

Golder Associates Ltd.

500 – 4260 Still Creek Drive
Burnaby, British Columbia, Canada V5C 6C6
Telephone (604) 296-4200
Fax (604) 298-5253



REPORT ON

**THE EVOLUTION OF BRITISH COLUMBIA'S
HERITAGE ENVIRONMENT: AN OVERVIEW
AND DISCUSSION OF FIRST NATIONS
ISSUES**

Submitted to:

Union of B.C. Indian Chiefs
Attention: Don Bain, Acting Administrator
500 – 342 Water Street
Vancouver, B.C.
V6B 1B6

DISTRIBUTION:

- 3 Copies - Union of B.C. Indian Chiefs, Vancouver
- 2 Copies - British Columbia Ministry of Community, Aboriginal and Women's Services, Victoria
- 2 Copies - Golder Associates Ltd., Burnaby

March 31, 2003

03-1417-006



EXECUTIVE SUMMARY

Golder Associates Ltd. (Golder) was retained by the Union of B.C. Indian Chiefs (UBCIC) to prepare a document that provides an overview of the current cultural heritage environment in British Columbia. Specifically, the UBCIC asked Golder to explore four areas:

1. Changes to the *Heritage Conservation Act* [RSBC 1996] Chapter 187;
2. Changes to the *Museum Act* [RSBC 1996] Chapter 326 to enable the Royal British Columbia Museum to become a Crown Corporation, and the related creation of a 'cultural precinct';
3. Implications for the management of heritage sites in light of the revised Provincial Policy for Consultation with First Nations (2002); and
4. The pending closure of the Heritage Resource Centre (Ministry of Community, Aboriginal and Women's Services).

The purpose of this overview was twofold. First, the report provides the UBCIC with relevant background information to evaluate the nature of the proposed or pending changes to the cultural heritage environment in British Columbia. Second, the report allows the UBCIC to identify issues for First Nations that are related to these changes and to devise means to protect their rights and interests.

While a number of specific action items were identified for the UBCIC to consider, it is clear that this is only the beginning of the process. In addition to these modest first steps, it is recommended that the UBCIC expand the scope of the current study to include meaningful internal dialogue as well as discussions with government. This current study can be used as the basis for future discussions.

Credits

Project Manager

Andrew Mason, M.A., R.P.C.A.

Researchers

Nia Hughes-Witcomb, B.A., M.Sc. (Econ.)

Andrew Mason

Natasha Thorpe, MRM

Report Authors

Andrew Mason

Don Bain¹, B.A.

Technical Review

Jeff Bailey, M.A., R.P.C.A.

Don Bain

¹ Union of B.C. Indian Chiefs

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
1.0 INTRODUCTION.....	1
1.1 Report Format	1
2.0 METHODS	3
3.0 BACKGROUND	4
3.1 Heritage Conservation Act [RSBC 1996] Chapter 187	4
3.2 Museum Act [RSBC 1996] Chapter 326.....	4
3.3 Provincial Policy for Consultation with First Nations.....	5
3.4 Heritage Resource Centre.....	6
4.0 ISSUES	8
4.1 Aboriginal Rights	8
4.2 Consultation.....	9
4.3 Representation	11
4.4 Protection	12
4.4.1 Heritage Conservation Act [RSBC 1996] Chapter 187	12
4.4.2 Section 4, Heritage Conservation Act [RSBC 1996] Chapter 187	13
4.4.3 Enforcement of the Heritage Conservation Act [RSBC 1996] Chapter 187	13
4.4.4 The Role of Archaeology	13
4.5 Access.....	15
4.5.1 Cultural Precinct	15
4.5.2 Culturally Sensitive Material	15
4.5.3 Heritage Resource Centre	16
5.0 RECOMMENDATIONS.....	17
5.1 Aboriginal Title and Rights.....	17
5.2 Consultation.....	17
5.3 Representation	17
5.4 Protection	18
5.5 Access.....	18
6.0 SUMMARY	19
7.0 CLOSURE	20
8.0 REFERENCES CITED.....	21

1.0 INTRODUCTION

Golder Associates Ltd. (Golder) was retained by the Union of B.C. Indian Chiefs (UBCIC) to prepare a document that provides an overview of the current cultural heritage environment in British Columbia. Specifically, the UBCIC asked Golder to explore four areas:

1. Changes to the *Heritage Conservation Act* [RSBC 1996] Chapter 187;
2. Changes to the *Museum Act* [RSBC 1996] Chapter 326 to enable the Royal British Columbia Museum to become a Crown Corporation, and the related creation of a ‘cultural precinct’;
3. Implications for the management of heritage sites in light of the revised Provincial Policy for Consultation with First Nations (2002); and
4. The pending closure of the Heritage Resource Centre (Ministry of Community, Aboriginal and Women’s Services).

The purpose of this overview was twofold. First, the report provides the UBCIC with relevant background information to evaluate the nature of the proposed or pending changes to the cultural heritage environment in British Columbia. Second, the report allows the UBCIC to identify issues for First Nations that are related to these changes and to devise means to protect their rights and interests.

1.1 Report Format

Following an introductory section, a brief discussion of the methods that were used to compile and assess the data used in this report is presented (Section 2.0). A summary of the recent or proposed changes to the heritage landscape in British Columbia (bullets 1 to 4 in Section 1.0) is found in Section 3.0. Key issues for First Nations that relate to these changes are identified in Section 4.0, and Section 5.0 (Recommendations) presents a roadmap to further address the issues that emerge from this discussion paper. Section 6.0 (Summary) recaps the study findings and Section 7.0 provides closure to the report. Section 8.0 lists references that were cited, and Appendix I lists the organizations and individuals that were contacted as part of this study. Appendix II contains a press clipping related to a successful prosecution under precursor legislation to the current heritage statute.

Golder was responsible for the preparation of this document; particularly aspects that relate to existing conditions in the heritage landscape of British Columbia. However, content for Sections 4.0 (Issues) and 5.0 (Recommendations) was largely provided by the UBCIC with some input from Golder. The UBCIC reviewed and approved the contents of this document.

