritage Conservation Act or other permit. This applies to UNB Cultural Heritage Investigation, Heritage Assessment or any other permits.

Consultation with the Upper Nicola Band will be initiated through a formal written process. This may include letters, fax transmissions, and/or electronic mail.

Phone calls and/or verbal agreements between two or more parties are **not** viewed as legitimate consultation.

The permit applicant will be notified of the Band's cultural resource management procedures. In the case of developments where no prior consultation has taken place, the UNB process will be triggered on receipt of a Heritage Conservation Act permit application forwarded from the Archaeology Branch. The proponent will then be notified of the Band's Cultural Heritage Resources Policy and permitting process.

The Band may alternately notify a proponent of its cultural heritage policy on receipt of a development referral. In the case of forestry licencees or developers who already have Service Agreements with the Upper Nicola Band, this policy will form part of these existing agreements **and the licensee or developer is not required to pay an additional fee beyond those set out in the Service Agreement.**

Prior to the issuance of a UNB Cultural Heritage Investigation Permit, the Sux<sup>w</sup>xtEm Committee will take into account the following:

- the nature and justification of proposed activities,
- the demonstrated willingness to comply with the Upper Nicola Band Cultural Heritage Resources Policy,
- the training, experience and logistical ability of an applicant to successfully complete the proposed activities,
- the willingness of an applicant to incorporate Upper Nicola Band trained technical personnel and/or cultural experts into proposed work plans, budgets and activities, where appropriate.

It is the expectation of the Sux<sup>w</sup>xtEm Committee that the applicant must have

- minimally a Master's degree in archaeology, anthropology or other scientific discipline relevant to investigations outlined in permit application, or a Bachelor's degree with an equivalent combination of post-graduate training and experience;
- experience and competency to carry out the work applied for in the permit;
- compliance with UNB's customary laws and ancestral community collective rights associated with our cultural heritage rights, as well as provincial laws and policies with respect to the research being conducted;
- compliance with the principles of informed consent;
- compliance with all requirements and conditions of previous permits held;
- access to facilities and services of related specialists required to carry out field work, analysis and report preparation;
- ability to arrange the proper curation of recovered cultural materials at a local repository that is acceptable to the Upper Nicola Band;
- for projects requiring excavation, a demonstrated knowledge of the regional archaeology and the ability to produce a report conforming to the British Columbia Archaeological Impact Assessment Guidelines;
- inclusion of a training component for Band members where appropriate.

A permit will not be issued without assurances that a Band member(s) will be employed as part of the project team. The participation of an Elder or cultural expert may also be required as deemed appropriate by the Committee.

As participants in the assessment process, proponents and the consultants who represent them are responsible for:

- abiding by UNB's customary laws and ancestral community collective rights associated with our cultural heritage rights, as well as the agreements, policies and procedures posted by the Ministry of Tourism, Sport and Arts, unless otherwise advised by the Band;
- complying with the terms of service agreements and Cultural Heritage Investigation Permits issued by the Upper Nicola Band;
- implementing assessment and impact management recommendations; and
- reporting the results and recommendations for review to the Sux<sup>w</sup>txtem Committee in a timely manner.

In the case of projects which do not require a permit under the Heritage Conservation Act (such as Archaeological Overview Assessments and Preliminary-Field Reconnaissances), consultation with the Upper Nicola Band is still mandatory. It is incumbent on the proponent and archaeologist or cultural researcher to contact and consult with the Band.

## **6.2 Academic Research Permits**

For academic research permits, the Sux<sup>w</sup>txtem Committee will consider the following criteria or equivalent information as it applies to the person carrying out the work applied for in the permit:

- minimally, a Bachelor's degree in respective discipline, or is an advanced student working under the direction of a supervisor who has previously held a permit,
- general competency to carry out the identified research,
- compliance with UNB's customary laws and ancestral community collective rights associated with our cultural heritage rights, as well as provincial laws and policies with respect to the research being conducted;
- compliance with the principle of informed consent,
- compliance with all requirements and conditions of previous permits held,
- in the case of archaeological research, the ability to arrange the proper curation of recovered cultural materials at a local repository that is acceptable to the Upper Nicola Band,
- inclusion of a training component for Band members where appropriate.

As a condition of the issuance of a research permit, the researcher must also respect and acknowledge the Upper Nicola Band's intellectual property rights as set out in UNB's *Declaration of Exclusive Ownership and Rights to Our Cultural, Heritage and Intellectual Property* (2001). The use of any intellectual property belonging to UNB by a researcher must first be approved by the UNB, and specific reference to the source of information must be made in any public document.

Application to access Traditional Ecological Knowledge for any purpose must be made to the Upper Nicola Band in writing. Included should be a statement concerning how the information is to be used. Should this be for publication purposes, then the UNB will reserve the right to review the material prior to publication to ensure that TEK data are being employed in a manner consistent with the perspective of our Elders and with agreement in the UNB Cultural Heritage Investigation Permit.

### **6.3 Review Procedures**

Permits will be issued to an archaeologist or academic researcher on behalf of the proponent by the Sux<sup>w</sup>tx̓em Committee. Upon receipt of an application for a Cultural Heritage Investigation Permit, the following procedures will normally be undertaken:

- the application will be reviewed for completeness; if deficiencies are identified, it will be returned for additional information from the applicant;
- the Committee may request comments from Chief and Council and/or the community membership, depending on the nature and sensitivity of the project; normally this will be carried out within 15-30 days of receipt of the application;
- the Committee will provide the applicant with written comments identifying community concerns over the study, as raised by community Elders, Chief and Council; and
- the Committee will make a decision as to permit issuance.

### **6.4 Permit Reporting Procedures**

Data recording procedures shall be consistent with Upper Nicola Band and provincial requirements including the use of archaeological site inventory forms. Any G.I.S. or other applications should be compatible with those employed by the Upper Nicola Band.

The Band reserves the right, as identified in the Service Agreement, to include its own section on the cultural/ethnographic/historical background required in standard archaeology reports.

Submission of a draft report to the Sux<sup>w</sup>tx̓em Committee for review is expected prior to submission to the Archaeology Branch.

As a condition of the Upper Nicola Band permit system, all researcher/investigators are expected to provide a two-page summary of their work within one month of completion of the investigations. This should be presented in jargon free language, for the purposes of informing the community at large.

## **7.0 PROTOCOL AND RESPECT FOR FOUND HUMAN REMAINS**

In the event that human remains are discovered during the course of archaeological investigations, then the Found Human Remains protocol and policy shall be followed. If a burial(s) is/are identified as aboriginal, then the Upper Nicola Band asserts the right to be involved in the removal and transportation according to our own cultural traditions, and we will determine the final resting place of our ancestor(s).

## 8.0 PERMIT FEES

Research Permit	No charge
Upper Nicola Band Cultural Investigation Permit (for pfrs and other work <b>not</b> requiring an HCA permit)	\$50.00
Upper Nicola Band Cultural Investigation Permit (for other projects requiring an HCA permit)	\$100.00
Archaeologist	\$70/hour
UNB Field Personnel	\$32/hour
Cultural Advisor Field Rate	\$32/hour
Technical Services (office)	\$32/hour
Equipment/vehicles	\$75/day plus \$0.35/km (over 100 km)