

# **Indigenous Cultural Heritage Policies & Local Planning - A Case Study in the Land of Plenty**

**by**  
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B.Mgmt. (Environment, Sustainability and Society), Dalhousie University, 2020

Project Submitted in Partial Fulfillment of the  
Requirements for the Degree of  
Masters of Resource Management (Planning)

in the  
School of Resource and Environmental Management  
Faculty of Environment

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Summer 2023

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## **Abstract**

Indigenous cultural heritage (ICH) is rapidly diminishing worldwide, driven by factors like development, private property rights, and colonial planning. This study centers on the Comox Valley within the Land of Plenty, the Territory of K'ómoks First Nation, serving as a case study that examines the interplay between Indigenous cultural heritage policies and local planning. Through 40 semi-structured interviews with local planners and knowledge holders, I identify pathways of ICH protection through local government implementation of K'ómoks First Nation's Cultural Heritage Policy. The purpose of this research paper is to explore how First Nations exert self-determination over their ICH, how ICH interacts with local planning, and how local governments can respond to strengthen ICH protection at the local level. The findings reveal that local level implementation of Indigenous cultural heritage policies helps ensure that ICH protection strategies are place-based, effective, and appropriate. This implementation simultaneously fosters relationships and enhances cross-cultural knowledge and respect.

**Keywords:** Planning; Indigenous cultural heritage; Community-based research; Archaeology; Indigenous self-determination; Co-existence

## **Dedication**

To Madeleine MacLean, for being a guiding light and source of comfort from the very beginning of this research journey. Thank you for the absolute joy and passion you have brought to the XLAP Team and building a family out of us all.

To many more afternoons spent napping in the Xwe'etay sunshine.

## Acknowledgements

I would like to express gratitude to the xwməθkwəy̓ əm (Musqueam), Skwxwú7mesh Úxwumixw (Squamish), and Səlílwətał (Tsleil-Waututh), kwikwəłəm (Kwkwetlem) nations who steward Lhuḵw'lkukw'áytən (Burnaby Mountain), where I have been spent the last couple years completing this study.

To my supervisor, Sean Markey, and co-supervisor, Dana Lepofsky, and the entire XLAP research team, thank you for providing me with the most incredible research experience one can imagine. I am eternally grateful for your unwavering support, especially throughout the last year. You all inspire me to stay curious, bold, and open-hearted.

To our First Nation partners in this project, thank you for engaging with us and sharing your experiences and knowledge. For welcoming us and entrusting us with your stories and lived experiences. To K'ómoks First Nation, Jesse, Candace, and Todd, thank you for your time and insights; the work you are doing to honour and protect K'ómoks First Nation's ancestors and future generations has moved me each and every day I've been part of this project.

To my friends and family, thank you for the endless encouragement, love, and laughter. To my mom and dad, thank you for your belief in me. To my dear roommate and lifelong friend, Amelia, you are family to me, and I cannot thank you enough for all the care and strength you've provided me.

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## List of Acronyms

SFU	Simon Fraser University
BC	British Columbia
CEA	Community Engaged Archaeology
CHIP	Cultural Heritage Investigation Permit
CHP	Cultural Heritage Policies
CIP	Canadian Institute of Planners
CVRD	Comox Valley Regional District
DRIPA	Declaration on the Rights of Indigenous Peoples Act
HCA	Heritage Conservation Act
HCATP	Heritage Conservation Act Transformation Project
KFN	K'ómoks First Nation
ICH	Indigenous Cultural Heritage
LGA	Local Government Act
OCP	Official Community Plan
RAAD	Remote Access to Archaeological Data
TRC	Truth and Reconciliation Commission
UNDRIP	United Nations Declaration of the Rights of Indigenous Peoples
XLAP	Xwe'etay/ Lasqueti Archaeology Project

## Glossary

Ancestors	Human remains (in the context of an archaeological site)
Belongings	Artefacts; heritage objects
Descendants/ descendant communities	Indigenous peoples/populations
Salish Sea	Thee waters and coastal areas that are home to Coast Salish First Nations, stretching from what is commonly referred to as Campbell River, BC, to Olympia, WA
Settler	A non-Indigenous person, usually of European descent
Traditional or ancestral lands	Unceded and treaty lands and waters that Indigenous communities/ nations lived on since time immemorial
Treaty lands	Lands and waters that are under legal jurisdiction of an Indigenous Nation through an Indigenous-Canadian Treaty
Land of Plenty	K'ómoks First Nation's Territory

# Chapter 1. Introduction

## 1.1. Research Purpose

Over the last decade there's been increasing advocacy for the need to protect Indigenous cultural heritage (ICH) as an inherent human right (Vrdoljak, 2018). Globally, movements such as the Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Convention for the Safeguarding of the Intangible Cultural Heritage have recognised this right and the importance of ICH to the health and cultural continuity of Indigenous Peoples (Vrdoljak, 2018; Nicholas, 2021). Despite this growing recognition, ICH belonging to First Nations throughout British Columbia (BC) is controlled by the Province through legislation that does not provide adequate protection (Aird et al., 2019).