2.0 METHODS

In preparing this report, Golder and UBCIC staff collected and reviewed readily available literature pertaining to changes in the heritage landscape of British Columbia. The review included:

- **Internet:** The World Wide Web was used to access key government websites (e.g., Royal BC Museum) for press releases, Hansard records, transcripts of open government cabinet meetings, legislation (e.g., *Heritage Conservation Act* [RSBC 1996] Chapter 187), and service plans (e.g., Royal British Columbia Museum 2003).
- **Key contact inquiries:** To obtain a range of opinions and input into this study, attempts were made to contact different First Nations communities, key government officials, heritage sector organizations, and heritage professionals working in institutions throughout British Columbia (e.g., Simon Fraser University and the University of Northern British Columbia). Contact was made by facsimile/letter, telephone, and email. A list of the institutions and individuals approached and the results of these inquiries is found in Appendix I².

² Input received by the UBCIC from First Nations individuals and organizations is considered confidential. As a result, statements made by these individuals are not attributed to a specific entity in this report. Similarly, Appendix I only lists the names of the First Nations and individuals that were approached for information.

3.0 BACKGROUND

To identify and understand the issues that are important to First Nations in British Columbia in light of the evolving heritage landscape, it is necessary to first provide an overview of ‘existing conditions’. While it is not the aim of this discussion to provide a critique of pending or actual recent changes and decisions, it is necessary for latter sections of this report to frame the current situation. Each of the four topics of inquiry that was outlined in Section 1.0 are discussed in the following sections.

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

In the fall of 2001, the Province held preliminary discussions with respect to potential amendments to the *Heritage Conservation Act* [RSBC 1996] Chapter 187 (*HCA*). These discussions explored ways to improve the balance between the need to conserve archaeological sites and the need to protect the rights of private property owners. As recently as March 12, 2003 it was understood that discussions surrounding proposed changes to the *HCA* had not progressed to any significant degree since late 2001. Further, should the issue of amendments to the *HCA* be raised again, government recognized the need to involve First Nations and stakeholders in a process of engagement and consultation.

However, on March 24, 2003, the Minister of Community, Aboriginal and Women’s Services, the Honourable George Abbott, presented First Reading of Bill 22 in the B.C. legislature. A portion of this bill, the “*Community, Aboriginal and Women’s Services Statutes Amendment Act, 2003*”, included repealing Part 3 (The British Columbia Heritage Trust) from the *HCA*.

3.2 *Museum Act* [RSBC 1996] Chapter 326

In late 2001, the government iterated the need for the Royal British Columbia Museum (RBCM) to review its operations and examine ways to improve the provision of services as part of the government’s Core Services Review. At an Open Cabinet Meeting on November 22, 2002, the government approved the RBCM’s recommendation to become a Crown entity, thereby signifying a change in governance (RBCM News Release 2002MCAWS0064-001004).

The *Museum Act* [RSBC 2003] Chapter 12 both repeals and replaces the *Museum Act* [RSBC 1996] Chapter 326 and, in the view of government, provides a mechanism through which the RBCM can respond to the challenges of effectively managing a cultural institution. Under the *Museum Act* [RSBC 1996] Chapter 326, the museum was under the control of a Provincial Museum Director under the authority of the minister. The *Museum Act* [RSBC 2003] Chapter 12 establishes the RBCM as a legislated

corporation with a Board of Directors, appointed by the Lieutenant Governor in Council, that will report to the Minister of Community, Aboriginal and Women's Services. The Board will also appoint a chief executive officer of the corporation.

The provincial government sees this change as key to increasing opportunities to improve the ways in which the RBCM conducts its activities. The new Board will pursue these opportunities as outlined in the proposed ministerial service plan (2003/4-2005/6) (RBCM 2003). The CEO's office, with input from the Board of Directors, will be responsible for overall planning, direction, and operation of the RBCM in four key areas, namely: curatorial services, public programs, archives, and corporate services.

Associated with the new Crown Corporation announcement on November 22, 2002, is the concurrent cabinet approval for a cultural precinct to be established, involving the amalgamation of the RBCM with the British Columbia Archives, Helmcken House, and the Netherlands Carillon (RBCM Backgrounder 2002MCAWS0064-001004). Previously the responsibility of four separate ministries, the rationale for the cultural precinct stems from the fact that they all share the same mandate and are in close physical proximity to each other. Government anticipates that the group will benefit from streamlined processes, operational efficiencies, and collaborative strategies for the stewardship of cultural resources. Further, it is the government's hope that the museum will be able to take advantage of the opportunities afforded by the Crown to form business and community partnerships in support of cultural tourism and make the cultural precinct a world-class entity.

3.3 Provincial Policy for Consultation with First Nations

Recent decisions of the British Columbia Court of Appeal have resulted in new duties to consult with First Nations. Specifically, industry and local government have new, legally enforceable duties to consult with and accommodate First Nations wherever policy and operations decisions impact on lands subject to reasonable claims of Aboriginal rights and title. Accordingly, the Provincial Consultation Guidelines (1998) were amended in October 2002 to incorporate present case law (Province of British Columbia 2002).

First Nations law has been rapidly changing in the last few decades. Aboriginal rights were recognized and affirmed in Section 35(1) of the *Constitution Act*. The *Sparrow* (1990) and *Delgamuukw* (1997) decisions discussed Aboriginal and treaty rights, including Aboriginal title. In 2002, new duties to consult arose from legal decisions in *Taku River Tlingit First Nation v. Ringstad et al.* [2002] B.C.C.A. 59 (Taku River), *Haida Nation v. B.C. and Weyerhaeuser* [2002] B.C.C.A. 147 (Haida 1), and *Haida Nation v. B.C. and Weyerhaeuser* [2002] B.C.C.A. 462 (Haida 2). Through these decisions, the Government of British Columbia and third party interests are bound to consult and to accommodate the Aboriginal title interests of First Nations *prior to proof*

of Aboriginal title and rights in the court. Whether these decisions are narrowly or broadly interpreted will partly determine how the new duties to consult will manifest. At this early stage, it is difficult to predict the full extent of these duties, but it is generally accepted by First Nations that consultation must occur as part of all government decisions affecting Aboriginal title and rights.

