

UNION OF BRITISH COLUMBIA INDIAN CHIEFS
FIRST NATIONS HERITAGE PLANNING TOOLKIT





UNION OF BRITISH COLUMBIA INDIAN CHIEFS

First Nations Heritage

Planning Toolkit

PREPARED FOR THE UNION OF BC INDIAN CHIEFS | APRIL 2013

PART 1.

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PART 2.

Preamble

THE UNION OF BC INDIAN CHIEFS (UBCIC) was founded in 1969 by Indigenous Nations in BC to fight against the 1969 White Paper and to protect and defend Aboriginal Title, Aboriginal Rights and Treaty Rights. A UBCIC guiding principle is that our Title and Rights are inherent – a gift and responsibility given by the Creator to our Peoples, together with the laws to carry out these responsibilities. The UBCIC’s mandate is to work towards the implementation, exercise and recognition of our inherent Title, Rights and Treaty Rights and to protect our territories through the exercise and implementation of our own governance, laws and jurisdiction. UBCIC is also dedicated to information sharing and fostering capacity building at the community level. This First Nations Heritage Planning Toolkit is intended to assist First Nations in developing their own cultural heritage management policies.



FIGURE 18: Sunrise over the Laich-Kwil-Tach origin place, courtesy of the Laich-Kwil-Tach Treaty Society



FIGURE 1: Remnant fish trap, Tuna River, courtesy of the Laich-Kwil-Tach Treaty Society

PART 3.

A Note From The Toolkit Developers

SINCE DELGAMUUKW, AND FOLLOWING THE HAIDA and Taku cases, and as part of the legal requirement for government to consult First Nations, First Nations have been inundated with referrals. These referrals address all kinds of proposed developments that have the potential to impact Aboriginal Title and Rights. A common referral is from the provincial Archaeology Branch regarding First Nations Heritage. Sadly, more often than not, the referral is received because the site is in danger of being altered, damaged or destroyed by development. While the Province has a legal obligation to insist that archaeological information be collected before that happens, First Nations have pressed for greater involvement in decision making around the activities that may impact our heritage sites.

In 2007, the Joint Working Group on First Nations Heritage Conservation (JWG) was formed by the First Nations Leadership Council (elected representatives from the UBCIC, First Nations Summit and BC Assembly of First Nations) and the provincial Government. Its mandate is to explore options and develop recommendations to improve the protection, management and conservation of First Nations cultural and heritage sites. The Leadership Council representatives also engaged with the Province, and more specifically, with BC's Archaeology Branch, in an attempt to negotiate a greater role for First Nations in the protection, management and decision making processes over their heritage sites.

In addition to government negotiations, the JWG believes that is important to work with First Nations communities to build heritage management capacity. Further, the First Nations Heritage Action Plan, developed by First Nations in 2010 and endorsed by the First Nations Summit, Union of BC Indian Chiefs, and BC Assembly of First Nations in 2011/12, identifies a capacity gap in the development of tools and support systems to assist First Nations in exercising management and jurisdiction over their cultural heritage resources.

With this in mind, the UBCIC applied for and obtained BC Capacity Initiative funding to develop this toolkit. The toolkit is intended to support First Nations in the development of heritage related capacity and their own heritage conservation plans or policies. Specifically, it will assist First Nations by providing information helpful in developing a heritage policy, responding to development related referrals associated with heritage, and becoming proactive in the management of their heritage sites. This toolkit is meant to work within existing government processes, but we hope that it will also assist First Nations in developing capacity that will eventually lead to a greater and more meaningful role in heritage management. The toolkit, however, is not meant as legal advice, but as a guide and reference. If there are legal questions or issues, First Nations should seek legal advice from their lawyers.

PART 4.

Acknowledgements

THIS TOOLKIT WAS DEVELOPED IN COLLABORATION with many people and we are most grateful for their assistance. First and foremost, we would like to acknowledge the First Nations of British Columbia whose perseverance in working toward greater involvement in heritage management has led to the development of this toolkit. We hope that they find it useful.

We would also like to thank the three communities and organizations that were part of the pilot project to implement the draft toolkit: the Fort Nelson First Nation, Esh-kn-am Cultural Resources Management Services and the Musgamagw Dzawda'enuxw Tribal Council. Their resource management staff and Elders reviewed the toolkit and provided valuable feedback. We would like to specifically acknowledge Lana Lowe, Jennifer Coupe, Katherine Wolfenden, Cynthia Burke, Marilyn Norby, Dawn Nicolson, Midori Nicolson, Julie McIntyre-Smith, Melissa Willie, Brenda Aljam, Mary Sandy and Bernice Garcia.

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Finally, thank you to the BC Capacity Initiative for funding this project and to the Laich-Kwil-Tach Treaty Society who gave permission to share many of the photographs you see in the toolkit.

Heritage sites are a vital part of our First Nations communities.



FIGURE 3: Petroglyph, Topaze Harbour, courtesy of the Laich-Kwil-Tach Treaty Society

PART 5.

Introduction

UNDER THE CURRENT PROVINCIAL HERITAGE MANAGEMENT process, the role for First Nations is seen by many as too limited, and as a result, heritage and heritage protection are often sources of conflict between First Nations, government and developers. For First Nations, heritage sites include many places such as archaeological sites, traditional use sites, spiritual sites, transformer sites, burial sites, caves, etc. Heritage sites may also include landscapes and waterscapes associated with ancestors and/or immortal beings. For the Province, heritage sites are defined by the *Heritage Conservation Act (HCA)*. This is the provincial legislation or law that manages heritage sites. Within the Act “heritage site” means land “that has heritage value” to a community or First Nation (British Columbia 1996). While the *HCA* appears expansive, in practice a more narrow range of sites receive provincial priority or protection.

Heritage sites are a vital part of our First Nations communities and we have an inherent right to manage, protect and use these places. They are significant to our history and culture and they are important to our future as our identity is inherently connected to them. Our heritage sites are places that were important to and used by our ancestors and we must work to protect them and use them in a manner that respects and honours our traditions, values and laws.

Our challenge is that the government and developers often have different values and plans for the lands upon which our heritage sites sit. This is complicated by the fact that our heritage sites are frequently located on valuable and desirable lands, which can become slated for development or resource extraction. As we work to protect our heritage sites, these competing values can be problematic. For example, the values placed on archaeological sites by the Ministry of Forests in the “British Columbia Archaeological Resource Management Handbook” reveal the difference in valuing heritage sites:

“Archaeological sites are valuable provincial resources, as are mineral deposits, arable land, forests, fish and wildlife. In addition to their scientific and public value, archaeological sites may also have economic value to British Columbia’s recreation and tourism industries. The protection of significant archaeological sites so that their intrinsic values may be realized is important. However, the use of land for this purpose must often be compared with other viable uses the land base is capable of supporting.

“The role of the Archaeology Branch is *not to prohibit or impede land use and development, but rather to assist the development industry, the province, regional authorities, and municipalities in making decisions which will ensure rational land use and development.*” (British Columbia n.d., italics added)

These values, and the desire to “assist the development industry,” are in stark contrast to how First Nations value heritage sites.

Our long-term goal as First Nations is to have our governance and management authority over all our heritage sites widely recognized and respected. However, as we continue to work toward that end, we are currently in a situation in which we must respond to development proposals in our territories, many of which can impact or destroy our heritage sites.

For these reasons, this toolkit has a dual purpose. On the one hand, it includes information and templates to assist First Nations in developing a heritage policy that can be useful now and in the future. On the other hand, it includes information and templates to help First Nations navigate the current heritage referral process. It is designed to provide readers direct answers to common questions about the current permitting process, the exercise of our own management systems, and about heritage management in general.

The toolkit begins with a brief discussion of the *Heritage Conservation Act (HCA)* and the provincial processes and opportunities that potentially exist within the *HCA*, including Section 4 agreements. This is further discussed in Part 12 of the toolkit. Following a brief discussion of the legislation, a section on heritage policy development is included to assist in the development of heritage plans that First Nations might choose to implement. A template is included in Part 17.7.

The toolkit also provides background information on the archaeological permitting system and archaeological process within British Columbia. To provide useful materials that a First Nation can use when responding to archaeological permit applications, Part 10 offers background information and the steps to follow when responding to an archaeological permit referral. Template letters are provided in the Appendices to assist your First Nation in developing its own response process.

In recognizing the limitations of the *HCA* in protecting heritage sites, this toolkit also provides an outline of other provincial policy and legislative mechanisms that are available. Although details that would elaborate on how to implement these other options are beyond the scope of this toolkit, information regarding how some of these other protection options may prove valuable in certain circumstances, especially where the provincial application of the *Heritage Conservation Act* falls short, is provided.

The Appendices contain website links, Archaeology Branch contact information, and templates for letters and policies for First Nations. These are also available on the UBCIC website in digital form to make them easier to use.

We hope that First Nations will use these resources to develop their own heritage management protocols, plans, and policies, and that the outcome will lead to a greater overall involvement by First Nations in heritage management within the province.



FIGURE 4: Pictograph, Fredericks Arm, courtesy of the Laich-Kwil-Tach Treaty Society

PART 6.

The Heritage Conservation Act

What is the Heritage Conservation Act?

The *Heritage Conservation Act (HCA)* is provincial legislation that seeks to protect heritage sites in British Columbia. According to the *HCA*, a heritage site is land “that has heritage value to British Columbia, a community or an aboriginal people” (British Columbia 1996). These sites are protected on both public and private lands and at the very least, include graves, shipwrecks, plane wrecks, First Nations rock art sites, and sites with physical evidence that predates 1846. It also includes other sites that have been designated protected by the provincial government.

In British Columbia, as per the *HCA*, a heritage site can only be altered or destroyed under permit from the government. The provincial Archaeology Branch is responsible for issuing these permits. Although most permits are issued as part of the provincial process of site protection or site mitigation during development, permits are also issued for archaeological research in which no development is intended. Heritage sites are protected under the *Act*; as such the *Act* provides substantial penalties for unauthorized (or unpermitted) destruction or disturbance of heritage sites, including imprisonment for up to two years and fines of up to \$1,000,000.

How did the Heritage Conservation Act come to be?

The *HCA* is the latest legislation in almost 150 years of heritage legislation in British Columbia. The first heritage legislation in the province was the *Indian Graves Ordinance Act* enacted in 1865. This was followed by the *Indian Graves Ordinance* (1867), *Historic Objects Preservation Act* (1925), the *Archaeological and Historic Sites Protection Act* (1960 and 1977), and finally by the *Heritage Conservation Act* (1979 and revised 1996). Each of these acts and ordinances provided heritage protection but each had limited effect. For example, although the 1867 *Ordinance* provided for a fine of up to \$100, numerous First Nations graves were robbed or destroyed.

How does the Province currently define a heritage site?

ALTHOUGH THE *HCA* PROVIDES SUBSTANTIAL FINES and seems to include a broad definition of “heritage site,” First Nations often face challenges in working with developers, companies and the Archaeology Branch. This is usually due to differences in valuing heritage sites, and to differences in interpreting the *HCA* and its resulting administration by the Archaeology Branch. For example, the provincial Archaeology Branch sees heritage as archaeological; therefore a site that does not have a physical or archaeological expression, or human alteration of the landscape, is usually not recognized as a provincial



FIGURE 5: Fish trap stake, Quadra Island, courtesy of the Laich-Kwil-Tach Treaty Society

heritage site. This has made it virtually impossible for First Nations to rely on this legislation to help protect our spiritual, sacred and traditional use sites – all of which frequently have little physical or archaeological evidence. Further, this viewpoint stands in opposition to the fact that sites may be significant to First Nations because they *do not* have alterations.

1846 is used as the date for protection because the courts have determined that Britain asserted sovereignty (through the Oregon Treaty) over what is now British Columbia, in 1846.

Another concern with the Archaeology Branch's interpretation of the Act relates to dates. Section 13(2)(d) states that a site that pre-dates 1846 is protected. Although the date is not part of the definition of "heritage site" within the Act, and although Section 13(2)(a) says simply that heritage sites are protected, the Archaeology Branch's interpretation of 13(2)(d) is that a First Nations heritage site may be protected under the Act if it predates 1846 and has physical evidence

of past use. If it is not pre-1846, Archaeology Branch policy does not allow for automatic protection. This is problematic for resource gathering sites like culturally modified trees, which may have been utilized after 1846. Many First Nations feel that heritage sites of ongoing significance deserve the same automatic protections offered archaeological sites. These would include spiritual sites, which may not have a physical expression. First Nations heritage sites that postdate 1846 ("historic sites") may, however, be protected if they are determined to have significance in the history of the province or Canada (e.g. grease trails). Additionally, there is some indication that the Archaeology Branch may eventually include post-1846 culturally modified trees (CMTs) in its registry (British Columbia 2001).

How are Heritage Site Decisions Made?

CURRENTLY, THE GOVERNMENT SEES THE ROLE of First Nations in heritage management as consultative but many First Nations seek a greater role in this process. A key goal for the JWG has been to explore possibilities for a greater First Nations role in provincial heritage management decision making. One area of discussion is Section 4 of the *HCA*. This section allows the provincial minister to enter into agreements with First Nations with respect to the conservation and protection of heritage sites and objects. These agreements can include a list of heritage sites of interest, circumstances for permitting, and provisions for delegating or assigning decision making to a First Nation.

To date, the provincial government has not entered into Section 4 agreements with First Nations (see Part 12). For this reason, this toolkit addresses the permitting and archaeological processes as they exist today, as well as the development of First Nations heritage policies. We hope that this information will assist First Nations in developing processes and policies to assist them in today's world of archaeological referrals, but which will also build capacity and empower First Nations to work toward greater management roles. Our goal is consistent with the recognition of our inherent rights with respect to our heritage, in that we seek to achieve greater recognition through developing these processes and policies. We also suggest asserting a greater management role with industry, developers and archaeologists. By insisting that the people within the world of archaeology work with us, we can better assert our rights over our heritage sites.

PART 7.

Heritage Policy Development

IN MANY OF OUR TERRITORIES, WE experience regular and ongoing archaeological studies. Often these are conducted by industry during their planning processes. These studies are important not only for supporting our Aboriginal Rights and Title, but they are also one avenue we have for input into development decisions. For these reasons it is important to respond to heritage referrals and take part in heritage and archeological studies.

As First Nations demand greater involvement in heritage management and decision making, many will find it useful to develop a heritage policy. Having a heritage policy is a proactive step. It can be used to inform government, industry, developers, archaeologists and researchers of your values and policies before any heritage issues arise. A heritage policy outlines your concerns, expectations and processes so that these can be built into development or research proposals that are planned for your territories. Through this policy, you can define your view of heritage and make clear statements regarding your ongoing connection and responsibility to your history and lands. With a heritage policy in place, development and research proposals can take into account your concerns and expectations before proposals arrive in your office. Making these values and processes clear can minimize conflict, is a powerful assertion of First Nations governance, and can facilitate collaborative approaches to research and development proposals. It is recommended that a policy be developed in close consultation with Elders, leadership and community members so that it truly reflects the values and priorities of your First Nation.

What should our heritage policy include?

- A preamble that includes information about your First Nation, your territory, and your responsibility to manage heritage. This may include statements of ancestral stories which make clear the connection of the people to the territory;
- A map of your territory;
- The purpose of the policy;
- Process for heritage research;
- Process for heritage management in the face of development;
- Your policy on ancestral remains;
- Your policy on unexpected archaeological finds;
- Your policy on cooperation or collaboration with neighbouring First Nations who share an interest (see below);
- An archaeological fieldwork policy;
- Artifact collection and storage policy;
- Expectations for archaeologists who are welcome to work in your territory; and
- Costs that might be incurred by the proponent.

A sample Heritage Policy template is provided in Part 16.7.

The last item, costs, is important to include in the policy. Most First Nations require that at least one representative from their First Nation be present for any archaeological work that is conducted within their territory. If ancestral remains are uncovered there may be special costs related to the respectful handling and/or reburial of the remains.

Some First Nations also have an internal permitting system that may require a permit fee. Information about these processes and their associated costs should be presented to the archaeologist and the proponent as early as possible. A heritage policy is an ideal tool to facilitate these discussions and no work should be undertaken before these discussions are complete. Ideally, the archaeologist should contact the First Nation while developing the project, drafting the budget and writing the Archaeology Branch permit application in order to include these requirements and costs into their overall plan. However, this does not always happen, so your First Nation can be proactive and insure that all archaeologists who work in your territory have a copy of your policy.

First Nation to First Nation Relations in Heritage Management

Another important part of a First Nation's heritage policy is a guideline for how to work with First Nations neighbours who share an interest in a heritage site or management decision. Recognizing the shared interests of neighbouring First Nations can promote positive and productive relationships and can result in effective and inclusive heritage management which is likely to result in a strengthened role in heritage management decisions. Such steps may include developing agreements such as memorandums of understanding or peace and friendship agreements.

First Nations Archaeological Fieldwork Process

Your heritage policy should include your expectations regarding archaeological fieldwork or research that is conducted in your territory. This might include:

- Required steps to complete archaeological work and assessments in your territory (include here if your First Nation has a permitting system in place);
- Required field crew representation;
- Field crew costs;
- How information and reports will be shared, including clear statements of ownership of information derived from the archaeological work;
- Your policy on ancestral remains, especially how they must be treated when they are discovered and who should be contacted within the First Nation administration; and
- Where archaeological materials will be deposited.