First Nations are navigating the inadequacies of the provincial ICH protection and the politics of recognition by exerting their right to ICH through laws, protocols, and policies. These initiatives assert sovereignty and relational responsibility to ancestral cultural heritage outside of the mandated colonial systems of management. Aligning traditional laws, governance and responsibility to a community's own heritage management, these initiatives create opportunity for heritage to reflect the cultural worldview unique to each Nation.

The purpose of this research paper is to explore three interconnected questions: how First Nations exert self-determination over their ICH, how ICH interacts with local planning, and how local governments can respond to strengthen ICH protection at the local level. K'ómoks First Nation (KFN) and several local governments within its Territory that manage land-use planning (the Comox Valley Regional District (CVRD), City of Courtenay, Town of Comox, Village of Cumberland, and the Islands Trust) serve as the case study entities for this research. The case study is designed to provide an example of possibilities for ICH protection that is Indigenous-led and can be referred to by other First Nations looking to create similar policies. Furthermore, the study acts as an example of local government implementation of Indigenous heritage policies in the aims of reconciliation and relationship building that can be emulated by other local governments.

This research is a part of the larger project titled “Protecting and Honouring Archaeological Heritage in the Salish Sea Through Community-Engaged Research,” (hereafter referred to as the Xwe’etay/Lasqueti Archaeology Project, or XLAP), which is an interdisciplinary undertaking with the Archaeology department and the Resource and Environmental Management department at Simon Fraser University (SFU). This project has partnered with the following First Nations, including the Tla’amin, K’òmoks, Qualicum, Halalt, and Wei Wai Kum First Nations, and the resident community of Xwe’etay. The main objectives of the larger project are to increase engagement between Indigenous and settler communities with ICH, to educate people about the archaeological record, to engage communities in sustainable community-based archaeological conservation, and to create a model for integrated top-down and bottom-up ICH management strategies for rural communities in BC (Lepofsky, 2019). The findings from this research will guide future XLAP work, and it is hoped will inform how local planners can respond to ICH policies, reconciliation, and building community relationships.

## **1.2. Positionality**

This section describes my personal positionality and the ways it informed and biased my research. I engaged in a reflexive approach to my methodologies and personal conceptualization of the research itself. With each class, conversation, and learning opportunity presented to me, my understanding on the theory and data deepened and changed. My bias, position, and privileges were not separate from this process as they shape my worldview and in turn, the research itself.

I am a white, cis-gendered, able-bodied settler woman who grew up on the stolen lands of the Anishinabe Algonquin Nation. My ancestors emigrated from Europe, primarily Ireland, are settled throughout the Frontenac Arch. As a settler who has lived in numerous Indigenous territories, I have participated in settler-colonialism. I have benefitted from the settler-colonialism hegemony, as I’ve moved through university education with ease. Further, this research is funded by the Social Sciences and Humanities Research Council of Canada (SSHRC) and was made possible through my attendance at Simon Fraser University – two colonial institutions for which I am incredibly grateful. However, it is important to acknowledge the history of such colonial institutions in the perpetuation of class and racial power imbalances. My identity has

allowed me these opportunities, which in many instances are not available to marginalized people.

I realize that I explore this research through a privileged lens and can never fully understand the lived experienced Indigenous other marginalized peoples. As I explore topics of Indigenous cultural heritage, relational self-determination, and racial property regime and land-use planning, I aim is to unpack the structural and systematic layers of ICH destruction. I do not intend to speak for the Indigenous communities I have learned from and worked with. Rather, I hope to describe the existing barriers and provide potential pathways for honouring and protecting ICH to support Indigenous self-determination. My experiences and research throughout this project have influenced my perspective on the benefits of diverse cultural communities working together through action-based allyship.