The Provincial Policy for Consultation with First Nations arose in response to these recent changes in case law. The Policy lays out the following four-stage approach to be taken by members of all provincial ministries, agencies, and Crown Corporations:

1. Initiate consultation.
2. Consider the impact of the decision on Aboriginal interests.
3. Consider whether any likely infringement of Aboriginal interests could be justified in the event that those interests were proven subsequently to be existing Aboriginal rights and/or title.
4. Attempt to address and/or reach workable accommodations of Aboriginal interests, or negotiate a resolution.

3.4 Heritage Resource Centre

The Heritage Resource Centre (Ministry of Community, Aboriginal and Women's Services) contains the government's entire collection of archaeological studies conducted under the *HCA* permit as well as other non-permit documentation, which is essential for archaeological land use decisions³. Reports are used by First Nations researchers, archaeologists, and resource managers. As they contain sensitive cultural information, these reports are specifically excluded from the *Freedom of Information and Protection of Privacy Act*. It is understood that the Heritage Resource Centre will close at the end of March 2003.

As currently proposed, one copy of each permit report⁴ and some of the non-permit supporting materials (e.g., archaeological overview studies, ethnobotanical studies, etc.)

³ The Heritage Resource Center has estimated holdings of 15000 titles.

⁴ Permits issued under the *Heritage Conservation Act* stipulate that two copies of final reports must be submitted to the review agency. After review and acceptance by the government agency, both permit reports are forwarded to the Heritage Resource Centre. One copy becomes available for on-site use, while the duplicate copy is available for both on-site use and loan. Microfiche copies of these permit reports are also made available to major research institutions in British Columbia (e.g., U.B.C.'s C.E. Borden Laboratory of Archaeology).

will be transferred to the Archaeology and Registry Services Branch office and will be available for on-site use. There will be no borrowing privileges but copies of the reports may be made available on a cost-recovery basis. In addition, the Archaeology and Registry Services Branch is scanning all permit reports into Adobe PDF⁵ and will eventually make these reports available to qualified users through a secure Internet portal. The timeline and the process of determining access through the secure Internet portal have not been determined.

The balance of the Heritage Resource Centre's holdings will be transferred to the Provincial Archives. Although access conditions for materials to be transferred to the Provincial Archives is not known, it is likely that the materials will be available for on-site use only with a provision for duplication on a cost-recovery basis.

⁵ Portable Document Format.

4.0 ISSUES

The four discussion points in the preceding section indicate far-reaching changes to B.C.'s heritage landscape are well underway. With change come both challenges and opportunities. The purpose of this section is to explore some of these challenges and opportunities that may exist for First Nations. Further, this section frames a number of key issues that First Nations may wish to address with respect to the current heritage landscape in British Columbia.

4.1 Aboriginal Rights

The topic of Aboriginal rights is complex and could easily form the basis of an entire report in its own right. This section focuses on the issue of Aboriginal rights with respect to the information presented in Section 3.0.

Heritage Sites

Heritage sites, including archaeological sites, traditional land use sites, and spiritual sites, are extremely important to First Nations, and many First Nations take seriously their obligation to protect these sites and the territory of their ancestors for the use of future generations. The UBCIC's position on the importance of these sites and the Province's role was clearly articulated in their draft position paper on First Nations graveyards, burial areas, sacred sites, and heritage objects (UBCIC 1992). Specifically, this document stated:

“The position of the Province of British Columbia on ownership of “aboriginal heritage” sites and objects is unacceptable to our First Nations. “Stewardship” of our graveyards, burial areas, sacred sites and cultural objects must flow from the recognition in law of our Nations' aboriginal title, not from Provincial policies and laws that ignore, override, defer, or deny our ownership.”

One of the First Nations community respondents in this study provided the following comments.

“Our Indigenous history on this continent has not been officially recognized and is not completely in the written record yet; much of our history (contact and pre-contact) is literally written in the land. Further, our legal Aboriginal rights and title rely, in part, on this fact that much of our history is written in the land.”

Another First Nation community member echoed these concerns by indicating his community has been protecting cultural sites for years because the impact of development is “totally unfair to our Elders..[and] hurting our Elders.”

Crown Corporations

One concern that was identified with respect to the creation of the RBCM Crown Corporation was the possibility that the operation will be forced into a business model. In such a setting, sustainability and profitability are paramount, creating the potential for important, yet economically non-viable, programs or aspects of the mandate to be dropped or neglected. In the light of this concern, there is some question whether the Crown Corporation is the best structure for the RBCM, given its duty to safeguard the irreplaceable collections of originating communities. A recent newspaper article articulated this concern, “..the changes [to the governance structure of the RBCM] has some people worried the museum may put profits before purpose, and could sell off some of its holdings, including First Nations artifacts” (Wiwchar 2003).

Another issue that emerged is the uncertainty with respect to how the Crown Corporation Board will treat the legal issue of Aboriginal title and interests in relation to such areas as the repatriation of cultural objects or the issue of intellectual property rights of First Nations (i.e., traditional knowledge of medicinal plants).

One First Nations representative expressed concern with respect to what might happen if the profit motives of the Crown Corporation Board conflict with First Nations interests.

Heritage Resource Centre

The pending closure of the Heritage Resource Centre is of concern to First Nations as these reports provide evidence of Aboriginal title and rights, which the provincial government is legally obligated to protect under Section 35(1) of the *Constitution Act*. Further, the closure of the Heritage Resource Centre and the resulting dispersion and change in access to these records will seriously curtail the ability of First Nations to access and research vital land use data. It will also impede the provincial and federal governments’ ability to avoid infringing upon Aboriginal rights.

4.2 Consultation

Consultation is another major issue for First Nations. Recent court decisions such as Haida 1 and 2 are currently redefining the scope and definition of what actually constitutes “consultation”. By all appearances, this will remain in flux for some time to come.

Provincial Consultation Guidelines (2002)

Each of the four stages of the Province's Consultation Guidelines (2002) is well-intentioned, but may not be in keeping with the objectives of a particular First Nation. Indeed, the process by which the policy was developed has not been described, and there is no indication that First Nations were ever consulted on the development of this policy. This raises questions as to whether First Nations support the policy.

The question of "soundness" of Aboriginal interest is at the cornerstone of each of these stages, yet nowhere in the policy is there a definition of what this entails. For example, the policy states "the depth of consultation and degree to which workable accommodation should be attempted will be proportional to the soundness of that interest." Without an established test for "soundness", it is likely that expectations of consultation required will differ between provincial agencies and First Nations.