Implementing Your Heritage Policy

Developing your heritage policy is an important step in asserting greater management authority over your heritage. Following its development, it must then be implemented. It is important to make your policy widely available. This might include placing a link to the policy on your website, sending it to known industry contacts, developers and archaeologists who work in your territory, or making printed copies available to those who ask. It might also be useful to distribute it to major government agencies. Regardless of its availability and distribution, there will likely be challenges in the initial implementation of your heritage policy. Some important points to remember include:

- Most archaeologists support working with First Nations;
- The cooperation of the land owner, industry, or developer to abide by your heritage policy is dependent on their goodwill and the relationship you can build with them. Provincial legislation does not support imposing First Nations policies if the proponent disagrees;



- It is important to have an ongoing working relationship with the archaeologists who work in your territory and to inform any new archaeologists or companies of your heritage policy (see Part 17.4 for a template letter); and
- Not all proposed archaeological work is for development purposes. On some occasions archaeological investigations are carried out by university teams in cooperation with First Nations. Often the university will require an ethics approval. Your heritage policy will be helpful in this process, which can help insure that your policy is implemented for the project.



FIGURE 6: Archaeological field school on Vancouver Island, courtesy of the Laich-Kwil-Tach Treaty Society

PART 8.

Referrals and the BC Archaeology Branch Process

ANY ALTERATION OR DESTRUCTION OF AN archaeological site in British Columbia must be done under permit issued by the BC Archaeology Branch. Part 9 discusses the most common permits issued by the Archaeology Branch; this Part focuses on other details of that process, such as who may apply for permits, what kind of training is necessary, and how First Nations may access information on archaeological sites. It is intended to assist you in reviewing the most common kind of permit applications and permit reports that come to your office through the provincial referral process.

The referral process offers an important moment for your First Nation to assert your rights in the management of your heritage. By responding to heritage referrals you can have valuable input into the overall study and ensure that your field crew is involved in the fieldwork.

Who Can Apply for Permits?

The Archaeology Branch has a policy regarding who can apply for a permit. Though staff at the Archaeology Branch conducts this review, it is important for a First Nation to know the required minimum qualifications.

For resource management purposes, an applicant must minimally have:

- A master's degree in archaeology or anthropology with an archaeological focus, or a bachelor's degree with post-graduate training and experience;
- Approximately 1 year experience in archaeological resource management (including 40 days supervising archaeological impact assessments);
- Approximately 60 days experience in archaeological excavation;
- Approximately 20 days experience supervising site alteration projects; and
- Access to all required support services, including a place to house artifacts ("repository").

For academic research permits, the applicant must minimally have:

- A bachelor's degree in archaeology or anthropology with an archaeological focus, or be a student in 3rd or 4th year working under a supervisor who has held a permit;
- Approximately 20 days experience conducting archaeological site survey;
- Approximately 60 days experience in archaeological excavation;
- Approximately 20 days experience supervising excavations; and
- Access to all required support services, including a place to house artifacts.



FIGURE 7: In the field, courtesy of Baseline Archaeological Services.

What if our First Nation chooses not to work with a particular archaeologist?

Occasionally a First Nation is unhappy with a particular archaeologist and chooses to prohibit his/her work within their territory. This is a decision that should not be made lightly as it can have serious consequences on an individual's career. At the heart of a decision like this is respect and how it is shown by that individual toward your First Nation and your heritage sites. This decision must be based on facts of methodology or lack of collaboration with your First Nation. For example, there may be evidence of the individual not following the terms of your heritage policy and their Archaeology Branch permits, systematically missing sites that are clearly there, making repeated recommendations that have serious adverse impacts on your heritage sites, or being disrespectful to your First Nation, your members, your field crew, or your ancestral remains. In these kinds of serious cases a First Nation may consider prohibiting an archaeologist from working in their territory. If it is determined that this is the best course of action, the archaeologist should be notified and you may wish to give the archaeologist a chance to present his or her view of the situation. You may also choose to place a time limit on the prohibition (e.g. 1 year), or allow the person to work in your territory only if there is a second archaeologist present. If the archaeologist is a member of the British Columbia Association of Professional Archaeologists (BCAPA), facts

may be presented there. The BCAPA has Standards of Practice, including a Code of Ethics and a Code of Conduct, that its members are expected to follow (BCAPA 1995). However, not all archaeologists are members. The Canadian Archaeological Association and the World Archaeological Congress also have ethics statements.

What if we have restricted an archaeologist and we receive a permit application for him/her?

If a permit application is received from the Archaeology Branch for a person you have restricted, you should:

- Contact the developer to request cooperation in the matter and to suggest options;
- Inform the Archaeology Branch (recognize, however, that the *HCA* does not allow them to prohibit an archaeologist from working in your territory and that they are not in a position to enforce your First Nation's decision); and
- Provide notice to the archaeologist to again state your decision.

Although currently there is no legal framework to support or enforce your decision, industry and developers who are hiring the archaeologists may have incentive to respect your First Nation's decisions and contract archaeologists approved by your First Nation.

Can our First Nation send representatives into the field with the archaeologist?

- Yes, your First Nation may inform the developer and archaeologist about your policy to include your workers in any fieldwork. If there is a consultation agreement, include this as a provision.
- It can be a good strategy to adopt this as part of your heritage policy – this benefits the First Nation by keeping the knowledge within the community, provides a valuable and culturally relevant experience for community members, and may respect cultural traditions, including conducting appropriate spiritual practices during archaeological work.
- The BC Association of Professional Archaeologists (BCAPA) has a bylaw (18) (BCAPA 2013) that encourages partnerships with First Nations, requires the archaeologist to inform a First Nation of planned work, and to respect a First Nation's protocols. The BCAPA encourages partnership unless it would contravene a contractual agreement with a client or if the First Nation's policy contravenes the Heritage Act.
- It is important to note that the Archaeology Branch will not agree to make a First Nation field crew mandatory on any permit application because the *HCA* does not have a provision for this. Their position is that it is at the discretion of the applicant's client.

Ensure archaeologists and industry know and understand your field crew policy.

For these reasons First Nations should:

- Clearly state their field crew policy to archaeologists, industry and developers (a template sample of a policy is included in Part 17.7);

- Build relationships with industry so they are willing to work with you in the archaeological process; and
- Devise a plan that creates consequences for industry and developers who chose not to follow your policies and decisions.

What happens when an archaeological site is identified?

The Archaeology Branch has developed guidelines that must be followed when working under a permit. It is important to note that archaeological sites can be recorded and registered at the Archaeology Branch without a permit, as long as there is no digging or ground-altering activity while recording them.

When work is conducted under permit, the archaeologist must usually:

- Document the location of the site;
- Record the extent or size of the site, including a site map illustrating the landscape of the site and the location of the cultural material;
- Consider the state of the site (whether intact or disturbed);
- Consider the “significance” of the site (for an AIA). Areas of significance include Public, Ethnic, Historic and Economic; and
- Register the site with the Archaeology Branch (the site will become part of the government’s database and the information may be looked up through RAAD- Remote Access Archaeological Database, see below).

These are the minimum steps for all sites that are being recorded. Other steps depend on the plan for the site. For example, the steps taken for a site that will not be disturbed are very different from the steps taken at a site that will be destroyed by development. Information on specific requirements for each permit type can be found on the Branch website at: http://www.for.gov.bc.ca/archaeology/legislation_agreements_policies_guidelines_bulletins/guidelines.htm

How can First Nations access information about archaeological sites?

RAAD (Remote Access to Archaeological Data)

The Archaeology Branch has an online database of all recorded archaeological sites in the province. It is called Remote Access to Archaeological Data (RAAD). RAAD is an easy to use, map based database system that shows site location on a GIS-style map, and has a summary of the information associated with each site. The computer mouse is used to zoom into a region and view the location of recorded archaeological sites and it is possible to view and print site forms from the database to learn more about a particular site.

The Archaeology Branch updates RAAD weekly so that it reflects all the sites that archaeologists entered into the system that week. The Archaeology Branch has a backlog of sites that have yet to be updated in RAAD, but these consist mainly of site updates (meaning the site is already recorded in RAAD but more recent information needs to be added) (Glaum 2013).

The RAAD system is not generally available to the public. First Nations governments, however, are able to obtain access to RAAD through an application process with the Archaeology Branch. The RAAD link in Part 17.1 provides directions on how to get the required government permissions and passwords.

Provincial Archaeology Report Library

All archaeological permit holders in British Columbia are required to submit a report or series of reports to the Archaeology Branch. These reports are held in the library, which is now available online, and First Nations may gain access through the Archaeology Branch (Part 17.1). The online library allows you to search for reports in a number of ways including permit number, permit type, map sheet, title, abstract, author, and Borden number. You can also conduct quick or advanced keyword searches on the full text of all reports in the online library. This can be an impressive and otherwise unavailable source of information about the heritage sites in your territory.

What about ancestral remains?

First Nations ancestral remains outside of cemeteries are not protected in British Columbia in the same way that burial remains in cemeteries are protected (ancestral remains on federal lands such as National Park Reserves, Department of National Defense land or Indian Reserves are an exception). Ancestral remains are sometimes uncovered during land development processes and experience tells us that it is difficult to protect them in a manner that allows them to remain undisturbed in their original burial or funerary place. Before the Archaeology Branch issues permits, it is important for your First Nation to share your policy on ancestral remains with industry, developers and archaeologists. If ancestral remains are uncovered during ground-altering activities at a site (whether under archaeology branch permit or not), the following generally occurs:

- Work in that place must stop immediately and the police and Archaeology Branch must be informed;
- Your First Nation can work collaboratively with the Archaeology Branch to immediately report the find to the local police, who may report it to the Coroner's Office;
- If ground-altering activities were not already being done under an archaeological site alteration permit (i.e., the developer did not know a site was there), one must be obtained before any further ground-altering activity at the site can proceed;
- The Archaeology Branch will usually allow the remains to be removed under an archaeologist's supervision and under a site alteration permit; and
- The remains can be returned to the First Nation for reburial or will be held in an official repository.

Most First Nations believe that the procedures set by the *HCA* and the Archaeology Branch are grossly inadequate. Most First Nations would rather protect their ancestral remains and leave them undisturbed in their original resting place and all want respectful treatment if ancestral remains are moved. Negotiations with landowners and developers may help but success depends greatly on the individuals involved. There are also a small handful of cases in the province in which the provincial government purchased or set aside the burial lands for future First Nation land settlements. While these are important precedents achieved by concentrated political and legal efforts by individual First Nations, they are not the norm.

In a few cases, the provincial government has purchased or set aside burial lands. For example: Departure Bay (Snuneymuxw); Hatzic Rock (Stó:lō); and Somenoes Creek. (Cowichan).

If your First Nation opposes a development at a funerary site, you will need to have internal discussions and make decisions regarding a strategy with respect to protecting the site. Having

an established, clear and comprehensive heritage policy can facilitate this process. If your First Nation decides that it is best to work with the developer you may want to consider negotiating:

- The relocation of the development to a different area of the property;
- If the remains are to be removed, an area to be set aside on the original burial property to rebury the remains once the development is complete;
- A reburial budget and the payment of these costs by the developer or landowner; and
- Having the landowner agree to and pay for a restrictive covenant on that part of the property in which the ancestral remains are reburied to ensure their protection in the future. (For more information on restrictive covenants see Part 13.13).

A restrictive covenant limits the way a person can use their land.

If considered appropriate, your First Nation may choose to share your policy on ancestral remains with the Archaeology Branch and your local police detachment. Having a relationship with the local police is helpful if/when ancestral remains are found.

PART 9.

HCA Permit Applications and Archaeological Work

THE ARCHAEOLOGY BRANCH CATEGORIZES ARCHAEOLOGICAL WORK within the province and issues permits accordingly. Below is a brief summary of the most common permits that First Nations encounter in the referral process.

What kind of permits does the Provincial Archaeology Branch issue?

1. Heritage Investigation Permit (Section 14 of the *HCA*)
2. Heritage Inspection Permit (Section 14 of the *HCA*)
3. Site Alteration Permit (Section 12 of the *HCA*)

What kind of work can be done with a Heritage Inspection or Investigation Permit?

1. Resource management, including Archaeological Impact Assessment, Archaeological Inventory Survey, and Systematic Data Recovery.
2. Academic research, including Archaeological Inventory Survey and Systematic Data Recovery. Archaeological research, usually lead by a First Nation or a university, also requires a Heritage Investigation or Inspection permit. An archaeological field school falls into this category.

What about when a developer wants to change or destroy an archaeological site?

- If a developer wants to change or destroy an archaeological site he or she can apply for a Site Alteration Permit (SAP) from the Archaeology Branch. This permit will outline what the developer can and cannot do. An Archaeological Impact Assessment is almost always completed before the developer may apply for a Site Alteration Permit.

For resource management and academic research the archaeologist must get a *Heritage Inspection* or *Heritage Investigation Permit*.

To alter a site the archaeologist or developer must get a *Site Alteration Permit*.

Did you know that British Columbia law says that it is illegal for anyone to dig for archaeological materials or to “alter” a site without a permit?



FIGURE 8: Culturally modified tree, photo courtesy of Heather Pratt.

- First Nations should receive a referral if permits to conduct archaeological work within their territory are being considered by the Archaeology Branch. First Nations should also be contacted by the archaeologist who will be doing the work. It is highly recommended that you provide input and direction into the process, which could mean supporting or opposing the work.

Site Alteration Permits are needed to change or destroy an archaeological site.

An example of a “change” might be to dig a water line trench through an old village site.

An example of “destroying” might be when a developer removes all of the archaeological material to make way for a condominium or resort.

Can you ever do archaeological work without a permit from the Archaeology Branch?

- Yes. Non-permitted resource management can include what is called a PFR (Preliminary Field Reconnaissance). This is when the archaeologist (or another experienced person) walks through an area looking for obvious signs of archaeological sites. It is important to note that they cannot dig when doing this, so only sites on the surface will be noted, although potential for subsurface evidence might be noted. There are minimum standards for recording a site during a PFR, including knowing the size and location of the site. This must be confirmed by a field visit, a site description, including site type, content, and its eligibility for protection under the HCA, and a digital shape file of the site (British Columbia 2007a).
- A PFR is often called a “reccy” or “rekky.” If a site is found then the developer and archaeologist will have to do more work but they must first apply for a permit.
- A provincial Archaeology Branch permit is not needed to conduct archaeological work on federal lands, including Indian Reserves, National Park Reserves, and Department of National Defense lands. However, other permits, such as those issued by Parks Canada or by Chief and Council (on reserve land) may be necessary.
- An archaeological inventory survey (AIS) may be done without a permit if it does not include shovel testing in its methodology. An AIS is a survey of a large area to inventory for the presence of archaeological sites. This is different from a PFR, which generally focuses on a smaller area and is generally done as a first step in the development process.

What kind of information is included in a permit application?

- A project description;
- The project scope (goals, where it will be done, for how long, what will be collected, etc.);

- Methodology;
- Information on where the collected material will be deposited (the “repository”);
- Who will be involved in the work; and
- The work schedule.

Do we have to register archaeological sites?

The only time an archaeological site must be registered is when it is recorded under a permit from the Archaeology Branch. If your First Nation is aware of a heritage site or sites but you have concerns about registering it with the Archaeology Branch, you are not under a legal obligation to do so. While there are some confidentiality mechanisms included in the provincial registry system, many parties including municipal governments, regional districts, academics, provincial officials, and others, may request and receive this information. Thus, some believe that registering may make a site vulnerable to public knowledge. For these reasons, some First Nations have chosen not to register if they believe that a site is too sensitive and that secrecy is the best way to protect it from damage. This is the exception; most First Nations have decided to register in hopes that it will provide an opportunity for better management practices. It is important to note that all archaeological sites, registered or not, are protected under the *Heritage Conservation Act*.

When does the First Nation, whose heritage site is in question, have input?

The answer to this question varies. Some First Nations have a policy that archaeologists must work with the First Nation before a permit application is sent to the Archaeology Branch. If your First Nation does not have a policy like this, or the archaeologist has not followed your policy, you will receive the permit application through the provincial referral process.

It is important to note that the Archaeology Branch referral process frequently occurs after other processes such as land use zoning and issuing building permits are underway, by which time developers are already heavily invested in the project. This is especially common in urban development. Ideally, First Nations will develop and implement policies that require heritage consultation as early as possible because the further the proponent proceeds into the development process (and the more money they spend on their plans), the greater the shock and potential for conflict when heritage sites are encountered. For this reason, it can be useful to provide a copy of your heritage policy to local municipalities and regional districts, build relationships with these organizations, and potentially seek agreements or memorandums of understanding with local governments regarding heritage protection and development.

When reviewing an application your First Nation can:

- Make comments on project details like its scope or methodology;
- Address concerns about the archaeologist (does he/she have the proper experience, professionalism and ethical standards to suit your First Nation? Is he or she an archaeologist that your First Nation is willing to work with?);
- Request changes to field times;
- Request a change in the repository (where the materials will be deposited);
- Ensure the applicant and developer have your policy on ancestral remains;

- Ensure a field crew from your First Nation is included on the team (you may need to contact the developer since the developer is paying for the work and the archaeologist may not have control over the decision); and
- Support or oppose the application.

Where can we get information on Archaeology Branch Policies?

The Archaeology Branch website contains the policies, procedures, guidelines, and handbooks for permitted archaeological work in the province. It also issues “bulletins,” usually addressed to archaeologists, to make them aware of any policy or guideline changes. These can be accessed through the Archaeology Branch’s main website at <http://www.for.gov.bc.ca/archaeology/index.htm>. You may find it useful to click on the “First Nations” tab in the column on the left.

9.1. Types of Archaeological Studies and Permit Related Definitions

As you work with archaeologists and the Archaeology Branch, you will need to become familiar with the meaning of the different kinds of archaeological work and the language of archaeology or its “jargon.” The following are common archaeological projects permitted through the Archaeology Branch.

9.1.1. AOA—Archaeological Overview Assessment

What is an AOA?