### **1.3. Location within the Literature**

The research grounding this report sits within archaeological heritage, land-use/community planning, and Indigenous self-determination literature. It builds upon decolonial thought pertaining to unsettling colonial conceptualizations of land, heritage, and property ownerships (Blomley, 2017; Dorries, 2022, Nicholas, 2021). Sitting within the intersection of land-use planning and Indigenous cultural heritage, this research applies co-existence literature (Howitt & Lunkapis, 2016; Porter & Barry, 2016) to explore relational self-determination (Daigle, 2016; Curren et al., 2020; Boron & Markey, 2020; Bryce & Cortassal, 2012) in cultural heritage management. It builds on the rejection of the politics of recognition as it pertains to state-based application of Indigenous self-determination in the arena of ICH. This research helps to fill gaps in the literature between Indigenous self-determination over ICH and unsettling land-use/community planning.

### **1.4. Research Questions**

The XLAP project explores the following questions as per the project proposal (2019):

- How can community-centered archaeology enhance heritage conservation and management?

- How can community-centered archaeology improve relationships, awareness, and knowledge among Indigenous and settler communities regarding heritage management?
- How can we build capacity for heritage management at the community level?
- How can senior governments support the implementation of community-based archaeology?

This report builds on the foundation of the XLAP project, including the work of Madeline MacLean’s research which investigated the relationship between policy, planning, and ICH. The main research question guiding this report is “how can Indigenous heritage policies be adopted in local planning and influence change in the provincial management of ICH?”. I’ve broken down this main question further into the following questions:

- What are the regulatory and colonial barriers to protecting ICH in BC across public and private land?
- How do Indigenous heritage policies honour Indigenous self-determination and the right to ancestral cultural heritage?
- How can local governments commit to reconciliation and building relationships with local First Nations by supporting ICH policies?
- How does the creation and implementation of Indigenous heritage policies change the wider management of ICH?



## Chapter 2. Literature Review

### 2.1. Indigenous Cultural Heritage

This section explores the literature on Indigenous cultural heritage (ICH). Due to the place-based nature of ICH, local planning mechanisms at regional and municipal governments in BC offer both opportunities and challenges to protecting ICH.

#### 2.1.1. What is Indigenous Cultural Heritage?

In Canada and other western dominated societies, conceptions of heritage have been predominantly focused on tangible components of heritage such as structures, buildings, monuments, and archaeological belongings (Schaepe et al., 2020). In contrast, for Indigenous peoples, there is often no separation between tangible components of heritage and intangible understandings of ICH (Nicholas, 2021). Furthermore, there is no single definition of ICH and it varies between Indigenous communities and peoples (Yukon First Nations Heritage Group, 2018). More recent definitions describe the holistic nature of ICH as “the objects, places, knowledge, customs, practices, stories, songs and designs, passed between generations, that define or contribute to a person’s or group’s identity, history, worldview and well-being” (Schaepe et al., 2020, pg. 10). This definition moves towards encapsulating the notion of “living heritage” that carries intangible elements of ICH such as knowledge, songs, stories from the past, through time into the present where it continues to be expanded (Aird & Fox, 2020; Schaepe et al., 2020).

ICH is seamlessly woven into Indigenous ontologies and essential to cultural continuity and understanding of oneself (Nicholas, 2021). The term heritage or cultural heritage is often absent from Indigenous languages because it can’t be separated from cultures and identities. In a study on Yukon First Nations' perspectives of heritage values, one Elder defined heritage as “It is everything that makes us who we are” (Schaepe et al., 2020, pg. 7). This understanding of heritage is reflected in relationality; the relationships with ancestors, kinship, spiritual world, and land (Schaepe et al., 2020). ICH understandings are completely shaped within this cultural worldview of interconnectivity and relationality, understood by the Nuu-chah-nulth Nation as “*hishuk ish tsawalk...* everything is one and all is interconnected” (Nicholas & Smith, 2020, pg. 135).

Due to the inherent connection to place, community, and one's self, definitions of ICH remain broad (Aird, & Fox, 2020). Definitions of ICH are expanding to capture its deeper meaning, however, applying broad notions of ICH without the local, community context of ICH can cause negative consequences if there is a perceived notion of heritage or its value. ICH cannot be understood without community, the intangible elements of ICH such as songs, ceremonies, and stories give meaning to the tangible forms (Schaepe et al., 2020). While there is a growing recognition of the importance of ICH to the lifeways, health, and identities of Indigenous communities through global movements such as UNDRIP, ICH protection must move beyond "recognition" and into the hands of descendant communities.

### **2.1.2. Heritage Management in BC**

The land area known today as British Columbia (BC) is home to one of the most diverse Indigenous regions in North America, with over 200 Indigenous communities across the region (Klassen et al., 2009; Aird et al. 2019). Each First Nation is shaped by their own unique cultures, practices, languages, and lands that make up their cultural heritage and identity (Aird et al. 2019). While Indigenous communities are the inherent governors and caretakers of their ancestral heritage, dominant governments of Canada and BC have forced colonial legislation and practices upon communities that have restricted Indigenous stewardship to care for their own cultural heritage. It's important to note that the term "heritage management" is colonial and is most often used when referring to dominant government practices (Schaepe et al., 2020). As previously introduced, Indigenous understandings of cultural heritage are vastly different from western views, which largely make up the legislated protection of ICH.