First Nations have expressed concern that the question of "soundness" suggests a prejudgement of the outcome of a government decision-maker who must weigh other values against First Nations interests in such areas as the issuance of a *HCA* Section 12 site alteration permit. In essence, First Nations concerns centre on how the policy demonstrates the provincial government's risk-management approach to consultation with First Nations. This gives the appearance that government is not truly attempting to reconcile Aboriginal interests with competing third-party interests.

Another concern articulated by a First Nations respondent concerning the Provincial Consultation Policy (2002) relates to the fact that this policy does not fully contemplate the direct impact of development and/or economic activity on heritage resources except that Aboriginal interests may exist on land with archaeological sites or traditional land use sites. However, it is acknowledged that the consultation policy may, in some circumstances, enhance opportunities for the identification of previously undocumented heritage sites.

With respect to the wider context of this study – consultation and implications for the management of heritage sites in British Columbia – two questions need to be addressed:

1. Are Aboriginal title interests being considered in these proposed changes to the heritage landscape of British Columbia? and
2. Has there been a dialogue or meaningful consultation between provincial government representatives and First Nations?

Heritage Conservation Act [RSBC 1996] Chapter 187

As stated in Section 3.1, provincial government representatives recently indicated a willingness and a commitment to include First Nations and stakeholder groups in discussions related to any proposed amendments to the *HCA*. Shortly after this commitment was made, government undertook First Reading of Bill 22 in the legislature – a Bill that will repeal Part 3 of the *HCA*. This unilateral action raises concerns over the government’s earlier commitment to consult with First Nations and to engage stakeholders in matters pertaining to heritage in British Columbia.

Museum Act [RSBC 2003] Chapter 12

One First Nations response expressed concern with respect to the province’s lack of consultation with First Nations prior to amending the *Museum Act*.

Traditional Land Use Studies

Three First Nations community respondents spoke of the necessity for the provincial government to fund traditional use studies or land-use and occupancy studies as part of the consultation process. One community respondent stated that there was a dire need in his community to identify and document sites of importance in order to protect them from development.

Another community respondent stated “these traditional use studies can help to be certain that development is not destroying remains, dwellings or artifacts that may be contained in a site. The province should be funding traditional use studies.” This First Nation also feels that *prima facie* evidence needs to be recognized as sufficient grounds to investigate a site for Aboriginal remains, sites, or artifacts.

4.3 Representation

As discussed in Section 3.2, as a result of legislative changes in 2003 to the *Museum Act* [RSBC 1996] Chapter 326, governance of the RBCM will now be the responsibility of an appointed Board. It is envisaged by government that this Board will consist of community and government representatives whose aim is to simultaneously maintain government control and to provide an effective mechanism to support the role of the community in decision-making processes.

The Board will initially consist of 11 members, and after a prescribed period, six directors will be appointed following consultation with the Chair, and a further five will be appointed from persons nominated to the Board. It is vital for First Nations to be included on the Board if the mandate of the Board is to achieve its objectives that reflect

upon society as a whole. In so doing it will allow for specific First Nations issues to be adequately represented at a key decision-making level and provide a clear link with the CEO's office.

4.4 Protection

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

Second only to education and awareness, heritage legislation is the key element behind any organized approach to the management and protection of cultural heritage resources. Section 3.1 detailed the recent move by government to repeal Part 3 of the *HCA* without input from First Nations or other affected parties and raises concerns that other changes may be forthcoming.

The last major revision to the *HCA* was completed in 1996. Prior to the ratification of this revised statute, there was a lengthy process of consultation throughout the province (see Province of British Columbia 1987, 1990). At that time, in response to the Province's proposed changes to the *Act*, the UBCIC prepared a statement that questioned the Province's 'joint stewardship approach' to dispute resolution with respect to heritage matters. Specifically, the UBCIC stated that:

“The basis of the Provincial Government's new *Heritage Act* is that the Province of British Columbia has underlying ownership of all the “Crown Lands” and private “fee simple” lands in our traditional territories, including our burial areas and sacred sites. The Province is willing to share “stewardship responsibilities” for lands, resources and property with our First Nations, so long as its illegal ownership of them is not challenged by our First Nations.

First Nation heritage is a fundamental aspect of the overall Land Question in British Columbia.

The position of the Province of British Columbia on ownership of “aboriginal heritage” sites and objects is unacceptable to our First Nations. “Stewardship” of our graveyards, burial areas, sacred sites and cultural objects must flow from the recognition in law of our Nations' aboriginal title, not from Provincial policies and laws that ignore, override, defer or deny our ownership” (UBCIC 1992).

Given these sentiments from roughly ten years previous, it is likely that many of these core issues with respect to ownership, protection, and Aboriginal rights will emerge once again should future amendments to the *HCA* be proposed. Further, given the

government's recent decision to amend the *HCA* without consulting First Nations, there is cause to doubt that First Nations will be consulted with respect to any future changes to the *HCA* or that First Nations concerns will be taken seriously and accommodated.

4.4.2 Section 4, *Heritage Conservation Act* [RSBC 1996] Chapter 187

With respect to the present wording of the *HCA*, specifically Section 4 (Agreements with First Nations), there is concern that the *HCA* does not adequately safeguard First Nations heritage sites and heritage objects that are not automatically protected under Section 13 of the *HCA* [see *HCA* Section 13(2)(b), (c), (d), (e), (f), and (g)]. Site types that might fall into this category could include sacred areas like ritual bathing pools, transformer sites, or post-1846 culturally modified trees (see Photograph 1).

While Section 4 of the *HCA* provides a mechanism for government to add to the list of heritage site types and objects protected under the *HCA* [see *HCA* Section 13(2)(h)] by written approval of the Lieutenant Governor in Council, there has never been a *HCA* Section 4 Agreement signed to date. Further, should a *HCA* Section 4 Agreement be signed in future, it is uncertain what the nature of the protection would be.

4.4.3 Enforcement of the *Heritage Conservation Act* [RSBC 1996] Chapter 187

One First Nations respondent reflected on the goal of the *HCA*, “to encourage and facilitate the protection and conservation of heritage property” and wondered why the word ‘enforce’ was missing. Frustration was directed toward the seeming lack of enforcement and absence of meaningful deterrents. It was felt that, in many cases, the risks to developers are sufficiently low to nurture an attitude that flagrantly disregards the *HCA*. To the knowledge of the authors, there has been only one successful prosecution under the *Archaeological and Historic Sites Protection Act*, the precursor to today's *HCA*, in 1972 (see Appendix II and Apland 1997).