- An AOA is an archaeological study that finds the archaeological **potential** of an area. It is sometimes called a model or an “armchair” or “desktop” review.
- An AOA can be done on a small property or on large areas (e.g. forest district)
- No permit is required to conduct an AOA so it is sometimes done without the knowledge or involvement of a First Nation.
- An AOA is the first step in the resource management process as an archaeologist considers site potential within a development area.
- In fact, as your First Nation reviews a referral in light of TUS/TEK or other pertinent information, you are conducting an AOA.

AOAs are sometimes called “models,” “modeling,” or “desktop” or “armchair” reviews.

What are AOAs used for?

- Land use planning.
- Industry uses them to flag areas where there may be a higher chance of finding archaeological sites that may affect their resource use or extraction plans.
- Determining the next level of archaeological study that is needed. For example, if the AOA indicates a potential for sites within the study area, an on-the-ground survey or archaeological impact assessment is required.

An AOA can tell you the “potential,” or possibility of finding archaeological sites in a particular area. Newer AOAs usually classify areas as having “low” or “high” potential. Older AOAs also identified “moderate” potential.

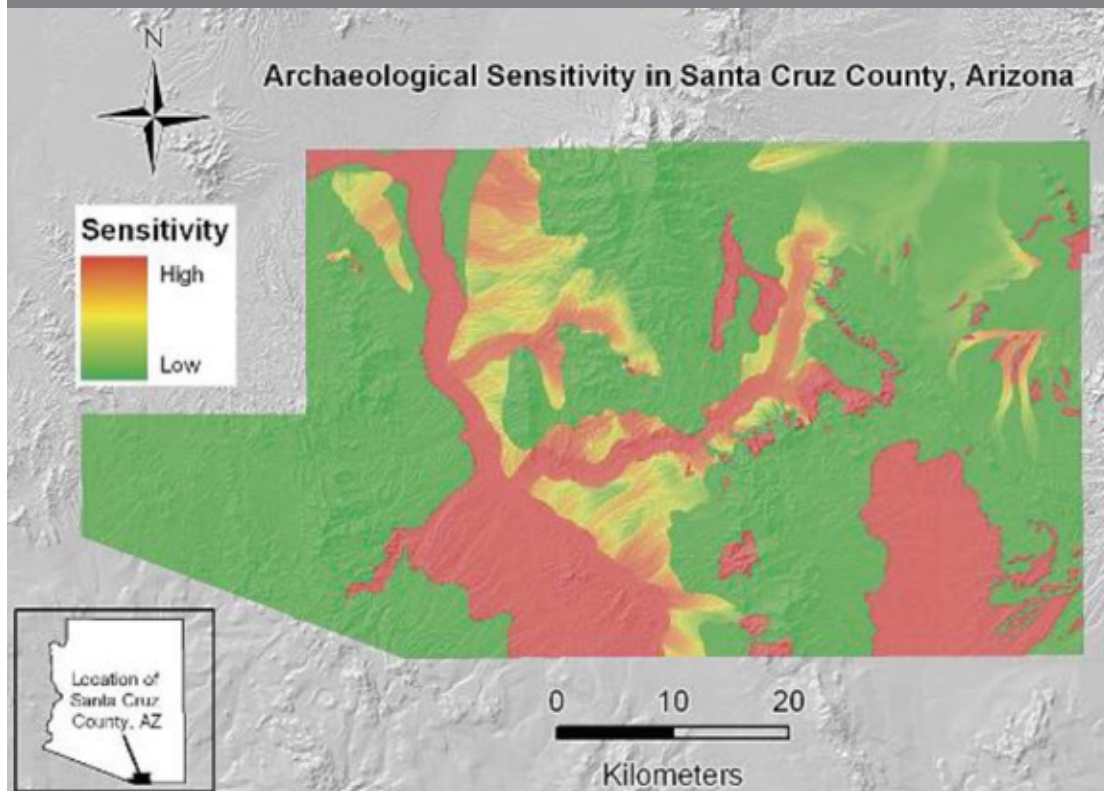


FIGURE 9: Sample of an AOA map, <http://www.esri.com>

What should we be concerned about in AOAs?

Because AOAs are often conducted by industry to assist them in their land use plans, First Nations should be aware of the following:

- AOAs may be undertaken without a permit so the First Nation may not know that one is being conducted;
- The quality of the AOA is limited by the data used to generate the results. If there are few or no previously recorded sites in the region, the resulting information in the AOA will be weaker than if there has been more extensive survey work to locate and record archaeological sites;
- It is important for AOA users to understand that low potential for archaeological sites does not mean that there is no potential. In the past, this was sometimes the assumption, and unfortunately, it remains so for some;
- If choosing to be involved in an AOA, incorporating traditional use information is relatively new. Ensure that you work with an archaeologist who is willing to work with you in this endeavor, and who is willing to keep your TEK/TUS information confidential;

- AOA results are generally included in RAAD, which then gets used by others planning work in that area. A poorly done AOA study can have long lasting and unanticipated impacts on the heritage sites in your territory.

A company wants to do an AOA in our territory. What should I be asking?

- How will the AOA be used and for what purpose?
- How will the use of the AOA improve consultation and communication?
- What role will your First Nation have in the process (for example, you should have an opportunity to review and comment on draft AOA reports and maps. You should also ensure that your input is shared with the Archaeology Branch. Your review can ensure better representation of TUS or TEK information).
- How will the company work with your First Nation to recover costs for your time on the AOA?
- When will your First Nation receive a copy, both digitally and in hardcopy?
- What data sets will be used? The list should include but not be limited to:
 - Location of recorded archaeology sites;
 - Location of fish streams;
 - Location of fresh water sources;
 - Forest cover data
 - Historical land cover data (if there have been large scale changes – e.g. reservoirs);
 - Slope and aspect;
 - Karst topography;
 - High resolution LIDAR;
 - Location of ungulates (i.e. winter ranges, migration corridors); and
 - TUS data (if a your First Nation decides to collaborate on the project)

9.1.2. AIA—Archaeological Impact Assessment

What is an AIA and what is it for?

- An AIA is fieldwork conducted to determine how a proposed development may disturb or alter known or potential archaeological sites.
- An AIA records archaeological sites, including site boundaries, within the study area by subsurface testing (digging) around the archaeological site.
- It is required when a known archaeological site is present or where possible impacts to archaeological resources are identified through a preliminary field reconnaissance (PFR) or an Archaeological Overview Assessment (AOA).
- An AIA makes management recommendations to assist Archaeology Branch staff and developers decide what archaeological steps are required to continue with the development.
- An AIA can assist First Nations with their decision regarding their support or opposition to a development.

An AIA is done on a building development site that is on or close to a known archaeological site. It is also done in a forest cutblock when there are known or suspected culturally modified trees.



Do you need a permit from the Archaeology Branch to do an AIA?

- Yes, an AIA must be conducted under permit from the Archaeology Branch. It also requires that a permit report be submitted to the Archaeology Branch after the work is completed. Your First Nation should receive a copy of that report.

What is a First Nation's role in the AIA process?

- A permit application to conduct an AIA is referred to potentially affected First Nations and you should make comments on the application referral as noted above.
- A First Nation may oppose an AIA application but this does not mean that the Archaeology Branch will not issue the permit.
- You should receive a copy of AIA reports and you have the right to review and comment on the reports (which you should send to the Archaeology Branch and permit holder).

What is a "Blanket Permit"?

An archaeologist who regularly works in a region doing particular kinds of permitted work (e.g. forestry AIAs) can apply for a one year blanket permit. It is important to carefully review the permit application, and ensure that field reports and annual reports are forwarded to your First Nation. Develop relationships with the archaeologist, forest companies, ministries, corporations and other developers who have these ongoing activities as this will increase the likelihood that the archaeology will be transparent and your input can be included in the process before reports are submitted and decisions are made.

9.1.3. SAP—Site Alteration Permit

What is a SAP and when is it issued?

- A site alteration permit is a permit issued by the Archaeology Branch that allows a developer or landowner, in consultation with an archaeologist, to change or destroy an archaeological site.
- A site alteration permit is issued after the Archaeology Branch has decided that all required archaeological studies are complete and that the development cannot avoid the alteration or destruction of the archaeological site.

What does a SAP allow industry or the developer to do?

- The site alteration permit authorizes the removal of archaeological deposits and materials.
- This may include tools, shell, bone, basketry, culturally modified trees and human remains (how removal takes place and what happens to those materials can be discussed with the developer and archaeologist. For example, your First Nation may want to have the CMT or a portion of it delivered to you).

What is a First Nation's role in the SAP process?

- For First Nations, this is often the most problematic of all archaeological permits.
- SAP applications are referred to all potentially affected First Nations.
- Application referrals usually have a 30-day comment period but this can be shorter if the Archaeology Branch sees it as an emergency.
- If your First Nation requires more time to respond to the referral, you can make this request through the Archaeology Branch. It will not be unreasonably denied.
- Your First Nation may also request a shorter comment period if you are applying for a permit and you see it as an emergency (i.e. ancestral remains have been exposed in the roots of a windfall).
- Your First Nation may respond to the application referral using the steps noted in the first part of Part 10.
- Ensure that you inform the developer or archaeologist about your heritage policy, including any First Nations field crew requirements.

An SAP application emergency might be if a person's water is shut off because archaeological material was found while replacing a waterline.

*What if our First Nation opposes the SAP
and the destruction of the archaeological site?*

- Unless the developer is cooperative, it is difficult to stop the destruction of an archaeological site and it may take the support of your entire community.
- Express your opposition and concerns to the developer or company.
- Express your opposition and concerns to the Archaeology Branch and government Ministers.
- Assert political and public pressure.
- Seek allies among archaeologists and anthropologists who understand the importance of the heritage site.
- Work with your community leaders, Elders and citizens to determine an appropriate course of action.
- See Part 10 for more information



FIGURE 10: Phillips Lake Planked tree, courtesy of the Laich-Kwil-Tach Treaty Society, photo by Baseline Archaeological Services



FIGURE 11: MDTC Elders discussing heritage, courtesy of MDTC

PART 10.

How to Respond to Permit Application Referrals

EACH YEAR MANY FIRST NATIONS RECEIVE dozens of permit application referrals for archaeological work within their territories. In many cases, First Nations have developed a system that works well for them. For First Nations who have not yet had an opportunity to develop their own system, the following information and corresponding flow charts are meant as a guide to assist in developing a process.

Before responding to the referral

- Review the application and applicant/developer.
- Consider the traditional use/traditional knowledge available to you.
- Consider treaty implications, economic development plans, land use plans and other relevant plans.
- Consult with Elders and community decisions makers about cultural concerns or other consequences of the work.
- Consider if the archaeological plan (number of field days, methodology, planned crew, where any artifacts will be housed, plan for ancestral remains that might be encountered, etc.) will adequately respect your heritage policy and address your concerns.
- If a site alteration permit is proposed, consider all previous archaeological work, whether or not it is acceptable, if there is more to do, etc.
- Consider the type of development and the extent to which it will impact anything known to be present or what may be found.
- Be prepared to contact the developer directly to initiate discussion.

What is an effective response?

- An effective response will incorporate traditional knowledge.
- Traditional knowledge may be used in various forms (e.g. databases of previously recorded information or new discussion with knowledgeable community members).
- Note that your response and decisions are the result of traditional knowledge (you are not required to include the specific traditional knowledge in the response).
- Ensure you respond within the timeframe, or request additional time, so that your input will be considered in the decision.

What do we do after our community makes a decision and we support the application?

- Ensure the archaeologist and/or developer is aware of and agrees to your heritage policy and field crew requirements.
- Mail, email or fax a letter to the Archaeology Branch project officer who is noted on the permit application referral (a template response letter is included in Part 17.3)

*What do we do after our community makes a decision and we **oppose** the application?*

- Determine why your First Nation opposes the application, as this will affect the kind of action taken (i.e. opposition because you oppose the development, you are unhappy with the previous archaeological work, inadequate consultation, etc.).
- Initiate further discussion with the appropriate government body, organization or individual.
- If you oppose the archaeological work, discuss it with the Archaeology Branch, archaeologist, and developer – a resolution may be found.
- If you oppose the overall project and/or development (not just the archaeological component), inform the developer, Archaeology Branch and appropriate government Ministers.
- There are different approaches your First Nation can take to oppose any particular project/development but it may take community support.
- Continue to communicate.
- You may need to consider options like negotiation, legal action, impact benefit agreements, political intervention, land purchases or exchanges, direct action, etc.
- Talk to other First Nations who have had success in opposing a development. There have been many diverse and successful approaches.

Can We Develop a First Nation Heritage Permitting Process?

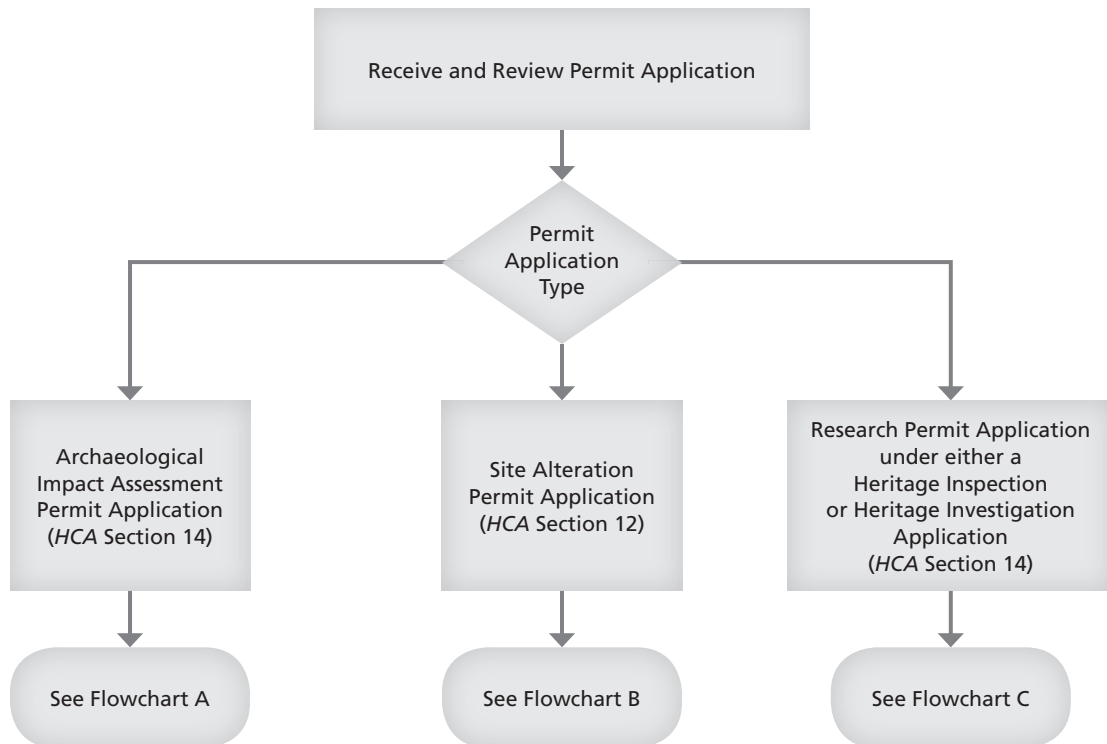
Some First Nations have chosen to develop a permitting process by which an applicant must also apply and obtain a First Nation's permit before being welcome to conduct fieldwork in their territory. The Stó:lō Nation, for instance, has successfully operated a permitting process for over two decades and nearly everyone conducting archaeological work within their territories respects and complies with it. Often there is a fee structure included to help offset First Nation costs. A template application is included in the heritage policy template in Part 17.7.



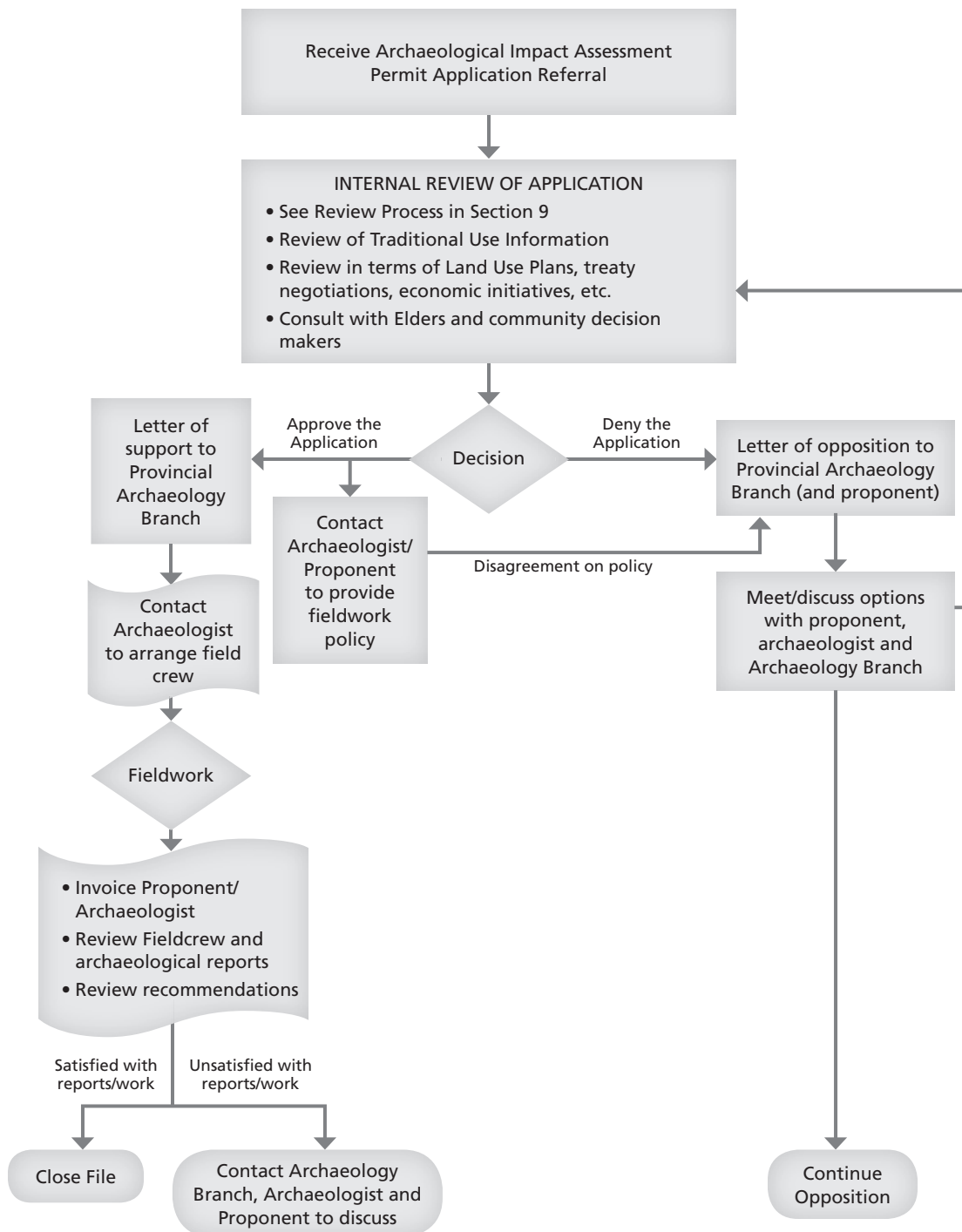
FIGURE 13: Pictograph, Heydon Lake, courtesy of the Laich-Kwil-Tach Treaty Society

If your First Nation decides to develop this process it is important to communicate it to applicants. A heritage policy can facilitate communication. It is also important that potential applicants (i.e. archaeologists or consulting firms who work in your territory regularly) are aware of the process. It might be useful to seek their input when developing your permitting process.

