

To: Fraser Valley Aboriginal Relations Committee
From: Jessica Morrison, Policy Analyst – Indigenous Relations

Date: 2018-04-11
File No: 3400-01

Subject: Changes to the Heritage Conservation Act

INTENT

This report is intended to advise the Fraser Valley Aboriginal Relations Committee of Bill 14-2019 currently before the BC Legislature, concerning amendments to the Heritage Conservation Act (1996). Staff are not looking for a recommendation at this time, and forward this information should members want more clarification to discuss the item further.

STRATEGIC AREA(S) OF FOCUS

Support Environmental Stewardship
Foster a Strong & Diverse Economy
Support Healthy & Sustainable Community
Provide Responsive & Effective Public Services

BACKGROUND

On March 6, 2019, the Province introduced amendments to the Heritage Conservation Act (HCA) - Attachment 1 to this report. The HCA has not been updated since its introduction in 1996. The intention is to make the Act more effective in its conservation and management of heritage, and archaeological sites and objects.

There are currently over 54,000 registered archaeological sites in BC, and approximately 1300 of those are within the FVRD.

The Heritage Conservation Act applies equally to Crown and private land. The only exception to application of the law is federal lands, which includes reserve lands. Archaeological protections on federal lands are provided through federal statutes. A more fulsome summary of the considerations in the HCA (1996) are included as Attachment 2 to this report.

The amendments are proposed through Bill 14-2019 - Attachment 3 to this report - which received second reading on March 25, 2019.

DISCUSSION

The key functional concepts embodied in the 2019 Amendment Act are as follows:

- People will now be legally required to report discoveries of archaeological sites or objects
- A person may now be required to obtain and pay for a heritage inspection or investigation prior to obtaining a permit to alter a heritage site in some circumstances. For example, if a person wants to alter a site to develop land, they may be required to complete archeological studies
- The ministry will have enhanced powers to refuse, amend, suspend and cancel permits
- Compliance and enforcement tools are improved

Uncertainties that have been common critiques of the effectiveness of the 1996 Act were its lack of enforcement mechanisms, and its lack of ability to compel the proactive protection of both documented and undocumented archaeological sites.

The current Act defines protection for both documented and undocumented archaeological resources. However, the Act only compels archaeological investigation in reactive situations. In other words, archaeological investigations are only legally required where previously documented archaeological resources are at immediate risk of disturbance by land-altering activities. This has historically left a grey area of protections where properties with pending developments, or land-alerting proposals, have a high potential to contain yet-undocumented archaeological resources.

The amended Act would contain provisions for the Province to compel a party, by ministerial order, to conduct proactive archaeological investigation where potential for previously unrecorded archaeological remains is considered significant.

These provisions may come into play where a party disregards archaeological best practice, or recommendations from a professional archaeologist. The provisions would also apply in circumstances where consultation with a First Nation has brought forward justification for archaeological concerns with proposed land alterations.

The mechanism of ministerial order to compel proactive archaeological investigation is passive. As such, it would likely only be put to use in a circumstance where a conflict of opinions on a management approach could not otherwise be resolved.

It is important to note that it has always been a professional archaeological best management approach to recommend and conduct proactive archaeological research on proposed development properties where potential for previously unrecorded archaeological remains is considered significant. The 2019 Amendment Act provisions will simply introduce a legal mechanism by which the Province may compel a developer, property owner, or resource proponent to follow that best management approach.

There are implications for the pending amendments to the HCA for the FVRD and member municipalities. These implications are pertinent in two business areas:

1. Situations where the FVRD or a municipality is the proponent of a development, land alteration, or the owner of a property
2. Information and guidance provided to residents, land owners, developers and businesses

Corporate Affairs staff are currently working together with FVRD departments to develop department-specific archaeological best management practices, and to incorporate them into standard workflows and project plans, in anticipation of passage Bill 14-2019. This work will ensure that the FVRD is in compliance with existing and anticipated legislation regarding the protection and management of archaeological and cultural heritage sites.

A number of archaeological training sessions for staff have already begun through the FVRD Learns program. In January 2019, the FVRD collaborated with the Archaeology Team from the Stó:lō Research and Resource Management Centre (SRRMC) to provide two, two-hour sessions on archaeological chance find procedures. These sessions were targeted to FVRD outdoor workers and managers. SRRMC archaeologists led staff through a series of hands-on stations where they learned about a wide variety of archaeological materials and site types, including artifact identification, and Stó:lō material cultural considerations. Attachment 4 to this report presents course feedback from staff, gathered through an anonymous survey.

FVRD project planners and managers were also provided with two, two-hour training sessions in February 2019 on using and interpreting data in the provincial Remote Access to Archaeological Data (RAAD) database. The RAAD database has historically been accessible to a very limited audience, namely professional archaeologists, First Nation organizations, and other vetted government users. The nature of archaeological data is sensitive, and cannot be made public without putting the integrity of those sites at risk.

The Archaeology Branch has recently invited local government planners to join RAAD, and to apply the tool in planning, project management, strategic planning, and land management. The FVRD Learns RAAD Training sessions were provided to staff in order to inform and support the development of organizational, department-specific policies, as appropriate, regarding the use and applications of the tool.

An interactive digital version of Bill 14-2019 containing explanatory notes can be viewed at:

<https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/progress-of-bills>

COST

N/A

CONCLUSION

This report is presented for information, and intended to broaden the awareness and understanding of laws and regulations concerning archaeological and cultural heritage in BC. Staff will continue to monitor and inform the committee of developments with respect to archaeological and cultural heritage conservation.

COMMENTS BY:

Jennifer Kinneman, Director of Corporate Affairs

Reviewed and supported.

Mike Veenbaas, Director of Financial Services

No further financial comments.

Paul Gipps, Chief Administrative Officer

Reviewed and supported

Attachments:

1. Heritage Conservation Act (1996)
2. Heritage Conservation Act (1996) Summary
3. Bill 14-2019, Heritage Conservation Amendment Act, 2019
4. Staff feedback on Archaeological Chance Find Procedure Training sessions