One First Nations respondent suggested that individuals that are convicted of contravening the *HCA* should be required to participate in Indigenous restorative justice processes.

4.4.4 The Role of Archaeology

Some First Nations have expressed the opinion that if archaeological work must be conducted within their territory that First Nations should have a say in who will do that work. Often, as part of an archaeological assessment project, such archaeological work is contracted out by industry and there are concerns that there is a lack of community engagement. Some First Nations have stated an interest in developing a community-based permitting process for archaeological work. While others have gone as far as

developing their own heritage guidelines, policies, and permitting systems (see Tables 1 and 2) and www.bcapca.bc.ca/FN_permit.htm.

Table 1.
**First Nations Organizations with Heritage Policies, Guidelines, Agreements,
By-laws, and Protocols**

Ahousaht First Nations (1997)
Chehalis Indian Band (2001)
Creekside Resources Inc. (Lil'wat Nation) (1998)
Haida Nation (Ministry of Forests 1997)
Heiltsuk Nation (1994, 1995a,b)
Kamloops Indian Band (1997a,b)
Ktunaxa Nation (n.d.a, n.d.b)
Ktunaxa/Kinbasket Tribal Council (n.d.)
Musqueam Indian Band (n.d.)
Skeetchestn Indian Band (1998)
Stó:lō Nation (1995)
Taku River Tlingit First Nation (1994)
Treaty 8 (2003)
Union of British Columbia Indian Chiefs (1992)
Upper Similkameen Indian Band (n.d.)
Westbank First Nation (1995)

Table 2.
First Nations with Cultural Resource Permitting Systems or Equivalent

Chehalis Indian Band
Heiltsuk Nation
Kamloops Indian Band
Ktunaxa/Kinbasket Tribal Council (draft)
Musqueam Indian Band
Skeetchestn Indian Band
Squamish Nation
Stó:lō Nation
Treaty 8
Tsilhqot'in Nation
T'Sou-ke Nation
Upper Similkameen Indian Band

Increasingly, when archaeological sites are identified, First Nations are asking for greater input and in some cases want either co-management or control of the sites. As one community respondent stated “it’s our heritage.”

4.5 Access

Access, in the context of this study, has a number of connotations. Some examples include access to heritage objects, documents, decision-makers, training opportunities, and financial resources. Some of these themes are explored in the following sections.

4.5.1 Cultural Precinct

As noted earlier, part of the rationale for the creation of a cultural precinct lies in the opportunities for improving efficiency, revenues, and stewardship. However, change brings both positive and negative consequences and opportunities.

For example, it is anticipated that, as the museum currently serves almost a million people every year and contributes an estimated \$63 million to the Greater Victoria economy, the fiscal distributional benefits stand to improve if partnerships and business synergies can move forward without barriers. A successful program could improve educational access, and fundraising activities could be reinvested to benefit First Nations communities.

Comments received with respect to the creation of a cultural precinct were cautiously optimistic. In one response, it was noted that the amalgamation of the archives and the RBCM could create a natural synergy resulting in easier access to archival, ethnographic, and archaeological materials by First Nations. Another comment suggested access could potentially be improved (e.g., access to Archival materials on weekends). Further, it is possible that the amalgamation of the BC Archives with the RBCM may raise the Archives’ profile and allow for a stronger revenue generation program, which could result in opportunities beneficial to First Nations.

4.5.2 Culturally Sensitive Material

As alluded to in the UBCIC (1992) document cited earlier in this report, issues surrounding First Nations heritage objects are one of the major challenges faced by museum curators and cultural resource managers. With respect to this study, changes in the governance of the RBCM raise questions pertaining to access and control over First Nations cultural heritage objects in RBCM collections.

More broadly speaking, with all the changes to the heritage landscape in British Columbia, what controls are in place with respect to access to sensitive cultural

information? Examples include archaeological site location data, traditional land use information, and artifact collections. What assurances are there that these materials will be managed and cared for in a culturally appropriate manner? Who decides on issues concerning access to information or objects? For example, if the Ministry of Sustainable Resource Management is proposing to make archaeological permit reports available on the World Wide Web, how will access to this potentially sensitive cultural information be controlled? Who decides what parties are granted access? Under what terms? Is there a time limit? Will First Nations be part of the process to determine appropriate access parameters and protocols? With respect to Treaty negotiations or repatriation negotiations, will the new Crown Corporation become involved?

4.5.3 Heritage Resource Centre

The decision to close the Heritage Resource Centre at the end of March 2003 raised questions concerning access to information for First Nations (other issues related to the pending closure of this facility have been addressed in earlier sections of this report e.g., Aboriginal rights). How will the closure affect First Nations' access to the heritage site information and their ability to undertake research? For example, if the Heritage Resource Centre no longer exists as a loaning library, First Nations will be required to have staff or retain a consultant in Victoria to undertake research and obtain documents. This is onerous to First Nations communities, particularly those located in remote areas of British Columbia, as the expense to access this material will climb dramatically due to travel costs or the fees of Victoria-based research consultants who are retained to complete this information retrieval. The loss of the Heritage Resource Centre librarian is also seen as a lost resource and the elimination of decades of 'corporate memory'.

The on-line availability of permit reports to qualified users is seen as a positive step as it will certainly improve access and delivery-time and will result in a cost-saving that will be shared by government and users of the resource. However, it is unclear how this will manifest itself with respect to other non-permit documents; access likely will not be possible except in person or via on-site duplication at cost.

5.0 RECOMMENDATIONS

The purpose of this section is to present a series of recommendations or action items for each of the issues discussed in the previous section. As mentioned in Section 4.0, it was not the intent to provide the answers to the questions that were raised but the roadmap to navigate a way forward in B.C.'s rapidly evolving heritage landscape.

5.1 Aboriginal Title and Rights

Access to *HCA* permit reports and supporting documents is vital to a successful completion of the legal test of Aboriginal title and rights. The focus of government should be on the nature and quality of access and the completeness of the records.