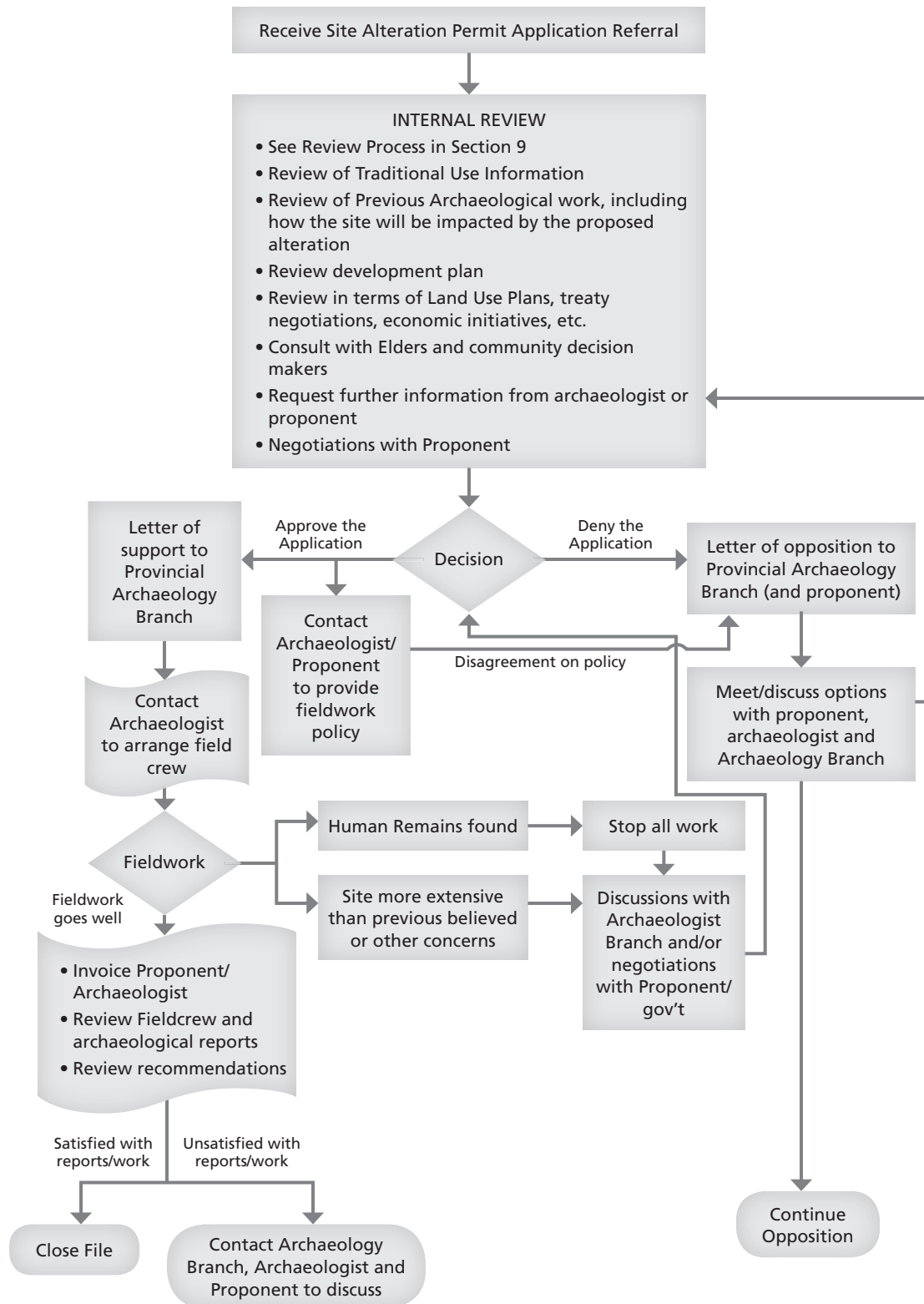
10.1. *HCA* Section 12 and 14 Permit Application Review Process Flowchart



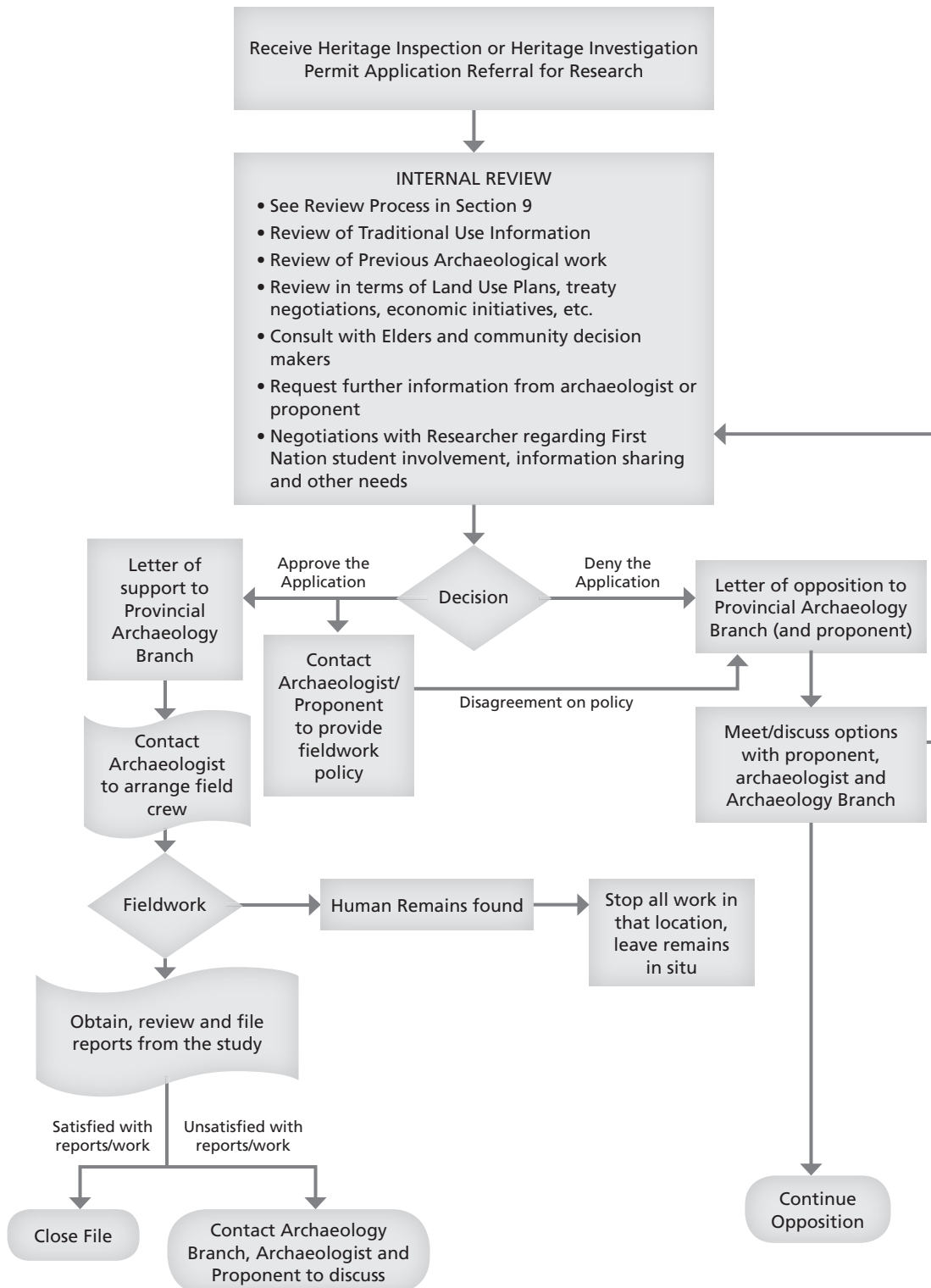
10.2. Flowchart A: *HCA* Section 14 Archaeological Impact Assessment Permit Application Review Process



10.3. Flowchart B: *HCA* Section 12 Site Alteration Permit Application Review Process



10.4. Flowchart C: *HCA* Section 14 Research Permit Application Review Process



PART 11.

Official Repositories And Repatriation

What is an Official Repository?

The repository is the location where artifacts will be stored after they are taken from your heritage site. All archaeological permit applications must identify the repository that will be used if artifacts are found during fieldwork. This is important to First Nations because it can mean that artifacts, and even ancestral remains, are taken and stored well away from your territory.

The Official Repository is where artifacts will be stored after they are removed from a heritage site.

Can Our First Nation become an official repository?

The short answer is yes. The Archaeology Branch has developed a policy on repository standards. However, these standards, (identified below) are restrictive and it is difficult for most First Nations to meet them. Nevertheless, some First Nations have had success in negotiating repository agreements, although later, some have found that ongoing storage and maintenance is problematic. If your First Nation decides that it would like to be a repository, you should contact the Archaeology Branch to begin discussions. Although it is not part of the Archaeology Branch's Repository Policy, if your First Nation wants only to hold non-perishable artifacts (i.e. stone tools), the standards of care might be met. It would be worthwhile to discuss this with the Archaeology Branch.

Another option is to negotiate an arrangement with a local museum. This could be done through a memorandum of understanding or through access agreements. These agreements can include details on how artifacts are to be handled and stored.



FIGURE 14: The Royal British Columbia Museum, Victoria BC. http://www.victoriabcca.com/reviews/victoria_inner_harbour_causway/inner_harbour_review.php



FIGURE 15: Basketry fragment from an intertidal wet-site, Saratoga Beach, courtesy of the Laich-Kwil-Tach Treaty Society

11.1. Provincial Archaeology Branch Repository Policy

According to the Archaeology Branch, repositories designated under *HCA* permits are expected to demonstrate the following attributes (note that these requirements have been defined by the Archaeology Branch):

1. Security

- a. **Physical Security:** the artifacts must have long-term security from theft, but also from degradation. For instance, a repository must have the proper environmental controls (temperature, humidity, etc.) and 'mechanical' controls (for instance, to prevent artifacts stored in drawers from shaking/sliding) to preserve delicate artifacts.
- b. **Financial Security:** the repository must have in place an adequate funding commitment to provide for the long-term storage of archaeological material.

2. Accepts a broad range of material

- a. **"Other" Archaeological Material:** the repository must be willing and capable of accepting and curating faunal remains, floral remains and in some instances, samples for dating or other site context documentation (such as sediments in some instances) and other materials that are important to understanding past lifeways at the sites being curated.
- b. **Site Documentation:** the repository must be willing and capable of accepting and storing documents such as field notes, photographs, maps and other documents.

3. Management:

The repository must be managed by qualified professional(s) or individual(s). This (these) individual(s) should be trained to curate archaeological material and site documents, and qualified to use standard museum facilities.

4. Access:

The repository must make its collections available for legitimate research. Currently approved repositories emphasize stewardship rather than ownership.



11.2. Repatriation

It is important to note that most government approved repositories have repatriation policies that provide opportunities to return collections or parts of collections to First Nations. This is particularly the case with human remains and associated burial or funerary objects. Repatriation has its own challenges, including the costs involved, the length of time it takes to negotiate repatriation arrangements, and other complicating factors as a result of having a third party responsible for these collections.

In addition to human remains, all artifacts removed from your heritage sites represent potential repatriation issues. Repatriation requires negotiations with the provincial government, the repository and possibly neighbouring First Nations.

There are numerous examples of repatriation among British Columbia First Nations. These include: the Haida Nation, who repatriated the remains of hundreds of individuals held in museums in North America; the Haisla Nation, who repatriated a totem pole from Sweden; and the Kwakwaka'wakw, who repatriated potlatch regalia from the Royal Ontario Museum and the Canadian Museum of Civilization.

Over the past couple of decades, most institutions and repositories have shifted their policies and have developed repatriation policies to assist in repatriation negotiations (see Part 17.2 for a link to some of these policies). There has also been a change in the approach to archaeology and, unless there are mitigating circumstances, archaeologists no longer excavate burials simply for research purposes. Instead, it is more common to avoid burials unless they are under some kind of immediate threat, or unless they are a unique circumstance, as in the case of Kwäday Dän Ts'ínchi, the more than 200 year old remains of a man that melted out of a glacier in 1999 in northwestern B.C. However, even in this case once the researchers completed their work, which was done in collaboration and cooperation with the Champagne and Aishihik First Nations, his remains were cremated and the ashes spread back where he was found, as per the wishes of the Champagne and Aishihik people.

Repatriation is when artifacts or ancestral remains are returned to your First Nation.



Beyond Archaeology

12.1. *HCA* Section 4

What is Section 4?

The *HCA* Section (4) is entitled, “Agreements with First Nations.” This section, quoted in full in the box below, seems to say that the government may enter into agreements with First Nations so that First Nations have much greater involvement in the management of their heritages sites. The agreement may include delegation, or granting authority to a First Nation to completely manage the protection of their heritage sites. Many suggest that Section 4 agreements are able to provide effective recognition, respect, protection and conservation of First Nations cultural heritage resources unlike the current provincial process.

***HCA* Section 4: Agreements with First Nations**

- (1) The Province may enter into a formal agreement with a first nation with respect to the conservation and protection of heritage sites and heritage objects that represent the cultural heritage of the aboriginal people who are represented by that first nation.
- (2) An agreement under subsection (1) must be in writing and must be approved by the Lieutenant Governor in Council.
- (3) Subsection (2) does not apply to an agreement that is entered into under section 20 (1) (b).
- (4) Without limiting subsection (1), an agreement made under this section may include one or more of the following:
 - (a) a schedule of heritage sites and heritage objects that are of particular spiritual, ceremonial or other cultural value to the aboriginal people for the purpose of protection under section 13 (2) (h);
 - (b) a schedule of heritage sites and heritage objects of cultural value to the aboriginal people that are not included in a schedule under paragraph (a);
 - (c) circumstances under which the requirements of sections 13 (1) and (2) and 14 (1) do not apply with respect to heritage sites and heritage objects, or to types of heritage sites and heritage objects, for which the first nation administers its own heritage protection;
 - (d) policies or procedures that will apply to the issuance of or refusal to issue a permit under section 12 or 14 with respect to
 - (i) sites and objects identified in a schedule under paragraph (a) or (b), or
 - (ii) other sites and objects or types of sites and objects identified in the agreement;

- (e) provisions with regard to the delegation of ministerial authority under sections 12 and 14 (4);
 - (f) any other provisions the parties agree on.
- (5) For the purpose of section 13 (2), if an agreement includes a schedule under subsection (4) (a), the agreement must identify actions which would constitute a desecration or which would detract from the heritage value of scheduled sites and objects, and different actions may be identified for different sites or objects or for different classes of sites or objects.

Can our First Nation negotiate a Section 4 agreement?

No. At this time, the provincial government will not negotiate a Section 4 agreement. The Joint Working Group on First Nations Heritage Conservation has been meeting since 2007 regarding several issues, one of which is implementing a Section 4 pilot project. These discussions are ongoing and it is hoped that an agreement can eventually be made.

12.2. Heritage Other Than Archaeology

Why doesn't the permitting process apply to non-archaeological heritage sites?

The *HCA* defines a heritage site as “land, including land covered by water, that has heritage value to British Columbia, a community or an aboriginal people.” Further, protection is given to places with “historical or archaeological value.” Although this definition seems broad, the Archaeology Branch does not generally register non-archaeological sites. First Nations believe that all of their heritage sites, archaeological, spiritual, resource use, transformation sites etc. should be recognized and protected.

In contrast, other historical sites deemed of heritage value to BC or Canada can be registered under the *HCA*. Examples include heritage trails such as the Hudson Bay brigade trail, Kettle Valley Rail, trading posts, trapper cabins, etc. These can be associated with a First Nation or early settlers.

Nevertheless, there may be other mechanisms outside of the *HCA* that First Nations can utilize to protect their heritage sites and assert more management control over them. These are discussed in the next part of the toolkit.



PART 13.

