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REPORT TO FIRST NATIONS RELATIONS COMMITTEE MEETING OF WEDNESDAY, February 20, 2019

SUBJECT Archaeology Policies and Procedures

ISSUE

The purpose of this report is to update the Committee on the work being undertaken by the First Nations Relations Division to develop an Archaeological Policies and Procedures framework slated to be implemented across the organization in Q2 of 2019.

BACKGROUND

An archaeological site is a location where there is evidence of past human activity. Archaeological site examples include: stone carvings, remains of ancient houses and campsites, shell middens, culturally modified trees, and early trading posts. These sites provide information about Indigenous life during the past 12,000 years and non-indigenous life for the past 200 years.

The context of the site in which the cultural materials are found is as important as the artifacts themselves. Therefore the Province has developed a regulatory framework to mitigate the destruction of this historical record.

The Heritage Conservation Act (HCA) regulates activities in known and unknown archaeological sites. As sites are discovered, usually through development, they are mapped and recorded on a Provincial database called the Remote Access to Archaeological Data application or RAAD. The data base also identifies areas that have a “high potential” for archaeology as well as historic sites¹. Although the information is not readily available to the general public² local governments can access that database to determine whether a proposed development or public works activity is within a known archaeological site or at risk of being in an as yet, unknown site. It is an offence under the HCA to undertake earthworks in a known site without a Heritage Alteration Permit, which must be issued under the direction by a Registered Archaeologist. Fines of up to \$1,000,000 may be issued against a corporation for failing to comply with the HCA.

The RAAD data for the region is considered to be rudimentary. Although the known sites are clearly marked, the high potential sites are conceptual and not complete. In the 1980s, a team of archaeologists undertook an overview of the region, through a combination of desk top analysis and some ground truthing. Factors such as known village sites, proximity to water features, bluffs and other geographic factors that typically indicate historic human activity, were used to identify areas of “high potential”. This work was funded by the Province, but the program did not allow for a comprehensive assessment of the region. As a result, the baseline information for the region is rudimentary, and large swaths of the lands (notably the Juan de Fuca Electoral Area) have no available data.

When the CRD undertakes public works activities, whether with its own crews, or through sub-contractors, the organization takes on a risk that archaeological materials could be discovered and

¹ Historic sites refer to non-indigenous sites or buildings of historic significance, and typically registered by local governments).

² Homeowners can enquire at the Archaeology Branch about their specific property.

disturbed, which in turn requires a shut down until permits can be acquired, expensive delays, potential fines, and potentially damaged relationships with impacted First Nations.

First Nations have identified as a critical concern, compliance with the HCA and in particular, the respectful care and reinterment of ancestors.

Over the years, operational departments in the CRD have developed their own ad hoc approach to the archaeological regulations, however staff have identified a need for tools and resources to assist project managers in understanding the regulatory framework and obligations under the HCA. A cross-organization approach ensures best practices are followed, risk is mitigated and resources are efficiently utilized.

Applicability of the HCA to CRD Activities

There are two ways the CRD interacts with the HCA. The CRD acts as a proponent when it undertakes land-altering activities (pipeline installations, pump repairs, paving, tree removal) and as a local government authority when it issues land use development permits in the Juan de Fuca Electoral Area.

Staff have been working with a registered archeologist to develop a set of policies and procedures to provide clear protocols to follow for each of these scenarios. The list of the various policies and procedures that make up the Archaeology Tool kit is attached as Appendix A.

CRD as local authority. When the CRD acts as a local government authority, the planning office will reference the provincial data base (RAAD) to determine if the owner's property is in a known archaeological site. If it is, the planning office will advise the applicant that under the HCA, a Heritage Alteration Permit is required and that the owner must engage a Registered Archaeologist before any development can occur on the property. Because there is very little baseline information available for the Juan de Fuca area, in most cases the planning office will not be able to confirm for the homeowner if their property is in a "high potential" area.