Action item #1 – Communication by the UBCIC to the provincial government that the proposed dispersal of the Heritage Resource Centre collection adversely impacts First Nations. The information held by the Heritage Resource Centre, including but not limited to *HCA* permit reports, is vital to the protection of First Nations Aboriginal rights and title. Further, access to this information by First Nations should not be fettered through the imposition of fees.

5.2 Consultation

Action item #1 – Communication by the UBCIC to the provincial government that there is a duty to consult in matters concerning First Nations heritage; specifically proposed amendments to government policies and the *HCA* (see UBCIC 1992). This communication should also denounce the recent decision by government to repeal Section 3 of the *HCA* without consulting first with First Nations or other affected parties.

Action item #2 – Communication by the UBCIC to the provincial government that there is a duty to consult in matters concerning First Nations heritage; specifically the devolution of provincial heritage properties (see Heritage Society of B.C. 2002).

5.3 Representation

Action item #1 – Communication by the UBCIC to the RBCM Crown Corporation CEO and Minister responsible that First Nations expect a strong presence on the RBCM Crown Corporation Board of Directors and that First Nations will play a leading role in the future direction of the Crown Corporation.

5.4 Protection

Action item #1 – To address the concerns of the UBCIC with respect to heritage protection in British Columbia, the UBCIC will ask the provincial government for funds to undertake a review and gap analysis of existing heritage legislation, policies, and guidelines in British Columbia (Provincial and Federal Lands). This will allow the UBCIC to participate in a meaningful and informed manner with the Province with respect to potential amendments to the *HCA*. Such a study will build upon existing studies by Apland (1993), Burley (1994), Klimko et al. (1998), Parks Canada (n.d.), and Yellowhorn (1999).

5.5 Access

Action item #1 – The UBCIC will approach government to begin a dialogue concerning access and control over First Nations heritage information, sites, and objects. First Nations expect to have a strong voice in discussions in this area (see UBCIC 1992).

6.0 SUMMARY

This report sought to provide an overview of the current cultural heritage environment in British Columbia to identify the potential issues for First Nations that fall out from this process, why they are important, and how First Nations may protect their rights and interests. These objectives were achieved within an extremely compressed timeframe.

While a number of specific action items were identified in Section 5.0 for the UBCIC to consider, it is clear that this is only the beginning of the process. In addition to these modest first steps, it is recommended that the UBCIC expand the scope of the current study to include meaningful internal dialogue as well as discussions with government. This current study can be used as the basis for future discussions.

7.0 CLOSURE

We trust the information in this report is satisfactory for your present needs. Should you require additional information or clarification, please do not hesitate to contact the undersigned at your convenience.

Yours very truly,

GOLDER ASSOCIATES LTD.

Andrew Mason, M.A., R.P.C.A.
Associate

REVIEWED BY:

Jeff D. Bailey, M.A., R.P.C.A.
Senior Archaeologist

ARM/JDB/jae/mm

03-1417-006

N:\Final\2003\1417\03-1417-006\REP-0429-final draft.doc

8.0 REFERENCES CITED

Ahousaht First Nations

- 1997 "Ahousaht First Nation Confederacy Culturally Modified Tree (CMT) Guidelines." Unpublished document, Ahousaht First Nations, Ahousaht.

Apland, Brian

- 1993 "The Roles of the Provincial Government in British Columbia Archaeology." BC Studies 99: 7-24.

- 1997 Heritage Conservation Act – Enforcement in *The Midden* 29(4):3-4.

Burley, David V.

- 1994 "A Never Ending Story: Historical Developments in Canadian Archaeology and the Quest for Federal Heritage Legislation". Canadian Journal of Archaeology 18:77-98.

Chehalis Indian Band

- 2001 "Chehalis Indian Band Cultural Heritage Resources Policy." Unpublished document, Chehalis Indian Band, Agassiz.

Creekside Resources Inc.

- 1998 "Lil'wat Traditional Territory Cultural Heritage Investigations." Unpublished letter to Golder Associates Ltd. dated August 6, 1998. On file with Golder Associates Ltd., Burnaby.

Heiltsuk Nation

- 1994 "Heiltsuk Nation Heritage Policy". Unpublished document, Heiltsuk Nation, Waglisa.

- 1995a "Archaeological Resource Overview (ARO) Archaeological Impact Assessments (AIAs) and "Use" Studies within Heiltsuk Traditional Territory (Draft Statement)." Unpublished document, Heiltsuk Nation, Waglisa.

- 1995b "Terms of Reference: Heiltsuk CMT (Culturally Modified Tree) Investigation Strategy." Unpublished document, Heiltsuk Nation, Waglisa.

Heritage Society of B.C.

- 2002 Devolving Heritage Properties. Heritage Society of B.C. Newsletter, Spring 2002, p.5.

Kamloops Indian Band

- 1997a “Cultural Heritage Policy for the Kamloops Band.” Unpublished document, Kamloops Indian Band, Kamloops.
- 1997b “Kamloops Indian Band Heritage Conservation By-Law.” Unpublished document, Kamloops Indian Band, Kamloops.

Klimko, Olga, Heather Moon, and Doug Glaum

- 1998 “Archaeological Resource Management and Forestry in British Columbia.” Canadian Journal of Archaeology 22:31-42.

Ktunaxa Nation

- n.d.a. “Ktunaxa Nation Application for Archaeological Investigation Permit.” Unpublished document, Ktunaxa Nation.
- n.d.b. “Ktunaxa Nation Archaeological Investigation Permit with Terms and Conditions.” Unpublished document, Ktunaxa Nation.

Ktunaxa Kinbasket Treaty Council

- n.d. “Ktunaxa/Kinbasket Tribal Council Archaeological Heritage Resource Protection Policy.” (Draft). Unpublished document on file with the Ktunaxa/Kinbasket Tribal Council, Cranbrook.

Ministry of Forests

- 1997 “Haida Tri-Council Forestry Committee Culturally Modified Tree Management Procedure.” Unpublished report, Ministry of Forests, Vancouver Forest Region, Nanaimo.

Museum Act [RSBC 1996] Chapter 326.

http://www.qp.gov.bc.ca/statreg/stat/M/96326_01.htm

Museum Act [RSBC 2003] Bill 2.

http://www.legis.gov.bc.ca/37th4th/1st_read/gov02-1.htm

Musqueam Indian Band

- n.d. “Musqueam Nation Policy Statement on Heritage Resources.” Unpublished document, Musqueam Indian Band, Vancouver.