Other Provincial Government Protection Mechanisms Outside of the *Heritage Conservation Act*

ALTHOUGH THE *HCA* IS MEANT TO protect heritage in British Columbia, as noted above, it is not always implemented in a way that adequately addresses First Nations' interests. For this reason it is important to realize that there are other provincial policy and legislative mechanisms that have options for land protection. First Nations may be able to benefit from these and use them to protect certain parts of their territory. On their own these mechanisms may not suffice, but implemented in concert, several of them together can provide effective protective measures to provide some practical short to medium-term protections. These mechanisms can be a bridge to more permanent solutions (such as treaty, land purchase or negotiated management roles).

Though the government has not implemented any regularized programs for First Nations to implement these protection options, we have researched several examples that have worked on a case-by-case basis, or that have the potential to be effective protective tools. The following list of tools and their corresponding information is not meant to be exhaustive, nor does it represent any official provincial policies, or reflect legal advice. It does, however, represent a starting point for further discussions of "outside-the-box" solutions for issues that may arise in your territories. We hope that this information will stimulate discussion with various ministry representatives to explore these and other creative possibilities.

Following is a table summarizing each option. This is followed by a brief description of each protection option.



13.1. Table of Provincial Government Protection Tools Outside of the *HCA*

Provincial Protection Tool	Legislation	Potential to Protect Cultural Sites	Must be combined with other protections	Shared Management Potential
Gov't Action Regulation Order	Forest & Range Practices Act	Yes	Yes	Yes
Notation of Interest	No	Yes	No	No
Order in Council Reserve	<i>Land Act</i> , Section 15	Yes	Yes	Unknown
Withdrawal from Disposition (Map Reserve)	<i>Land Act</i> , Section 16	Yes	Yes	Unknown
Map Reserves	<i>Land Act</i> , Section 17	Yes	Yes	No
Prohibition of Use	<i>Land Act</i> , Section 66	Yes	Yes	Unknown
Objectives by Order	<i>Land Act</i> , Section 93.4	Yes	Yes	Unknown
Environment Land Use Committee Order	Environment Land Use Act, Section 7	Yes	Possibly	Unknown
Wildlife Management Area (WMA)	<i>Wildlife Act</i> , Section 4	Yes	Yes	Possibly
No Registration Reserves	<i>Mineral Tenure Act</i> , Section 22	Yes	Yes	No
Coal Land Reserve	<i>Coal Act</i> , Section 21	Yes	Yes	No
Restrictions	<i>Mineral Tenure Act</i> , Section 17	Yes	Yes	No
Covenant	<i>Land Title Act</i> , Section 219	Yes	Unknown	Unknown

Long Term Protection (10 years or more)	Indefinite Protection	Covers large areas	Can limit or prohibit other uses	Has been used to protect First Nation Heritage
Yes	No	Moderate	Forestry use affected	Yes
No	No	Acts as a flag for referrals		
Yes	No	No	Can protect from new <i>Land Act</i> tenures	Unknown
Yes	No	No	Yes	Unknown
Yes	Yes but at Minister's discretion	No	Yes but compatible uses still approved	Unknown
Unknown	Unknown	No	Limits a specific use only	No
Unknown	No	Moderate	Yes	Yes
Yes	No	Unknown	Some uses may be prohibited	Yes. Also used to protect Treaty Settlement Lands until Final Agreement
Unknown	No	Yes	Some uses may be prohibited	Unknown
Yes	No	Yes	No (combine with other protection measures)	No
Yes	No	Yes	No (combine with other protection measures)	No
Yes	Unknown	Unknown	No (combine with other protection measures)	Unknown
Yes	Possibly	No	Yes	Yes

13.2. Government Action Regulation Order, *Forest and Range Practices Act*

What is a Government Action Regulation (GAR) Order?

- A regulation under the *Forest and Range Practices Act*.
- A GAR Order can establish localized land designation that requires special management for certain values including First Nations cultural values.
- Allows the Minister of Forests to protect a cultural heritage resource that is the focus of traditional use by a First Nation but that is not regulated by the *Heritage Conservation Act*.

The GAR Order tests:

When considering a GAR Order four tests, must be met:

1. The area must require protection which is not provided by any other legislation or regulation;
2. A GAR Order must be consistent with the established objectives of an area;
3. A GAR Order must not reduce the supply of timber in BC; and
4. Public benefits (including cultural) must outweigh the impact on licensees.

Benefits of GAR Orders:

- It is a current tool within the government that First Nations can potentially use to protect parts of their territory;
- It identifies management objectives to protect cultural resources and limit or prohibit activities, which are inconsistent with protecting them;
- A GAR Order can provide conditions and protections for a relatively large area of land or water (i.e. lake or cultural feature like a mountain);
- Licensees must accommodate the GAR Order in their forest planning; and
- Once established, it can protect an area from further forestry operations.

Considerations of GAR Orders:

- A GAR Order is not forever and will have an expiry date;
- A GAR Order can only protect areas and not an entire territory;
- A GAR Order only provides protection from forest development activities;
- May need to combine the GAR with No Registration Reserves for fuller protection (see Part 13.11); and
- A GAR Order does not result in a First Nation owning or managing the land.

For examples of GAR Orders, see Part 17.2.

13.3. Notation of Interest or Map Notation

What is a Map Notation?

- Information recorded on provincial reference maps and databases as a result on an interest in Crown land by a provincial ministry.
- When a land activity is proposed, the notation acts as a “flag” to initiate the referral process, but *it does not carry any authority to prevent development or disposition*.
- Statement of Intent areas and archaeological sites act as map notations.
- There is no time limit to the Notation of Interest but anything greater than ten years is subject to a mandatory review every ten years.

13.4. *Land Act* Section 15, Order in Council (OIC) Reserve

What is an Order in Council (OIC) Reserve?

- An Order made by the Lieutenant Governor in Council.
- This Order can protect Crown land with a specific value or attribute from new *Land Act* tenures.
- The Order can remove areas from the “operable land base” if it is in the public interest (i.e. protection of cultural sites).
- It is used only when a map reserve will not sufficiently safeguard a public interest or concern (see Part 13.5).

Benefits of OIC Reserves:

- An absolute reservation regarding any activity for which *Land Act* authorization is required;
- Can only be amended or canceled by another OIC.

Considerations of OIC Reserves:

- Protection is not indefinite but for a period of years (minimum five years);
- The land must be surveyed (associated costs);
- At this time, it does not appear that this section of the *Land Act* has been used to protect First Nations’ heritage interests;
- A No Registration Reserve may also be necessary (see Part 13.11).

13.5. *Land Act* Section 16, Withdrawal from Disposition, Map Reserves

What is Section 16 Map Reserve?

- Under section 16 of the *Land Act*, the Minister can remove or reserve land from new *Land Act* tenures.
- This can withdraw or withhold Crown land from alienation for all purposes.

Benefits of Section 16 Map Reserves:

- The withdrawal of lands is formally entered into the records at the authorizing agency;
- Can withdraw Crown land from disposition and may be used to support Crown land planning (including heritage protection);
- This tool might be useful in the short-term to assist First Nations in protecting their heritage sites, particularly if there is a competing use proposed for a parcel of Crown Land, providing time to negotiate other solutions.

Considerations of Section 16 Map Reserves:

- The life of the reserve is generally a maximum of thirty years and any reserve greater than ten years will have a mandatory review every ten years. However, not all Section 16 land withdrawals need to be temporary.

13.6. *Land Act* Section 17, Map Reserves

What is Section 17 Map Reserve?

- Section 17 of the *Land Act* allows the Minister to designate lands for specific uses, including heritage purposes, but also includes recreational uses, agriculture, commercial, etc. This is sometimes called a UREP (use, recreation, enjoyment of the public).
- Incompatible uses would not be allowed once designated but the government can approve other “compatible” uses.

Benefits of Section 17 Map Reserves:

- The term of a *Land Act* designation is set at the discretion of the Minister, but can be set indefinitely, possibly providing long-term protection.
- This might be beneficial to First Nations who are considering protection of a site that would not be negatively impacted by some kinds activity (recreation, for instance), in the face of other Crown land use pressures

Considerations of Section 17 Map Reserves:

- Any designation longer than ten years would be subject to a mandatory review every ten years;
- Other “compatible” uses can be approved by the ministry.

13.7. *Land Act* Section 66, Prohibition of Use

What is a Section 66 Prohibition of Use?

- Prohibition of Use is set by the Lieutenant Governor in Council to prohibit certain activities in particular areas.
- It is applied where the restriction of an activity or use is deemed to be in the public interest.
- At this time, it does not appear that this section of the *Land Act* has been used to protect First Nations’ heritage interests.

13.8. *Land Act*, Section 93.4 Objectives by Order

What is an Objective by Order?

- Under the *Land Act*, the Minister can establish objectives for the *Forest and Range Practices Act*.
- These can be for the use and management of Crown resources, Crown land or private land that is subject to a tree farm licence, woodlot licence, or community forest agreement.
- An example of a 93.4 Objective by Order is an Old Growth Management Area.

What is an Old Growth Management Area (OGMA)?

- OGMA's are areas set aside from logging to protect old growth forests.
- In some cases, they contain important cultural sites or cultural values that First Nations may have identified during consultation with the Province or forest company.
- It is possible that if the cultural value is known to the Province, a requested amendment to move an OGMA would be denied in order to continue to protect that cultural value.

Benefits of Objectives by Order, specifically OGMA's:

- Has the potential to provide protection from forest related activities to cultural heritage areas including traditional heritage features, spiritual sites, origin sites, monumental red and yellow cedar, and CMTs.

Considerations of Objectives by Order, specifically OGMA's:

- Does not provide protection from non-forestry related activities and developments;
- A No Registration Reserve may also be necessary (see Part 13.11).

13.9. Environment and Land Use Committee Order

What is an Environment and Land Use Committee?

- A committee made up of provincial cabinet members.
- This committee's powers come from the *Environment and Land Use Act*.
- This *Act* enables the committee to develop programs and recommendations on environmental issues.
- Section 7 of the *Act* allows cabinet, on recommendation from this committee, to make any order respecting land use.
- Government can use these orders when no other legislation provides the power necessary to pass a particular order.
- This committee can establish an order to set aside certain areas from development pending treaty negotiations.
- Although this *Act* can be used to protect lands during treaty negotiations, it is unclear if it can protect First Nations heritage sites outside of the treaty context.

13.10. *Wildlife Act* Section 4, Wildlife Management Area (WMA)

What is a WMA?

- The minister can designate land as a wildlife management area.
- This would require any new activities to be conducted with the permission of the regional manager.
- The WMA provides direction for a designated area focusing on protection of wildlife and wildlife habitat.

Benefits of a WMA:

- If there are cultural/heritage values in the area, there is potential for a First Nation to be involved in development of the associated management plan.

Considerations of a WMA:

- The designation does not affect any rights granted before the designation.
- The designation does not remove land from the operable land base, but it does allow the regional fish and wildlife manager to ensure that any authorized uses are compatible with the purpose of the WMA;
- It does not appear as though a WMA and First Nations cultural values have been aligned in the past.

13.11. *Mineral Tenure Act*, Section 22, No Registration Reserves (No Staking – No Mining) and *Coal Act*, Section 21, Coal Land Reserve

What is a No Registration Reserve?

- A land designation that prohibits a free miner from registering a mineral claim and/or a placer claim over a parcel of land.

What is a Coal Land Reserve?

- A land designation that prohibits a person from applying for a coal license over a parcel of land.

Benefits of No Registration Reserves and Coal Land Reserves:

- Can restrict claim registration or coal applications;
- No Registration Reserves are effective tools for land use management in regards to mining;
- No Registration Reserves can be several thousand hectares in size.

Considerations of No Registration Reserves and Coal Land Reserves:

- No Registration Reserves only apply to mining and/or subsurface resources and will not take land out of the land base for other activities;
- Much of the Province is already under mineral claim. It is not clear how those claims would affect other protection options noted above; and
- No Registration Reserves are meant to be temporary.

13.12. *Mineral Tenure Act*, Section 17 – “Restrictions”

Under this section of the *Act*, the minister may “restrict the use of surface rights, or restrict the right to or interest in minerals or placer minerals, comprised in all or part of a mineral title if the minister considers that all or part of the surface area is or contains a cultural heritage resource.”

13.13. *Land Title Act*, Section 219, Registration of Covenant as to Use and Alienation

What is a covenant?

- A covenant is a notice placed on the title of a property to inform any land owner of use or restrictions on that property.
- The Archaeology Branch has issued a bulletin on the “Restrictive Covenant Process for Consulting Archaeologists” (British Columbia 2007b) outlining the process for placing a covenant on a heritage site.

What can a covenant do?

- A covenant can be placed on a heritage site, which can restrict the use of that area (e.g. it could be specified that the area cannot be built upon or subdivided).
- Sections 219(4) and (5) of the *Land Title Act* allow a covenant to protect land that has heritage, historical or cultural value.

Benefits of Covenants:

- Small cultural or heritage sites can be protected indefinitely. This might be an option to protect a known burial site;
- A covenant acts as a flag to inform anyone who conducts a land title search on a property that there is a protected area,

Cons of Covenants:

- To hold a covenant, you must be designated by the Surveyor General. It is not clear if a First Nation can get this designation;
- If a First Nation cannot be a designate, it is necessary to work with a designate, like a municipality, who must then agree to hold the covenant;
- The area of the covenant must be surveyed, although in this case, it might only be necessary to have the assistance of an archaeologist;
- Legal assistance is needed to draw up the covenant;
- The cooperation of the property owner would be needed (at least for the survey); and
- The covenant holder can cancel the covenant at any time.



PART 14.

Local Government Protection Options

Where does a local government, such as a regional district or municipality, get its authority?

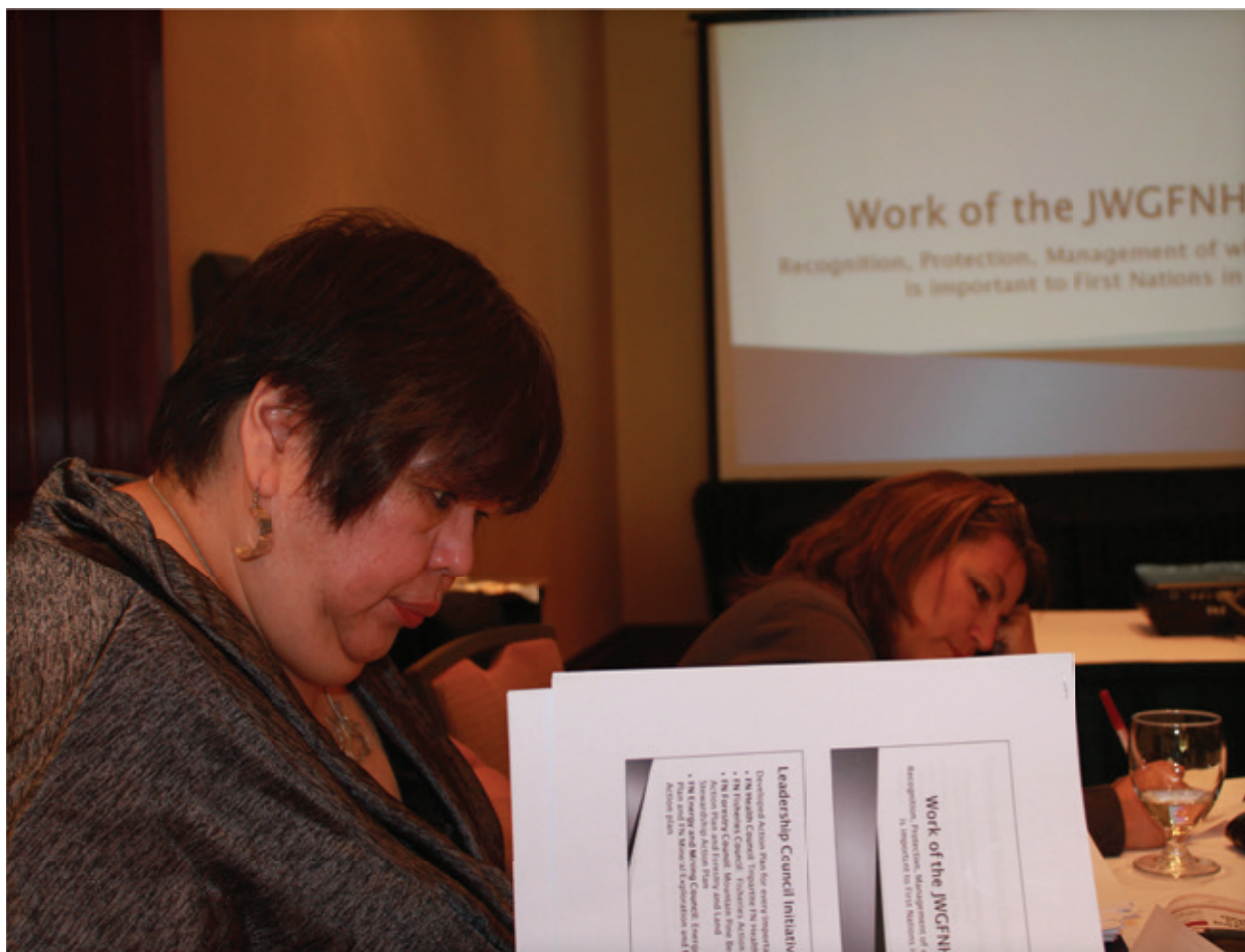
- Authority comes from BC legislation, the Local Government Act.

Can local governments such as regional districts and municipalities protect heritage?