Tangible heritage in British Columbia is managed through the *Heritage Conservation Act* (HCA), which reflects the "Euro-Canadian concepts of property that often prioritize the rights of landowners and the objectives of land and resource development over the protection of heritage values" (Nicholas et al., 2015, pg. 43). This lack of understanding of Indigenous values in the heritage protection process is problematic, considering that 90% of heritage sites within British Columbia are of First Nations (Nicholas et al., 2015). Canada has yet to ratify the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, which has been in place since 2006 (Schaepe et al., 2020). This lack

of enthusiasm or priorities for state ICH protection is demonstrated in the poor representation of ICH in federal and provincial legislation and policies.

Throughout Canada, ICH is mostly controlled and managed by the provincial governments. There are some federal mechanisms for heritage-related management, but mostly within the National Parks (Aird, 2019; Warrick, 2017). Within BC, the Archaeology Branch is the primary authority for the management of ICH. Through the legislative powers guided by the HCA the Archaeology Branch is responsible for protecting all archaeological heritage sites that date pre-1846 (Heritage Conservation Act, 1996). The Archaeology Branch's main responsibilities include managing the site registry and overseeing the permit system (Hammond, 2009). The Branch maintains all reported archaeological sites through the Archaeological Site Inventory Section (LeBourdais, 2022). The Branch issues permits for proposed development that may impact a registered archaeological site, these permits authorize the destruction or alteration of the archaeological site for development purposes (UBCIC, 2013).

The HCA heavily focuses on the physical evidence or proof of historical Indigenous presence (Hammond, 2009). One point of contention is the focus on “objects” classified by rigid, prescriptive scientific terms. Categories for recording an archaeological object include site class, type, and descriptors (Schaepe, 2018). The definition of “objects” in the HCA is “personal property that has heritage value to British Columbia, a community or an aboriginal people” (Schaepe, 2018, pg. 9). The use of inclusive language can better describe ICH, for example, referring to objects as “belongings” (Schaepe, 2018, pg. 9). Furthermore, the HCA defines “site” as “land, including land covered by water, that has heritage value to British Columbia” and “value” as the “historical, cultural, aesthetic, scientific or educational worth or usefulness of a site or object” (Schaepe, 2018, pg. 9). These definitions are the foundation of the HCA and are steeped in the colonial view of heritage that influences the entire process of identification and designation of ICH.

First Nations in BC have advocated for improved protection of their cultural heritage and voiced their concerns regarding the inadequacies of the Archaeology Branch and HCA. Provincial control of heritage is one of the most significant barriers to Indigenous protection and even access to ICH within their territories. This state-driven regulation perpetuates a colonial system of dominant governments making decisions on behalf of

First Nations and the management of and even access to their ICH. This control has been further criticized due to the nature of ICH, specifically the intangible elements that people outside a community cannot understand without the unique cultural context of each First Nation (Schaepe et al., 2020; Dent, 2020). As Nicholas (2017) asks, “How can outsiders make decisions about someone else’s heritage when they are unaware of or don’t understand local values, needs and consequences?” (pg. 217). The Provincial approach to ICH management has failed to protect intangible, living forms of ICH and does the bare minimum to protect tangible ICH, often with minimal community engagement involved in the permits that authorize the destruction or alteration of an archaeological site by the Archaeology Branch (Klassen, 2009).

### **2.1.3. Destruction & Lack of Access to ICH**

The nature of ICH is tied to the land and its destruction is an example of ongoing colonial injustice (English et al., 2023). State-controlled dispossession of Indigenous lands has been enacted through “fast and slow” speeds (Yellowhead Institute, 2019). The faster speed, used in the earlier days of BC, entailed the use of blunt forms of dispossession through colonial law. The colonial legal landscape asserted jurisdiction over Indigenous lands, setting strict rules for “alienation” of Indigenous lands to the Crown (Ladner, 2020; Yellowhead Institute, 2019).

The rapid expansion of Crown authority in pursuit of land and resources also resulted in several policies aimed at cultural assimilation under the *Indian Act* of 1876 (Yellowhead Institute, 2019). While much of the physical dispossession of land was justified through colonial law, the state followed suit in its efforts to legally inhibit cultural connections to land, such as the *Potlatch Law* of 1884, which banned Indigenous ceremonies (Daigle, 2016). The colonial legal system has halted Indigenous access to territories, the ability to nurture relationships with the land, traditional practices vital to cultural continuity, and the practice of traditional governance and legal systems (Yellowhead Institute, 2019; Daigle, 2016).