Parks Canada

- n.d. Unearthing the Law: Archaeological Legislation on Lands in Canada. Archaeological Services Branch, Parks Canada Agency.

Province of British Columbia

- 1987 Project Pride: Taking Care of British Columbia's Past for Generations to Come, Discussion Paper. Ministry of Tourism, Recreation, and Culture, Victoria.
- 1990 Toward Heritage Legislation: A Proposal for Public Review. Ministry of Municipal Affairs, Recreation, and Culture, Victoria.
- 2002 Provincial Policy for Consultation with First Nations, October 2002, Government of British Columbia,
[http:// www.srmwww.gov.bc.ca/cpp/docs/ConsultationPolicyFN.pdf](http://www.srmwww.gov.bc.ca/cpp/docs/ConsultationPolicyFN.pdf).

Royal British Columbia Museum

- 2003 Royal British Columbia Museum Service Plan 2003/04-2005/06, February 2003, <http://www.royalbcmuseum.bc.ca/corporateservices/serviceplan03-04-04-05-2.pdf>.

Royal British Columbia Museum News Release 2002MCAWS0064-001004, 'Museum to Improve with Independent Status', Nov 22, 2002,
[http:// www.rbcm1.rbcm.gov.bc.ca/newsrelease/index.html](http://www.rbcm1.rbcm.gov.bc.ca/newsrelease/index.html).

RBCM Backgrounder 2002MCAWS0064-001004, 'Royal B.C. Museum Cultural Precinct', Nov 22, 2002,
[http:// www.rbcm1.rbcm.gov.bc.ca/newsrelease/index.html](http://www.rbcm1.rbcm.gov.bc.ca/newsrelease/index.html).

Skeetchestn Indian Band

- 1998 "Skeetchestn Indian Band Territorial Heritage Conservation Law." Unpublished document, Skeetchestn Indian Band, Savona.

Stó:lō Nation

- 1995 Stó:lō Nation Heritage Policy. Unpublished document, Stó:lō Nation, Chilliwack.

Taku River Tlingit First Nation

- 1993 "Taku River Tlingit First Nation Heritage Strategy." Unpublished document, Taku River Tlingit First Nation, Atlin.

Treaty 8 Tribal Association

- 2003 Treaty 8 Tribal Association Cultural Resources Protection Law. Unpublished document, Treaty 8 Tribal Association, Fort St. John.

Union of B.C. Indian Chiefs

- 1992 Ownership, Jurisdiction, Repatriation: Draft Position Paper on First Nations Graveyards, Burial Areas, Sacred Sites and Heritage Objects. Unpublished report on file with the Union of B.C. Indian Chiefs, Vancouver.

Upper Similkameen Indian Band

- n.d. "Policy on Heritage Resources within the Jurisdiction & Management Area of the Upper Similkameen Indian Band." Unpublished document, Upper Similkameen Indian Band, Keremeos.

Westbank First Nation

- 1995 "Westbank First Nation Crown Land Use Referrals Policy." Unpublished document, Westbank First Nation, Westbank.

Wiwchar, David

- 2003 "RBCM Cut From Government" in Ha-Shilth-Sa, Volume 30, No. 4, p. 7.

Yellowhorn, Eldon

- 1999 "Heritage Protection on Indian Reserve Lands in Canada." Plains Anthropologist Volume 44(170), Memoir 31: 107-116.



PHOTOGRAPH 1

Post-1846 Culturally Modified Tree, Pacific Spirit Park, Vancouver

APPENDIX I
ORGANIZATIONS AND INDIVIDUALS CONTACTED

Organizations and Individuals Contacted

Group or Institution	Contact	Title	Letter	Email	Telephone	Response
Aboriginal Directorate	Mr. Milt Wright	Director, Negotiations & Corporate Policy		X	X	X
Adams Lake	Ronnie Jules	Chief	X			
Archaeological Society of B.C.	Ms. Patricia Ormerod	President	X	X		X
Archives Association of British Columbia	Ms. Lara Wilson	President	X	X		X
Archaeology and Registries Services Branch	Ms. Justine Batten	Director	X	X	X	X
Ashcroft First Nation	Leonard Quiring	Chief	X			
Bonaparte First Nation	Mike Retasket	Chief	X			
Boothroyd First Nation	Phillip Campbell	Chief	X			
Bridge River Indian Band	Bradley Jack	Chief	X			
British Columbia Association of Professional Consulting Archaeologists	Mr. Robert Lackowicz	President	X	X		X
British Columbia Association of Professional Consulting Archaeologists	Mr. Ian Franck	Past President	X			
B.C. Archives	Mr. Gary Mitchell	Provincial Archivist	X			
British Columbia Museums Association	Ms. Deborah Tuyttens	President	X			
Carrier-Chilcotin Tribal Council	Allan Weselowski	Chief	X			
Cheam First Nation	June Quipp	Chief	X			
Chehalis First Nation	Alex Paul	Chief	X			
Coldwater First Nation	Gordon Antoine	Chief	X			
Comox First Nation	Ernest Hardy	Chief	X			
Doig River First Nation	Gary Oker	Chief	X			
Fraser Canyon Tribal Administration	John McIntyre Sr.		X			
Gwawaenuk Band	Charlie Williams	Chief	X			
Heritage Society of British Columbia	Mr. Rick Goodacre	Executive Director	X			X