- Yes, the Local Government Act allows protection or conservation of a heritage property or property that has heritage value (including historical or cultural value).
- Part 27 of the Act is entitled “Heritage Conservation.” It allows a local government to make rules and regulations over heritage, including protection.
- Section 903(3)(1) of the Local Government Act also allows a local government to make regulations in regards to protecting heritage properties.
- Section 849(2)(n) states that a regional growth strategy must work toward “good stewardship of land, sites and structures with cultural heritage value.”
- Under 970.1 a local government can designate heritage conservation areas within official community plans. This limits (as per Section 971) the activities that can be done within the heritage conservation area.

How can we access protections under the Local Government Act?

- Unlike the *Heritage Conservation Act*, in which protection is automatic for a heritage site (but within the limits applied by Archaeology Branch policy), protection under the *Local Government Act* requires that the local government to designate the site as a heritage property.
- This means working with and building relationships with local government to determine the available options, improve communications, identify gaps in protection and develop agreements or a memorandum of understanding (see Part 17.2 for links to examples of such agreements).



PART 15.

Other Tools Used By Some First Nations

15.1. Treaty

Many First Nations in British Columbia are involved in tripartite negotiations with Canada and British Columbia. Although this is a lengthy process, a few Final Agreements have been completed and each includes a section on heritage. Generally these Final Agreements state that the First Nation will own any archaeological remains or materials and/or they will make laws in respect to archaeological sites located on treaty settlement land. They also state that any human remains that are found off treaty settlement land, but that are associated with the First Nation, may be repatriated in accordance with the law.

For those heritage sites that are off treaty settlement land, the approach has varied. The Maa-nulth Final Agreement has provisions for the First Nation and British Columbia to develop a list of key sites that will be protected through various provincial mechanisms, including the *Heritage Conservation Act*; the Tsawwassen Agreement provides for the opportunity to negotiate meaningful participation in heritage site protection and management; and in the case of the Nisga'a Agreement, each party is responsible for heritage site management on their respective lands.

15.2. Informing landowners

Some First Nations may choose to conduct a communication and education program with their neighbours. A template letter that could be sent out to private landowners within your territory whose land contains a registered heritage site is included in Part 17.5. It is important that this be approached with sensitivity, as the goal is to bring private landowners into the process of heritage protection and management. Caution must be exercised to ensure that landowners do not feel alienated or threatened by this process.

15.3. Land Use Planning

Some First Nations may choose to enter into land use planning agreements with the provincial government. The Haida example (see Part 17.2 for the link) is a case of a First Nation collaborating with government, industry and community to develop a land use plan over their territory. This process included an Objective by Order (13.8). This may be an option for other First Nations to explore with the Province.

Some First Nations may choose to develop an internal land use plan for their territory, independent of government. This plan can then be negotiated and shared with industry and other land users in an effort to gain a greater management role and authority throughout the territory. (See Part 17.2 for a link to the Xay Temixw (Sacred Land) Land Use Plan by the Squamish Nation).



15.4. Provincial Protocol Agreements

The Hul'qumi'num Treaty Group successfully negotiated a memorandum of understanding in regards to how it will work and communicate with the provincial Archaeology Branch (See Part 17.2 for the link). This agreement concerns how the branch and the First Nations will work together in the protection of heritage sites, but stops short of giving decision making and management authority to the First Nations.

Other First Nations have negotiated Strategic Engagement Agreements (See Part 17.2 for a link) in an effort to streamline consultation and promote engagement between First Nations and British Columbia. These agreements support the referral and consultation process in the province and may assist some First Nations in effectively responding to referrals.

15.5. Coast Guardian Watchmen Network

Some First Nations have worked with the Guardian Watchmen Network. Guardians in this program monitor the health of territorial lands and resources including heritage sites. See Part 17.2 for the link to the website. The Northwest Community College in Terrace, BC offers a certificate program for Guardian Watchman training.

Conclusion



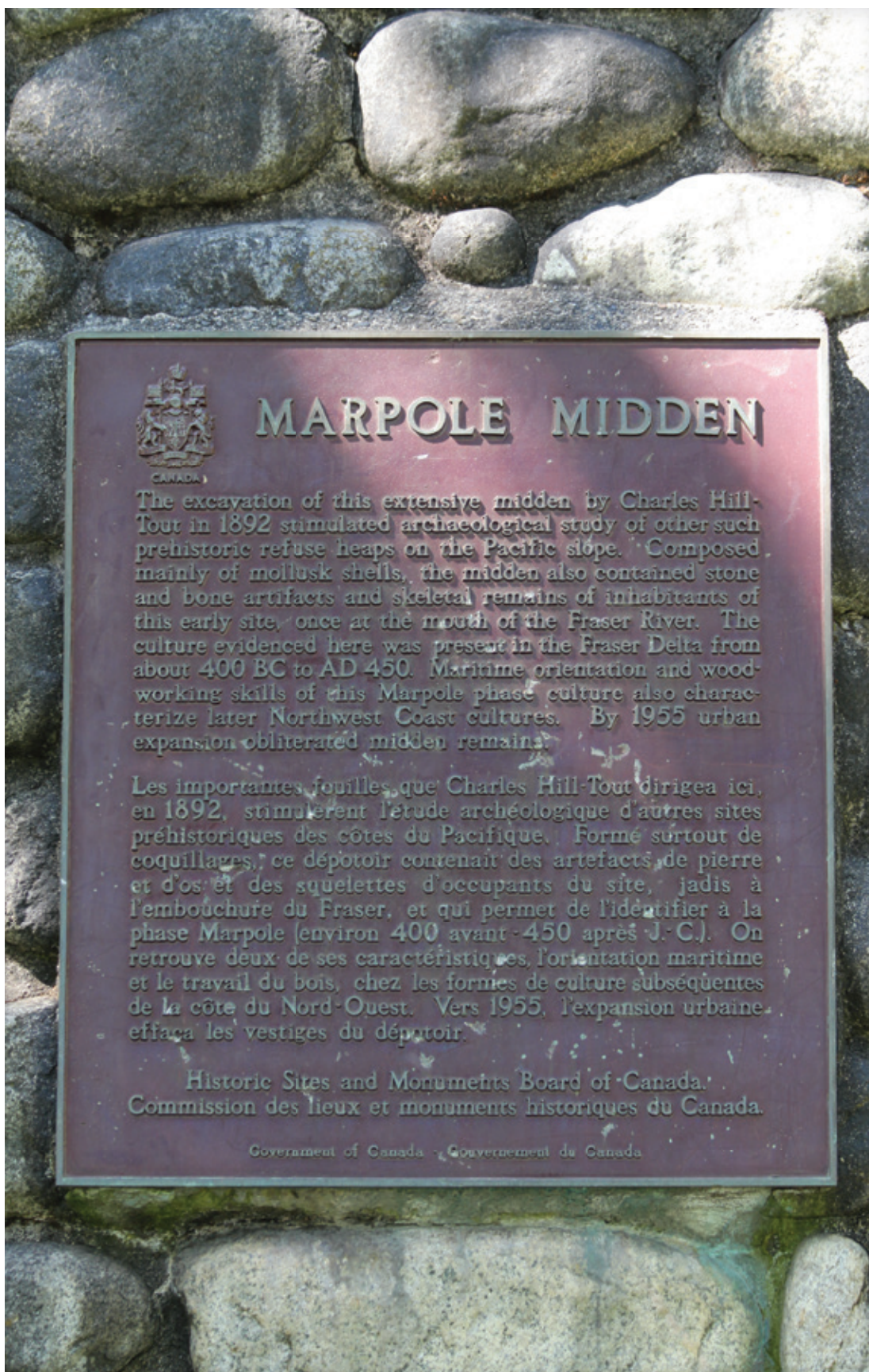
FIGURE 18: MDTC Elders reviewing the toolkit and discussing their Heritage Policy, courtesy of MDTC

HERITAGE PROTECTION IN BRITISH COLUMBIA IS an important issue and it should concern all citizens of the province. The vast majority of heritage sites in British Columbia are associated with our ancestors so as First Nations we have an important role to play in their protection and management. This role is inherent to our Aboriginal Title and Rights.

This toolkit provides guidance for two related processes as we work toward a greater role in management and decision making over our heritage sites. The first is the development of a heritage policy. Heritage policies can inform government, industry, developers and archaeologists of First Nations principles and guidelines around heritage in our territories and they can be useful tools in communicating our expectations for and concerns about work that affects our heritage. Heritage policies identify how we will work with our First Nations neighbours in an effort to support each other's heritage management efforts. Finally, and importantly, heritage policies inform government, industry, developers and archaeologists of our protocols if our buried ancestors are disturbed during development. Each of these is a step toward taking back management of our heritage.

The second part of this toolkit provides information to assist First Nations in developing or refining the heritage referral process. The referral process provides an avenue for involvement in heritage decisions and studies. Although we do not always agree with the final decisions made by the Archaeology Branch, our involvement is important.

We hope that the information and templates provided in this toolkit will be useful and that they will be flexible enough for all First Nations in the province to use now and in the future.



PART 17.

Appendices

17.1. Archaeology Branch Contacts

Mailing Address:

Archaeology Branch, Ministry of Forests, Lands and Natural Resource Operations
PO Box 9816, Stn Prov Govt
Victoria, BC
V8W 9W3

Physical Location:

#3 – 1250 Quadra Street
Victoria, BC
V8W 2K7
Archaeology Branch Fax: 250-953-3340

Primary Contacts:

Justine Batten, Director
Phone: 250-953-3355
Email: Justine.Batten@gov.bc.ca

Doug Glaum, Permitting and Assessment/Site Inventory Section Manager
Phone: 250-953-3357
Email: Doug.Glaum@gov.bc.ca

17.2. Further Sources of Information

Archaeology Branch Links

- *Heritage Conservation Act* http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96187_01#section14
- Archaeology Branch Website, Ministry of Forest, Lands and Natural Resource Operations <http://www.for.gov.bc.ca/archaeology/index.htm>
- RAAD (Remote Access to Archaeological Data) information and obtaining access to the database http://www.for.gov.bc.ca/archaeology/accessing_archaeological_data/RAAD.htm
- Provincial Archaeological Report Library http://www.for.gov.bc.ca/archaeology/accessing_archaeological_data/Provincial_Archaeological_Report_Library.htm
- Culturally Modified Trees Handbook: A Handbook for the Identification and Recording of Culturally Modified Trees, BC Archaeology Branch, 2001. <http://www.for.gov.bc.ca/ftp/archaeology/external/publish/web/professionals/cmthandbook.pdf>

- Provincial Standards and Guidelines for Archaeological Overview Assessments. http://www.for.gov.bc.ca/archaeology/docs/impact_assessment_guidelines/assessment_and_review_process_part2.htm#3.4_overview and http://www.for.gov.bc.ca/archaeology/docs/impact_assessment_guidelines/appendix_A_part1.htm

Repatriation Links

- Royal British Columbia Museum, Aboriginal Material Operating Policy. http://www.royalbcmuseum.bc.ca/Content_Files/Aboriginal_Material_Operating_Policy.pdf
- Canadian Museum of Civilization. <http://www.civilization.ca/about-us/corporation/about-the-corporation/repatriation-policy>
- Simon Fraser University's repatriation policy is not available online. You can contact Shannon Wood (wood@sfu.ca) for information on repatriation of human remains, and Dr. Barbara Winter (bwinter@sfu.ca) for information about artifacts and materials.
- University of British Columbia, Laboratory of Archaeology. <http://www.anth.ubc.ca/research/research-facilities/laboratory-of-archaeology-loa/repatriation-guidelines.html>
- Museum of Anthropology. <http://moa.ubc.ca/research/collections/repatriation.php>

GAR Order (For First Nations) Links

- Forest and Range Practices Act: Government Actions Regulation <http://www.for.gov.bc.ca/ftp/hth/external/publish/Web/frpa-admin/frpa-implementation/gar-guide.pdf>
- Chilliwack Forest District, Culture-Heritage GAR Order to Identify a Cultural Heritage Resource Feature on Mt. Woodside (Kweh-Kwuch-Hum) (Sts'ailes First Nation) http://www.for.gov.bc.ca/tasb/legsregs/frpa/frparegs/govact/orders/DCK_Cultural_Heritage.pdf
- Kweh-Kwuch-Hum (Mt. Woodside) Spiritual Areas and Forest Management <http://www.for.gov.bc.ca/dck/Stewardship/KKH%20Final%20Report.pdf>
- Okanagan-Shuswap Forest District –Order to identify a Cultural Heritage Resource Feature at Wap Creek http://www.for.gov.bc.ca/tasb/legsregs/frpa/frparegs/govact/orders/DOS_Order.pdf
- Map for Wap Creek GAR Order http://www.for.gov.bc.ca/tasb/legsregs/frpa/frparegs/govact/orders/DOS_Map.pdf

Other Protection Option Links

- Reserves, Designations and Notations Policy within the Land Act http://www.for.gov.bc.ca/land_tenures/documents/policies/reserves.pdf
- Study on Landscape Reserve Options in British Columbia http://archive.ilmb.gov.bc.ca/slrp/lrmp/nanaimo/cen coast/ebmwg_docs/ds04b_report.pdf
- Environment and Land Use Committee Order http://www.bcwatersheds.org/wiki/index.php?title=Environment_and_Land_Use_Committee_Act and http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96117_01

- Land Use Objective Regulation http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/357_2005
- Haida Gwaii Land Use Objective By Order <http://www.ilmb.gov.bc.ca/slrp/lrmp/nanaimo/haidagwaii/index.html>
- Haida Nation Land Use Planning <http://www.haidanation.ca/Pages/Programs/Forests/Forest%20Guardians/Land%20Planning/HLUV.html>
- Local Government Act, Part 27 – Heritage Conservation http://www.bclaws.ca/EPLibraries/bclaws_new/document/LOC/freeside/--%20L%20--/Local%20Government%20Act%20RSBC%201996%20c.%20323/00_Act/96323_31.xml
- Squamish Nation Xay Temixw (Sacred Land) Land Use Plan <http://www.squamish.net/aboutus/xaytemixw.htm>
- Hul'qumi'num MOU with BC on Heritage Conservation http://www.hulquminum.bc.ca/pubs/HTG-ArchBranchMOU_FINAL_2007.pdf
- Strategic Engagement Agreements http://www.newrelationship.gov.bc.ca/agreements_and_leg/engagement.html
- Guardian Watchmen Network <http://coastalguardianwatchmen.ca/>
- Northwest Community College Guardian Watchman Training <http://www.nwcc.bc.ca/Programs/Technical/CGW/index.cfm?Program=SENV>

Examples of First Nation and Local Government Agreements

- Snuneymuxw and Islands Trust Protocol Agreement, December 2008 <http://www.islandstrust.bc.ca/tcl/pdf/orgagrdec042008oth.pdf>
- Draft Protocol Agreement Regarding the Protection of First Nations Archaeological Heritage Sites, June 9, 2008 (Hul'qumi'num Treaty Group and Islands Trust Council) (This is a draft protocol agreement that provides direction for developing these types of agreements with local government). In *First Nations Heritage Site Protection by the Islands Trust: Opportunities and Limitations*, by Courtney Dawn Campbell, 2009, p. 60-74. <https://circle.ubc.ca/handle/2429/24460>

Archaeological and Anthropological Associations Links

- BC Association of Professional Archaeologists <http://www.bcapa.ca/>
- Archaeological Society of British Columbia <http://www.asbc.bc.ca/> The society holds public talks monthly and invites First Nations participation.
- Canadian Archaeological Association <http://www.canadianarchaeology.com/>
- Society for American Archaeology <http://www.saa.org/>
- American Anthropological Association <http://www.aaanet.org/>
- World Archaeological Congress <http://www.worldarchaeologicalcongress.org/>
- Canadian Anthropology Association (CASA) <http://www.cas-sca.ca/>
- Northwest Coast Archaeology website of Professor Quentin Mackie of the University of Victoria. This is an excellent source of information about the archaeology of BC and adjacent regions. It contains photos, site information, debates about a range of issues, critiques, and information about public talks. <http://qmackie.wordpress.com/>

17.3. Template for Permit Application referral response

[First Nation Letterhead and Address]

[Please note: this template letter is not a replacement for legal advice. If your community is concerned about a potential development or proposal to do a heritage investigation, seek legal advice.]

[Date]

Archaeology Branch
Ministry of Forests, Lands and Natural Resource Operations
PO Box 9816, Stn Prov Govt
Victoria, BC
V8W 9W3

Dear [Insert name]:

Re: [Insert type of application, permit number and applicant's name]

Thank you for your referral letter dated [insert date of receipt]. Heritage sites and objects are vital to the [First Nation's name] future as our identity is inherently connected to them. We have an obligation to manage, protect and use them in a manner that respects and honours our traditions, values and laws.

The *Heritage Conservation Act (HCA)* recognizes that the perspective of the Aboriginal people is necessary to determine what sites or objects have heritage value and should receive protection under the *HCA* ("‘heritage object’ means, whether designated or not, personal property that has heritage value to ... an aboriginal people" and "‘heritage site’ means, whether designated or not, land, including land covered by water, that has heritage value to ...an aboriginal people").

From our perspective, heritage sites are both cultural and archaeological, and there are sites with tremendous heritage significance that do not have obvious physical or archaeological expression, or human alteration of the landscape. Identifying and protecting these sites requires working closely with the [First Nation name].

The [insert First Nation name] Title, Rights and interests (or, Treaty Rights) are strong throughout our territory.

- Consider including information that shows your strength of claim to Aboriginal Title and Rights (or Treaty Rights) and the cultural and spiritual importance of the area to your community. If you have one available include a map, or description, of your territory. List known research and court evidence, agreements or negotiations that your community has about the area with government. Listing this information is important because in considering a proposed project or referral the Province does an assessment of the strength of a First Nation's claim, and they are required to consider this information.

Our cultural heritage is integral to our cultural survival. We have a responsibility from our ancestors and a commitment to our youth to ensure the ongoing protection and well being of our lands and resources, and heritage sites and objects, now and in the future.