Although a permit is not required to undertake work in a non-archaeological site, the homeowner will benefit from knowing the risks before undertaking any activity. The planning office will provide the applicant with the Provincial education materials which lays out the obligations of the property owner and contact information for support at the Archaeology branch. The CRD is not responsible for property owners' compliance with the HCA, however, it is the expectation from the Province that local governments will act as liaisons and direct applicants to the appropriate Provincial resources.

CRD as proponent. When the CRD acts a proponent, it has the responsibility to be compliant with the HCA. The following is, at a high level, the key elements of the policies and procedures.

- The CRD will obtain a 'blanket permit' under the HCA;
- The CRD will pre-qualify archaeologists to be engaged, on an as-needed and rotating basis;
- At the start of each year, the CRD's capital projects will be registered and added to the blanket permit, as a way to give ample and prior notice to First Nations and the Archaeology branch of the CRD's expected activities;

- Where new or unplanned activities arise, the blanket permit will be amended to include that project;
- All activities that involve earth works will be scanned for archaeological risk:
 - Each project will be categorized according to its level of risk, with a corresponding action plan;
 - Where the site has been determined to be of low risk, a “Chance Find” protocol, which has been developed for the CRD, will be initiated;
 - Where the site has high risk of an archaeological find, one or more of the pre-qualified archaeologists will be asked for a proposal to determine the best approach and an associated fee.
- The Blanket Permit will be managed by the First Nations Relations Division (FNRD) on behalf of the organization;
- The Project Manager overseeing the earthworks activities will be the primary contact for the archaeologist, with support from FNRD for the direct notification of First Nations should cultural materials be found;
- If ancestral remains are discovered, FNRD will help ensure respect for local cultural and spiritual protocols, in consultation with the archaeologist and impacted First Nations.

As the CRD builds its literacy and skills in managing archaeological resources, it may seek the support from an owner's archaeologist on an hourly and contract basis to help guide the implementation of the corporate policies and procedures, and help navigate the relationships with the pre-qualified archaeologists on contract.

A flow-chart which describes the process is attached as Appendix B

ALTERNATIVES

That the First Nations Standing Committee recommend to the Regional Board:

Alternative 1:

This report be received for information.

Alternative 2:

Staff consider alternative approaches and report back to the Committee.

FINANCIAL IMPLICATIONS

Archaeology can add significant costs to a project in the form of unexpected delays, potential fines and the actual archaeology work. The intention of this policy is to invest in good archaeological practices in order to avoid the chances of disturbing a site in the first place, and where unavoidable, mitigating the associated costs.

A blanket permit process saves time and there are cost efficiencies gained from having pre-qualified archaeologists that have competitively bid on the work.

Ensuring compliance with the HCA will likely result in some increased costs to capital projects. The full cost impact will vary on a case-by-case basis depending upon the location of the project and whether the project is in an identified archeological site. In high risk cases, the cost of mitigation measures, including on-site monitors, may require an increase in project contingency of up to 10 percent.

INTER-GOVERNMENTAL IMPLICATIONS

First Nations have consistently identified the issue of compliance with the HCA and respect for local cultural and spiritual practices. This set of policies and procedures is a tangible illustration of the CRD's commitment to its relationships with First Nations.

The Province is undergoing a review and refresh of the Archaeology Branch, which includes outreach and education to local governments. This set of policies and procedures meets with the Province's expectations.

For the local municipalities that have archaeological policies in place this comprehensive set of policies and procedures aligns or at the very least does not conflict with their approaches. There is an opportunity for CRD to partner with interested municipalities to join the blanket permit and add their capital projects to the permit. The CRD may also make the policies and procedures document set available to member municipalities which will further support a seamless approach to archaeology in the region.

CONCLUSION

The CRD has developed a set of policies and procedures to guide archaeological activities in the Region. The approach includes the establishment of a regional blanket permit for the entire region, and integrates a respectful communications approach with First Nations. The archaeology approach aims to avoid archaeological disturbance in the first place, and where unavoidable or unexpected, mitigate the impacts.

RECOMMENDATION

That the First Nations Standing Committee recommend to the Regional Board that:

This report be received for information.

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Appendix A: Archaeology Toolkit Index
Appendix B: Archaeology Process Flow Chart