Group or Institution	Contact	Title	Letter	Email	Telephone	Response
Heritage Resource Centre	Ms. Romi Casper	Librarian	X			
Heritage Branch	Ms. Rhonda Hunter	Director			X	X
High Bar First Nation	Yvonne Smith	Chief	X			
Hwiltsum Band	Raymond Wilson	Chief	X			
Kanaka Bar Indian Band	James Frank	Chief	X			
Kwakiutl First Nation	Alex Wilson	Chief	X			
Kwicksutaineuk-Ah-Kwaw-Ah-mish Band	Sandy Johnson		X			
Kwicksutaineuk-Ah-Kwaw-Ah-mish Band	Russell Kwakseestahla	Chief	X			
Lhatko	Frank Boucher	Chief	X			
Lillooet Tribal Council	Garry John	Chief	X			
Lower Nicola First Nation	Arthur Dick	Chief	X			
Lower Similkameen Indian Band	Barbara Allison	Chief	X			
Lytton First Nation	Janet Webster	Chief	X			
Ministry of Community, Aboriginal, and Women's Services	Hon. George Abbott	Minister	X			X
Ministry of Sustainable Resource Management	Hon. Stan Hagen	Minister	X		X	X
Mount Currie Nation	Allen Stager	Chief	X			
Musgamagw Tsawataineuk Tribal Council	Carol Perrault	General Manager	X			
Native Women's Society			X			
Native Youth Movement	David Dennis		X			
Neskonlith First Nation	Arthur Manuel	Chief	X			
Nicola Valley Tribal Association	Kowaintco Shackelly	Chairperson	X			
Nicomien First Nation	Cyril Spence	Chief	X			
Nlaka'pamux Tribal Council	Robert Pasco	Chief	X			
Nuu-chah-nulth Tribal Council	David Dennis	S. Region Co-chair	X			
Nuxalk Nation	Anfinn Siwallace	Chief	X			

Group or Institution	Contact	Title	Letter	Email	Telephone	Response
Okanagan Indian Band	Lyle Brewer	Chief	X			
Okanagan Nation Alliance	Dan Wilson		X			
Oregon Jack Creek First Nation	Robert Pasco	Chief	X			
Osoyoos First Nation	Clarence Louie	Chief	X			
Pauquachin First Nation	Edwin Mitchell	Chief	X			
Penticton Nation	Stewart Phillip	Chief	X			
Royal British Columbia Museum	Ms. Pauline Rafferty	CEO	X			X
Seabird Island Nation	Wayne Bob	Chief	X			
Semiahmoo Nation	G.C. Bernard Charles		X			
Seton Lake	Garry John	Chief	X			
Shuswap Nation Tribal Council	Nathan Matthew	Chair	X			
Simon Fraser University, Archaeology Department	Dr. Dana Lepofsky	Professor			X	X
Simon Fraser University, Archaeology Department	Dr. Mike Roberts	Head	X		X	X
Simon Fraser University, Archaeology Department	Mr. Terry Spurgeon	Alumni		X		X
Simon Fraser University, Archaeology Department	Dr. Eldon Yellowhorn	Professor		X		X
Simon Fraser University, Museum of Archaeology and Ethnology	Dr. Barb Winter	Curator	X		X	X
Siska Indian Band	Fred Sampson	Chief	X			
Skowkale Nation	Caroline James		X			
Skuppah Nation	Doug McIntyre	Chief	X			
Skwah Nation	Roy Alfred Mussell	Chief	X			
Spuzzum Nation	Jennifer Bobb	Chief	X			
T'it'q'et Administration	Norman Leech	Chief	X			

Group or Institution	Contact	Title	Letter	Email	Telephone	Response
Tlatlaskikwala Nation	Tom Wallace	Chief	X			
Toosey Nation	Warren Houde	Chief	X			
Treaty 8 Tribal Council	Judy Maas	Chair	X			
Tsartlip Nation	Simon Smith	Chief	X			
Tsawataineuk Nation		Chief	X			
Tseycum Nation	Vern Jack Sr.	Chief	X			
Ts'kw'aylaxw First Nation	Robert Shintah	Chief	X			
Ulkatcho Nation	Allan Weselowski	Chief	X			
Underwater Archaeology Society of B.C.	Robyn Woodward	Member	X			
University of British Columbia, Anthropology and Sociology Department	Dr. David Pokotylo	Head		X		
University of British Columbia, C.E. Borden Laboratory of Archaeology	Dr. Michael Blake	Curator of Archaeology	X		X	X
University of British Columbia, Museum of Anthropology	Dr. Sue Rowley	Curator of Public Archaeology	X	X		X
University of Northern British Columbia, Anthropology Department	Mr. Richard Lazenby	Professor	X			
University of Victoria, Anthropology Department	Dr. Quentin Mackie	Professor	X	X		X
Upper Nicola Nation	George Saddleman	Chief	X			

APPENDIX II
PRESS CLIPPING

Man who removed remains fined \$300 in Tofino court

Special to The Sun
TOFINO — Charles Carl Ehlers was fined \$300 in provincial court here Friday after he was found guilty of removing skeletal human remains from a burial place. Ehlers was charged July 30 under the Archaeological and Historic Site Protection Act. Ehlers — Aphaloma Charle, as he is known here — moved one of two mummified bodies he discovered in a cave at Kennedy Cove, about 35 miles from here. The offence wasn't discovered until John Stertz bought several acres of Surrey property from Ehlers and discovered the remains in a plywood

box under a table in one of two houses there. Stertz and a friend pried the box open and discovered the body, estimated to be 50 to 60 years old, curled up in a fetal position. The mummy was transferred to the morgue at Royal Columbian Hospital in New Westminster where pathologist Dr. Campbell Joseph Coady examined it and identified it as a mummified female body which he described as "light as balsa wood." Dr. Coady testified that it was impossible to determine cause of death. Ehlers was arrested by Tofino RCMP July 30, but re-

leased later that evening. He admitted removing the body from the cave. Sheila Gay Cunningham Boehm, archeologist for the Vancouver Centennial Museum in November, 1968, testified that she received a letter from Ehlers at that time asking if the museum would be interested in securing one of the mummies for the institution. Mrs. Boehm replied that the museum was interested, but ~~that it was against the law to remove the remains from their burial place.~~ Ehlers moved one of the bodies early this spring and took it to Surrey when he moved there.

Dan David, a 68-year-old Indian who has lived in the Tofino area all his life, testified that he was at the cave in 1923 for the burial of the woman removed by Ehlers. Although he hadn't returned to the spot since, David had no problem leading police to it Friday before appearing in court. In passing sentence, provincial Judge T. G. Bowen Colthurst commented that he was satisfied that the body removed by Ehlers could be termed skeletal remains, adding that the evidence entered by the Crown and David proved that the cave "comes within the meaning of a burial place." "The evidence of the Crown and the statement by Mr. Ehlers also satisfies me that he did remove skeletal remains from their burial place."

Vancouver Sun
October 14, 1972, p.10