Section 35 of the *Constitution Act, 1982* recognizes and affirms Aboriginal and Treaty

rights. The purposes of Section 35 include to protect Aboriginal peoples' relationship with our lands and resources and to ensure the cultural survival of Aboriginal Peoples: *R. v. Van der Peet*; *Delgamuukw v. The Queen*; *Haida Nation v. British Columbia*; *R. v. Sparrow*. The Courts have identified consultation and accommodation as a mechanism to uphold the honour of the Crown in their dealings with Aboriginal Peoples by engaging Aboriginal Peoples in decision-making about lands and resources.

Consultation and accommodation must occur as early as possible, so that through the meaningful involvement of the Aboriginal people, potential infringements of Aboriginal Title or Rights can be avoided or minimized. The Crown must consult in good faith with a willingness to change or alter its proposed activities to respond to the information shared or concerns raised by Aboriginal peoples. The Crown is always bound by a duty to consult about proposed activities that may impact lands and resources, including heritage sites or objects.

The United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP) endorsed by Canada in November 2010, sets out an international human rights framework which embodies the goal of protecting Indigenous Peoples' and cultures. The UNDRIP protects the principle of free, prior informed consent and recognizes Indigenous Peoples' right to be fully involved in land and resource decisions that impact our cultural identity and survival. Key provisions include:

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Activities authorized or carried out under the *HCA* must meet the constitutional standards required by Section 35 and international standards articulated through UNDRIP.

- If you have a heritage policy, address this here. Include a copy of the policy and set out what it means for the way that you expect that this assessment will be carried out, including any requirements under your heritage policy. Use your policy to guide the steps that you will set out in your initial response to the referral.

In regard to the above noted application the [insert First Nation name], [Complete this section setting out your First Nation's particular concerns or requests in respect of the application. Some possibilities are listed below.]

- You may support the application outright, or on the condition that certain changes are made or steps are taken (i.e. you might not agree with the repository identified; you may require an agreement about how any information obtained will be addressed).
- You may oppose the application, and give reasons.
- You may request an alternative archaeologist (you will likely need to work with the developer on this) provide reasons for this request, including past relationships with this person; you may note that you wish to work with an archaeologists that you feel works respectfully with your community and who has knowledge of your heritage sites and objects.
- You can ask the Archaeology Branch to inform the applicant that you require First Nation crewmembers to be present during all fieldwork (also inform the archaeologist or proponent directly). You should state why this is necessary from your perspective (for example, to ensure that cultural protocols are respected; to ensure that all information is shared with your community), and also that First Nation crewmember participation should not be deemed to have fulfilled the requirements of consultation that requires engagement with your community.
- If you require that traditional knowledge keepers from your community be involved in this process, state this, for example: they can provide advice or direction to the investigation; or, ensure that cultural protocols are followed.
- If your First Nation is implementing an internal permitting system with a cost attached, insert the information here. Or, address any other costs that you will require to be covered in addressing the referral. For example, if you will require that First Nation crewmember participation be paid for, or other costs to assess the referral or participate in the process be covered, address those costs and propose a budget.
- You can request a meeting with the developer, archeologist or Archaeology Branch to address concerns.
- Set out how your community expects to be involved in the project (research or project plans/process, input into report, sharing of results).
- Address how your community would like sensitive sites or information to be managed.
- You may wish to state that any heritage sites or items that may be impacted by the request may form part of the evidence that [First Nation's name] requires to establish Aboriginal Title or Rights (or Treaty Rights) in the future either in Court or through negotiations and they must be preserved.

The permit referral process should not be understood to fulfill the Province's duty to consult and accommodate, nor should our response to this referral be used to abrogate, limit, or define our Aboriginal Title or Rights (or Treaty Rights). We reserve the right to address the issue of infringement and compensation with the governments of British Columbia and Canada. We reserve the right to raise objections if any unforeseen

cultural or heritage sites are identified during this work or any future development. We expect that we will be informed immediately of the identification of any cultural or heritage sites, and that we will be involved in all decisions about whether or how this investigation can continue.

If human remains are encountered during the proposed work, all work must cease immediately and our office is to be contacted [you can add a statement here expressing why this is important both culturally and spiritually].

Thank you for your assistance in our ongoing efforts to identify and protect our cultural heritage. [If you are requesting a meeting, set out several available times, and contact information for setting up the meeting]

Yours truly,

[Insert name]

[Insert title/position]

[cc: You may choose to cc your letter to the permit applicant and/or the proponent]

17.4. Template letter for archaeologists/permit holders

This letter can be used to communicate your protocols and policies with archaeologists who plan to work in your territory. Ideally, the letter or a variant of it should be sent to archaeologists who regularly work with you, or who are new to the region and express interest in working in your territory. It can also be used to communicate with an archaeologist who is applying for a permit to work in your territory.

[First Nation Letterhead and Address]

[Please note: this template letter is not a replacement for legal advice. If your community is concerned about a potential development or proposal to do a heritage investigation, seek legal advice.]

[Date]

[Archaeologist's Name
Company Name
Company Address]

Dear [Insert name]:

Re: Archaeological Work in [First Nation name] territory

Thank you for your interest in conducting archaeological work and research within our territory. The [First Nation name] Title, Rights and interests (or, Treaty Rights) are strong throughout our territory.

- Consider including information that shows your strength of claim to Aboriginal Title and Rights (or Treaty Rights) and the cultural and spiritual importance of the area to your community. If you have one available include a map, or description, of your territory. List known research and court evidence, agreements or negotiations that your community has about the area with government.

Our cultural heritage is integral to our cultural survival. We have a responsibility from our ancestors and a commitment to our youth to ensure the ongoing protection and well being of our lands and resources, and heritage sites and objects, now and in the future.

[To honour these commitments, the (First Nation name) has developed the attached Heritage Policy that we require all archaeologists working within our territory to follow.]

Aboriginal Title and Rights (or Treaty Rights) are protected and affirmed in Section 35 of the Constitution Act, 1982. The purposes of Section 35 include to protect Aboriginal peoples' relationship with our lands and resources and to ensure the cultural survival of Aboriginal Peoples: *R. v. Van der Peet*; *Delgamuukw v. The Queen*; *Haida Nation v. British Columbia*; *R. v. Sparrow*. In considering applications concerning heritage sites or objects, the Federal and Provincial governments must uphold the honour of the Crown in their dealings with Aboriginal Peoples by engaging Aboriginal Peoples in decision-making about lands and resources, with the goal of avoiding or minimizing infringements of Aboriginal Title or Rights (or, Treaty Rights).

The United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP) endorsed by Canada in November 2010, sets out an international human rights framework which embodies the goal of protecting Indigenous Peoples' and cultures. The UNDRIP protects the principle of free, prior informed consent and recognizes Indigenous Peoples' right to be fully involved in land and resource decisions that impact our cultural identity and survival. Key provisions include:

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Activities authorized or carried out under the *Heritage Conservation Act (HCA)* must meet the constitutional standards required by Section 35 and international standards articulated through UNDRIP.

Given the legal and international precedent we believe that it is in everyone's best interests for all archaeologists who wish to work in our territory to collaborate with us before, during and after any fieldwork and research.

The *HCA* recognizes that the perspective of the Aboriginal people is necessary to determine what sites or objects have heritage value and should receive protection under the *HCA* ("‘heritage object’ means, whether designated or not, personal property that has heritage value to ... an aboriginal people" and "‘heritage site’ means, whether designated or not, land, including land covered by water, that has heritage value to ... an aboriginal people"). The perspective of Aboriginal Peoples is crucial in determining what sites or objects have heritage value should receive protection under the *HCA*.

Heritage sites are both cultural and archaeological, and there are sites with tremendous heritage significance that do not have obvious physical or archaeological expression, or human alteration of the landscape. Identifying and protecting these sites requires working closely with the [First Nation name].

Our goal is to work collaboratively with all archaeologists who work within our territory to ensure that our heritage sites and objects are fully protected.

The attached Heritage Policy outlines key considerations that must be respected when undertaking fieldwork or other archeological research in our territory. In particular:

- Set out any steps that you require an archaeologist to follow in working within your territory, which could include having one or more of your members on the field crew, meeting with cultural advisors or traditional knowledge keepers to guide their research, steps in conducting fieldwork in your territory, additional information that you could provide to aid them in their research.
- If your First Nation is implementing an internal permitting system with a cost attached, insert the information here. Or, address any other costs that you expect them to cover in the work, and suggest that they may wish to include those costs

in the budget that they provide to the proponent.

- Include discussions about project/research scope, development, and relevancy to the [insert First Nation name],
- Confidentiality issues or if you require a knowledge sharing agreement.

We expect that all findings will be shared with the [name of First Nation]. We reserve the right to review and offer input on the final report that will be submitted to the provincial government. For example, there may be a situation where crucial information and our heritage sites or objects is not reflected in your initial research and it may be necessary to meet with our community, to get further direction and feedback, to ensure that the final report adequately and fully reflects the information required for full protection of those heritage objects or sites.

If human remains are encountered during the proposed work, all work must cease immediately and our office is to be contacted [you can add a statement here expressing why this is important both culturally and spiritually].

Thank you for your assistance in our ongoing efforts to identify and protect our cultural heritage. [If you are requesting a meeting, set out several available times, and contact information for setting up the meeting]

Sincerely,

[Insert name]

[Insert title/position]

[Insert copy of your Heritage Policy]

17.5. Template to send to private landowners who have a recorded heritage site on their property

First Nations may choose to identify all recorded archaeological sites within their territory and cross-reference this with the property information available through land titles to determine the current owners of the properties. The following letter could be sent to the landowners informing them of the presence of a heritage site and its protection status under the *Heritage Conservation Act*. Alternatively, you could choose to send a letter to private landowners where you are aware of the significant cultural heritage values on property.

[First Nation Letterhead and Address]

[Please note: this template letter is not a replacement for legal advice. If your community is concerned about a potential development or proposal to do a heritage investigation, seek legal advice.]

[Date]

[Property Owner – name]

[Address]

Dear [Property Owner – name]:

We are writing to you as part of an educational program that the [First Nation] is conducting to reach out to all property owners whose land contains a heritage site that is of significance to us. Our cultural heritage is integral to our cultural survival. We have a responsibility from our ancestors and a commitment to our youth to ensure the ongoing protection and well being of our lands and resources, and heritage sites and objects, now and in the future.

[According to the provincial Archaeological database, there is a heritage site recorded on your property. Given the presence of this site, there is great potential that there are as yet unrecorded sites elsewhere on your property or close by.] [Or, where there is no information recorded on the provincial Archaeological database: We are aware that there is a significant heritage value to the (First Nation name) on your property, which includes (brief description of why you believe that this site has significant heritage value)] To protect you and the heritage site, it is important for you to know that all heritage sites within British Columbia are protected under the *Heritage Conservation Act (HCA)*. According to the Act, a heritage site “means, whether designated or not, land, including land covered by water, that has heritage value to British Columbia, a community or an aboriginal people.” According to section 13(2) of the *HCA*, except as authorized by a permit, a person must not do any of the following:

- (a) damage, desecrate or alter a provincial heritage site or a provincial heritage object or remove from a provincial heritage site or provincial heritage object any heritage object or material that constitutes part of the site or object;
- (b) damage, desecrate or alter a burial place that has historical or archaeological value or remove human remains or any heritage object from a burial place that has historical or archaeological value;
- (c) damage, alter, cover or move an aboriginal rock painting or aboriginal rock carving that has historical or archaeological value;
- (d) damage, excavate, dig in or alter, or remove any heritage object from, a site that contains artifacts, features, materials or other physical evidence of human habitation or use before 1846;

- (e) damage or alter a heritage wreck or remove any heritage object from a heritage wreck;
- (f) damage, excavate, dig in or alter, or remove any heritage object from, an archaeological site not otherwise protected under this section for which identification standards have been established by regulation;
- (g) damage, excavate, dig in or alter, or remove any heritage object from, a site that contains artifacts, features, materials or other physical evidence of unknown origin if the site may be protected under paragraphs (b) to (f);
- (h) damage, desecrate or alter a site or object that is identified in a schedule under section 4 (4) (a);
- (i) damage, excavate or alter, or remove any heritage object from, a property that is subject to an order under section 14 (4) or 16.

The *HCA* provides for significant penalties, if a person contravenes section of 13(2). An individual convicted of an offence under the *HCA* may be fined up to \$50,000, imprisoned for a term of up to 2 years, or both. A corporation may be subject to a fine of up to \$1,000,000.

Due of the importance of heritage sites to the [insert First Nation name] and because of the protections and offences addressed by the *HCA*, the [insert First Nation name] believes it is important to inform our neighbours of the presence of any heritage sites on their property. In this way, we can work together to manage and protect heritage sites that have value to all British Columbians.

If you require assistance determining the protection measures necessary for the heritage site on your property or if you would like to discuss this letter, please feel free to call [insert contact name] at our office, [insert phone number]. We look forward to working with you to protect and manage our past and our future.

Sincerely,

[insert name]

[insert position]

17.6. Template letter to Resource Companies, Municipalities, Regional Districts

This letter can be sent to resource companies that work within your territory. It can also be modified and sent to municipalities and regional districts. This letter is meant to inform them that your First Nation has a policy and protocols regarding heritage sites and that there is an expectation of collaboration to protect the sites.

[First Nation Letterhead and Address]

[Please note: this template letter is not a replacement for legal advice. If your community is concerned about a potential development or proposal to do a heritage investigation, seek legal advice.]

[Date]

[Company Representative/Contact
Contact's Position
Company Name
Company Address]

Dear [Insert name]:

Re: Heritage Management and Protection in [insert First Nation name] territory

The [insert First Nation name] Title, Rights and interests (or, Treaty Rights) are strong throughout our territory.

- Consider including information that shows your strength of claim to Aboriginal Title and Rights (or Treaty Rights) and the cultural and spiritual importance of the area to your community. If you have one available include a map, or description, of your territory. List known research and court evidence, agreements or negotiations that your community has about the area with government.

Our cultural heritage is integral to our cultural survival. We have a responsibility from our ancestors and a commitment to our youth to ensure the ongoing protection and well being of our lands and resources, and heritage sites and objects, now and in the future. The *Heritage Conservation Act (HCA)* protects and manages heritage sites within British Columbia. In addition, our cultural heritage is protected by Section 35 of the Constitution Act, 1982 which recognizes and affirms Aboriginal Title and Rights (or Treaty Rights) and by international instruments to which Canada is a party.

The purposes of Section 35 include to protect Aboriginal peoples' relationship with our lands and resources and to ensure the cultural survival of Aboriginal Peoples: *R. v. Van der Peet*; *Delgamuukw v. The Queen*; *Haida Nation v. British Columbia*; *R. v. Sparrow*. In considering applications for heritage permits or other development activities, including those concerning heritage sites or objects, the Federal and Provincial governments must uphold the honour of the Crown in its dealings with Aboriginal Peoples by engaging Aboriginal Peoples in decision-making about lands and resources, with the goal of minimizing or avoiding infringements of Aboriginal Title or Rights (or, Treaty Rights).

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) endorsed by Canada in November 2010, sets out an international human rights framework which embodies the goal of protecting Indigenous Peoples' and cultures. The UNDRIP protects the principle of free, prior informed consent and recognizes Indigenous Peoples' right to be fully involved in land and resource decisions that impact our cultural identity and survival. Key provisions include:

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Activities authorized or carried out under the *Heritage Conservation Act (HCA)* must meet the constitutional standards required by Section 35 and international standards articulated through UNDRIP. The [First Nation name] will hold the federal and provincial governments to these standards in respect of any decision that they make or authorize which impact our Aboriginal Title, Rights and cultural heritage (or Treaty Rights and cultural heritage), and this may impact upon any authorizations issued to your [company or local government].

[If you have a cultural heritage policy, which addresses the relationship with third parties and municipalities: To honour these commitments, the (First Nation name) has developed the attached Heritage Policy to protect our cultural heritage. The Heritage Policy outlines the steps that companies, developers and archaeologists must follow when working within our territory. It is our expectation that you will follow this policy, and share it with any archaeologist who is hired by [company/municipality/local government name] to conduct work within our territory.]

To ensure protection and management of our heritage sites the [insert First Nation name] actively seeks greater involvement in management of our heritage sites. [Your company, the town/city of X, the Regional District of X] conducts business within our territory and we are inviting you to collaborate with you in this endeavor. We wish to foster improved communication between the [First Nation name] and [company/local government/municipality name] so that that we can work together to manage our heritage sites in a way that respects community needs and protocols.

If you have any questions about our effort to work with you to manage and protect our heritage sites, please contact [name] at [number]. Thank you for your support as we strive for sustainable and culturally sensitive resource use in our territory. [If you are requesting a meeting, suggest several available times. It may be a good idea to hold regular meetings that are generally open to local governments/companies to inform them of your heritage policy, to invite a discussion and build relationships]

Sincerely,

[Insert name]

[Insert position]

17.7. Sample/Template of First Nations Heritage Policy

[First Nation Name] Heritage Policy

[Create title page, insert date]

Part 18. Preamble

[This section should include information about the First Nation(s) represented in the policy. This can include a description of the territory, a statement of Title, Rights and Treaty rights, how the responsibility to care for the lands and resources was inherited from the ancestors, an origin story, a statement that you own your intellectual property, etc.

It can also include a statement about the policy, why it is important to your First Nation and how this policy is meant to help build relationships with archaeologists, developers, landowners, industry, and government within your territory. You may include that this is another step in your First Nation's effort to assume a greater management role over your heritage sites.]

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Part 20. Map 1: [First Nation Name] Territory

[Your First Nation may decide that including a map of the territory will be useful within the policy. However, given the sometimes sensitive nature of maps, it is not absolutely necessary]

Part 21. Purpose Of The [First Nation Name] Heritage Policy

- i. To protect, preserve, manage and record [First Nation Name] heritage in a manner consistent with our traditional laws, values and beliefs.
- ii. To promote [First Nation Name] heritage and cultural traditions.
- iii. To ensure the [First Nation Name] has a role in the management of our heritage resources.
- iv. To cooperate with other organizations in the protection, preservation and management of [First Nation Name] heritage.
- v. To ensure that the companies and developers who conduct business on [First Nation Name] lands have access to a timely, effective and accurate system of identifying heritage resources that may be of importance to the [First Nation Name] and our land use plans and needs.
- vi. To provide a system of communication between the [First Nation Name] and large development companies and government in terms of flagging and managing heritage resources.
- vii. To identify the process all professional archaeologists and researchers must follow when conducting work within [First Nation Name] lands.

Part 22. General

This policy applies to all projects, works, land development and resource management projects (including those proposed for rivers, lakes and waterways) that may impact [First Nation Name] Heritage Sites or Heritage Objects.

This policy also applies to any and all research that may be proposed by anthropologists, archaeologists, ethnographers, ethnohistorians, historians or any other disciplinary research where the [First Nation Name] culture and heritage is the subject of study and the researcher is requesting access to our community, lands and resources.

Generally, within [First Nation Name] territory, all resource, land and water use must be planned in a way that minimally conflicts with [First Nation Name] heritage.

Negotiation and collaboration with the [First Nation Name] is required before a [First Nation Name] Heritage Site or Heritage Object can be damaged, altered or destroyed. Mitigation and/or compensation may be required where impacts to [First Nation Name] Heritage Sites or Heritage Objects occur.

No [First Nation name] Heritage Object is to be removed from a [First Nation name] Heritage Site unless agreed to by the [First Nation name].

Part 23. Definitions

[First Nation Name] Heritage Site

[Your First Nation could substitute words from your language to replace “heritage site”]

[The name of your First Nations heritage sites] is a site of archaeological, historical or cultural significance to the [First Nation Name] and includes graves and mortuary sites.

[First Nation Name] Heritage Sites include but are not limited to:

- Burial or funerary sites;
- Sacred and spiritual sites;
- Transformer and legend sites;
- Food and medicine gathering sites;
- Archaeological sites; and
- Traditional use sites (including resource gathering areas, hunting and trapping sites, and habitation sites).

[First Nation Name] Heritage Object

[Your First Nation could substitute words from your language to replace “heritage object”]

[The name of your First Nations heritage object] means any artifact or object that has past and ongoing importance to [First Nation Name] cultural or spiritual practices.

[First Nation Name] Heritage Objects include but are not limited to:

- Artifacts and objects removed from [First Nation Name] Heritage Sites;
- Culturally important objects taken from the [First Nation Name] in accordance with early Indian Act “potlatch laws”;
- Cultural and intellectual property including songs, stories, photographic material, movie image material, and culturally important images and designs; and
- Plants or plant parts that are important for traditional medicine.

[The name of your First Nations heritage object] does not include any object traded to, commissioned by, sold by or given as a gift to another First Nation or person.

Part 24. Heritage Site And Heritage Object Responsibility

[Your First Nation could substitute words from your language into the title here]

[First Nation Name] maintains the responsibility to care for and manage all [First Nation Name] Heritage Sites and Heritage Objects. At all times, our Heritage Sites and Heritage Objects must be treated with respect. Management must reflect our traditional laws and values and must be conducted in consideration of our future generations. In our effort to manage and protect our Heritage Sites and Heritage objects, the [First Nation Name] may develop heritage related protocol agreements with Aboriginal governments, non-Aboriginal governments, universities or post-secondary institutions, museums and archives and resource management agencies.

Part 25. Unexpected Archaeological Finds

Sometimes unrecorded archaeological sites are unexpectedly found during a development process. If this happens, our policy states that all work must be stopped immediately. The [First Nation Name] must be notified immediately in order to discuss our heritage policy and any immediate steps. The [First Nation Name] will assist the developer in contacting the provincial Archaeology Branch, and if requested, an archaeologist who is familiar with work in our territory.

[First Nation Name], Heritage And Our First Nation Neighbours

[Include information in this section about how you will cooperate/collaborate with neighbouring First Nations. How this is worded will be different for each First Nation, but it is an important part of your policy so that proponents know the process and so that you can work together in the face of development plans.]

Part 26. Archaeological Studies Policy

The [First Nation Name] recognizes that not all archaeological work in our territory will be resource industry or development related. If the archaeological study is research related and is outside of the development process, the [First Nation Name] must still be included in the study design and implementation and this heritage policy is still in effect. If research goals coincide with the [First Nation Name] traditional values and principles, we will strive to support the work. We understand that funding is often problematic in research oriented studies and the [First Nation Name] will work with the researcher to determine the best course of action to include our field crew in the study.

Part 27. Archaeological Work And Surveys Process

[Many First Nations have heritage sites on their reserve lands. Your policy should include an internal management process for those sites, or, if necessary, develop an internal policy that is separate from this policy.]

During all stages of development, the potential for identifying heritage resources and heritage sites must be considered. Unless a project is a [First Nation Name] project, all costs associated with these studies will be borne by the proponent or developer. As noted above, research related work must be discussed with the [First Nation Name] to determine the best course of action. Otherwise, the following steps will assist in this process:

[Some First Nations have a referrals officer or manager who oversees all referrals. You may want to draft this section to clearly indicate the connection between the referrals manager, the field crew, the proponent and the archaeologist.]

i. Information Transfer

- a. Information about the development area to be transferred from the proponent to the [First Nation Name]. Such information must include:
 - Detailed maps;
 - Detailed description of proposed activities;
 - Information about known or possible archaeological sites (i.e. field engineers have noted a possible CMT during their initial survey work);
 - Timeframe for the proposed development; and
 - Contact information, including email, phone and fax.

[Your First Nation may choose to enter into a permitting process in which an archaeologist wishing to conduct work in your territory would complete an application for a permit from your First Nation. This could potentially be a costly process for your First Nation so you may need to consider including a fee structure. It is important to note that the province does not support this kind of endeavor and there is not currently a provincial mechanism to require an archaeologist or developer to comply with your permitting process or fees. If you choose to implement a permitting process, a permit application template is included at the end of this policy template. Some First Nations may choose to work within the current provincial permitting process.]

ii. Pre-fieldwork

- a. The [First Nation Name] will review the development proposal/proposed work and determine the need for a heritage and resources assessment, based on known archaeological values and potential, traditional use information, traditional ecological knowledge and [First Nation Name] land values.
- b. Sites and areas known to have ancestral remains will not be approved for

- development. Areas with known or assumed high archaeological potential will require the equivalent of a provincial Archaeological Impact Assessment to determine any potential impact to our heritage site(s). Areas with medium archaeological potential will minimally require a field review by the [First Nation Name] field crew.
- c. Development on traditional use sites will be considered in light of the impact on the [First Nation Name] and our ability to continue to utilize the site.
 - d. [X] days before fieldwork begins the archaeologist will provide a field schedule to the [First Nation Name], including the days, times and location of work.
 - e. The [First Nation Name/referral person] will communicate with the archaeologist regarding field crew arrangements.
 - f. The fieldwork budget will include at least [X] day(s) pre-field time for the [First Nation Name] field crew member to consult with [insert the name of the position of the person who manages these referrals], Elders and community decision makers about the development area in light of known archaeological values, traditional use information, Traditional Ecological Knowledge and [First Nation Name] land values.

iii. Field Work

[Some First Nations conduct fieldwork independently of an archaeologist hired by the proponent. Write this section to reflect your process]

- a. The [First Nation Name] field crew will accompany the archaeologist into the field. A minimum of [insert the minimum number of crew members required] crew members will be present.
- b. The field crew will assist the archaeologist in the field, noting any archaeological features and other sources of heritage concern that are identified.

iv. Ancestral Remains

During any archaeological investigation or land altering processes, if human remains are identified the [First Nation Name] must be contacted immediately at [enter phone number]. **All work must stop** until it is determined if the remains are ancestral (ancient) or more recent and mitigating steps can be arranged. Our office will work with the provincial Archaeology Branch, an archaeologist and the RCMP to determine the antiquity of the remains. If the remains are ancestral, consultation with the [First Nation Name] is required. Such consultation might include a field visit, meeting(s) with hereditary Chiefs, elected leaders, and Elders, and negotiations around the plan for, protection of, or disposition of the remains. The [First Nation Name] strives to complete this consultation in a timely manner but due to the sensitive nature of ancestral remains, it is necessary for all parties to be patient in this process. [Your First Nation may choose to add a statement about testing the remains for scientific purposes. Different First Nations have different policies ranging from no testing to complete analysis including dating, DNA analysis, gender identification, age at death identification, dietary analysis, etc.]

v. Post-fieldwork

- a. All information recorded by the field crew will be provided to the [First Nation Name] for review.
- b. The fieldwork budget will include at least [X] day(s) post-fieldwork time for the [First Nation Name] to review the field data and reports.
- c. Field conditions and study area coverage will be considered when reviewing the results of the survey (i.e. weather conditions, unexpectedly rough terrain, etc.).
- d. If the [First Nation Name] determines that the fieldwork was inadequate, the archaeologist and proponent will be contacted to make further fieldwork arrangements.
- e. If the [First Nation Name] determines that the field work was adequate, [First Nation Name] recommendations will be forwarded to the archaeologist/proponent when necessary.

Part 28. [First Nation Name] Field Crew Training And Experience

[Can discuss here what kind of training your field crew has. It is ideal to provide a yearly or every other year opportunity for interested community members to take a culturally modified tree and archaeological resources course. These are usually 5 days long. It is likely that a trusted archaeologist can offer advice on how to arrange a course. Some First Nations have been successful in negotiating payment for these courses with forest companies or Ministry of Forest, Lands and Natural Resource Operations.]

[First Nation Name] Field Crew Pay Scale

[You may choose to have one daily rate for any field crew members or you may choose to have a scale based on experience and training. Include the costs here.]

[First Nation Name] Crew Requirements

[Insert here information on crew representation. For example, there will be a minimum of X field crew members for any archeological work conducted in the territory]

It is important to note that the [First Nation Name] field crew is not responsible for consultation between the [First Nation Name] and the proponent. The field crew is present to ensure timely and adequate transfer of field information to our First Nation, as well as standards of practice that respect our values, laws and traditions as per our heritage policy. Although the crew is our representative they are in no way authorized to consult on behalf of our First Nation and their presence must not be considered consultation or accommodation.

Part 29. Results and Subsequent Communication with the Proponent

Following any archaeological or heritage survey work, the [First Nation Name] will review all available reports. After our review, our office will contact the archaeologist or proponent to discuss the work, future work, the development or any other concerns that might have arisen.

Part 30. Requirements for all Professional Archaeologists Wishing to Work in [First Nation Name] Lands

[If your Nation is planning on charging or issuing its own permit in concert with the provincial Archaeology Branch, this is where that information should be provided. An example of what might be said is outlined below.]

In an effort to build relationships with archaeologists, companies, developers, and researchers, the [First Nation Name] is establishing a process for archaeological and research practices within our territories. It is hoped that in this way, the permitting process can be expedited because our First Nation[s] will be aware of and have input into development plans.

Recognizing that the [First Nation Name] is responsible for our heritage and heritage sites, consent is needed for anyone proposing a cultural heritage investigation within the territories. Thus, any permit application to the provincial Archaeology Branch for work that will be conducted in our territory must be reviewed by the [First Nation Name]. It is best and fastest to coordinate this effort through email to [insert appropriate email address] before your application is submitted to the permitting authority. Once reviewed, and if deemed appropriate, a letter of support will be issued.

Once a permit is secured, the archaeologist must work with the [First Nation Name] to identify field crew availability. Field crew requirements are noted above.

[Reports can be asked for before being sent to the branch. The First Nation could request to write the section on site significance and a section could be added entitled 'First Nation Management Recommendations'. A First Nation could require the Archaeologist to draft/add these sections to a report only after consultation with the First Nation].

[A First Nation may choose to add a clause similar to the following: It is necessary for all professional archaeologists who wish to conduct work within our lands to work within this policy. Failure to do so may result in a letter to the provincial Archaeology Branch asking it to deny future permit applications for that archaeologist and/or firm within our lands and a request to proponents that they choose another archaeologist/firm.]

Part 31. Curation Of [First Nation Name] Heritage Objects

Any artifacts removed from a [First Nation Name] heritage site must be curated at a location agreed to by the [First Nation Name]. All curation will be on an 'in-trust' basis until such time as the [First Nation Name] is prepared to take over care.

[If your First Nation obtains official repository status or you have a local museum you work with, you should add it here.]

Part 32. Violation Of This Policy

[This section should be developed internally by your First Nation as one policy will not suit all. You may choose to utilize some of the wording in Part 8 of this toolkit: **“What if our First Nation chooses not to work with a particular archaeologist?”** Regardless, if there is to be an imposed consequence for violating your policy, all parties must be aware of its contents before they work in your territory.]

Part 33. Archaeological Permit Application Template

[Create Your Letterhead here]

Name of Applicant:

Name of Company:

Name of Client Company/Developer

Project/Study Location:

Proposed Date(s) of Study or Fieldwork:

Other Permits Received or Applying for:

Reason for Investigation:

Development Property:		Research Related:	
Forestry:		Recreational:	
Mining:		Other:	
Transportation:			

Kind of Study:

Archaeological Overview Assessment	
Archaeological Reconnaissance	
Archaeological Impact Assessment	
[First Nation Name] Heritage Site Alteration	
Archaeology for Research Purposes	
Archaeology for Research Purposes that will include excavation	

Project Description: Append a description of your project. Include goals and objectives, reason for work, methodology, who will be involved, length of study, artifact curation, site restoration plans, etc.

Applicant Qualifications: Append a description of your qualifications. A curriculum vitae or resume will suffice. Include your experience in similar studies as well your educational

qualifications and any professional affiliations. If the [First Nation name] has your information on file, please simply note “qualifications on file with the [First Nation name].

Do you and your client agree to the following terms and conditions?

To comply with the Permit Terms and Conditions appended to your permit application?

Yes ☐ No ☐

To work with the [First Nation name] field crew that will be reasonably assigned by the [First Nation name]?

Yes ☐ No ☐

To pay or arrange for your client to pay for all field crew costs, including the daily rate as outlined in this policy?

Yes ☐ No ☐

To present the results of your work to the [First Nation name] *if requested*?

Yes ☐ No ☐

To make all reasonable efforts to ensure that all archaeological sites altered under the terms of this permit are restored as nearly as possible to their former condition?

Yes ☐ No ☐

Signature of Applicant

Date

(Month/Day/Year)

Permit Terms and Conditions

1. Permits shall be valid for the term stipulated by the [First Nation name] unless otherwise suspended or cancelled. Extensions to the term of the permit, or other amendments, will be considered upon submission of an application to the [First Nation name] at least **30 days prior** to the expiry date of the permit.
2. The permit holder is responsible for ensuring that all crew members and anyone working on this project are familiar with the [First Nation name] Heritage Policy.
3. The permit holder will hire and pay, or arrange payment, for the [First Nation name] crew members that will be reasonably assigned to the project by the [First Nation name].
4. If human remains are identified during this project, the work will be immediately stopped and the [First Nation name] notified. [First Nation name] Heritage Policy protocol will then be followed.
5. Upon completion of your archaeological work, you will make reasonable efforts to ensure all sites are restored as nearly as possible to their former condition.
6. The permit holder shall work with the [First Nation name] to arrange for a secure repository to curate any materials recovered under this permit.
7. [First Nation name] Heritage Objects and other associated materials recovered under this permit may not be kept for personal use or pleasure, or sold or exchanged for financial gain.
8. The permit holder will provide an opportunity for the [First Nation name] to review and comment on the Permit Report that will be written as per the provincial permitting requirements. This includes input into the interpretation of “cultural value” [and the addition of a ‘First Nation Management Recommendations’ section].
9. A [First Nation name] representative may at any time review the work conducted under the terms of this permit.
10. The [First Nation name] can cancel the permit at any time. Notification will be given to the applicant in writing.
11. The applicant agrees to any other conditions that may be specified in the permit.

PART 18.

References Cited

BCAPA (BC Association of Professional Archaeologists)

1995 BCAPA Code of Ethics and Code of Conduct. <http://www.bcapa.ca/members/bylaws/standards-of-practice/>,

accessed Feb. 13, 2013.

British Columbia

1996 *Heritage Conservation Act* [RSBC 1996] Chapter 187.

British Columbia

2001 Archaeology Branch Bulletin Number 1 – May 2001, Recording Post-1846 CMTs. http://www.for.gov.bc.ca/archaeology/bulletins/bulletin1_recording_post-1846_CMTs.htm, accessed Feb. 10, 2013.

British Columbia

2007a Archaeology Branch Bulletin Number 19 – Feb. 14, 2007, Minimum Content and Format Requirements for Recording Archaeological Sites. http://www.for.gov.bc.ca/archaeology/bulletins/bulletin19_minimum_content_and_format_requirements_for_recording_archaeological_sites.htm, accessed Feb. 10, 2013.

British Columbia

2007b Archaeology Branch Bulletin Number 21 – November 8, 2007, Restrictive Covenant Process for Consulting Archaeologists. http://www.for.gov.bc.ca/archaeology/bulletins/bulletin21_restrictive_covenants.htm, accessed Feb. 10, 2013.

British Columbia

n.d. British Columbia Archaeological Resource Management Handbook. Ministry of Forests, Lands and Natural Resource Operations. http://www.for.gov.bc.ca/archaeology/docs/resource_management_handbook/legislation.htm, accessed March 2, 2013.

Glaum, Doug

2013 Personal communication. BC Archaeology Branch.