The period of the rapid colonial expansion has been followed by a slower, institutionalized form of land theft. The territories of First Nations throughout BC have been divided into regions often viewed and treated as “extractive zones” (Curran et al., 2020). With natural resource extraction driving much of the Canadian economy,

Indigenous resistance to land dispossession hindered capital expansion. The inclusion of Aboriginal rights in Section 35 of the *Constitution Act* of 1982 started a decades-long battle in the Canadian courts to establish the parameters around treaty rights and Aboriginal title (Yellowhead Institute, 2019). Coupled with the introduction of Aboriginal rights was the governmental transition towards neoliberalism; privatization and deregulation (Boron & Markey, 2020). Tied to the neoliberal model is the slower, institutionalized form of settler colonialism, which has been framed as “a structure and not an event, one informed by the logic of elimination... an inclusive, land-centred project that coordinates a comprehensive range of agencies” (Preston, 2013, pg. 44). Private sector companies and public agencies have joined together to access and extract resources from Indigenous lands (Preston, 2013).

With inadequate protections on public and private land, ICH has been destroyed by development, resource extraction, urbanization, and theft (English et al., 2023; Nicholas, 2022). Archeology sites are being destroyed across BC at the pace of development (Lepofsky, 2019). The failure to protect ICH and its sacred significance tied to Indigenous communities is considered a form of violence (Nicholas & Smith, 2020). This inequity is evident with burial grounds, in BC, burial or grave locations dated pre-1846 fall under the HCA, compared to locations dating post-1846 which are given stronger protection under the *Cremation, Interment and Funeral Act* (Schaepe et al., 2020). The decisive date of 1846 has strong colonial ties as it mirrors the date of the Oregon Treaty; the date of British rule over BC (Nicholas, 2015). This date reflects the colonial priority in providing rights to settlers over the existing rights of Indigenous nations. Development or disruption of a known or designated grave post-1846 is strongly prohibited through legislation yet Indigenous nations across BC must fight to protect their ancestral burial grounds (Warrick, 2017).

## **2.2. Local Planning & ICH**

This section explores the literature on the intersection of local planning and ICH. Due to the place-based nature of ICH, local planning mechanisms at regional and municipal governments in BC offer both opportunities and challenges to protecting ICH.

### **2.2.1. What is Local Planning?**

Local planning, a slice of the larger planning field, is the process of creating and implementing plans, policies, and programs that guide the development and growth of neighbourhoods, cities, towns, and regions (Hodge et al., 2021). In general, planning in Canada is mostly performed at the local level by provinces and local governments (Cullingworth, 2017). For the scope of this paper, local planning includes the planning duties completed by municipal and regional governments in British Columbia. Local planning encapsulates a variety of matters and goals related to land use decisions to meet the needs of local residents. Local planning departments typically have plans pertaining to the improvement or maintenance of land use, transposition, housing, infrastructure, environmental protection, and community development (among others). The resulting plans serve as a framework to guide the use of planning tools such as zoning, bylaws, and development control regulations (Hodge, 1985). Through these tools, local governments have substantial authority over local areas (Porter & Barry, 2015). Despite having a tremendous impact on local regions, municipalities and regional governments are limited by the powers granted to them by the province (Cullingworth, 2017).

The planning profession and the theory that guides it has changed over the last century. While its roots have always been focused on bettering the “public good”, the notion of who the “public” is and how to best plan for them has brought upon a series of transformations to the profession in an attempt to confront nuances and power dynamics in the process. Developed in post-World War II, the rational-comprehensive theory was applied to both planning and public policy decision-making (Pojani, 2022). The rational-comprehensive theory worked to solve complex issues through a systematic process that weighs the facts and objectively assesses the collected information to enact the best course of action. This theory relied on planners and public service workers to be neutral and rational actors in the decision-making process but ultimately resulted in prioritizing the needs of few (Seasons, 2021; Barry et al., 2018). Rational comprehensive failed to discern the conflicting interests between parties and relied on the narrow expertise of decision-makers which did not account for the diverse lived experience of groups impacts by planning decisions nor was it as objective as claimed (Fainstein & Defilippis, 2016).

Following the rational-comprehensive theory was a series of models that expanded the planning process behind closed doors including transactive, collaborative, advocacy, and radical planning theories (Pojani, 2022). Built on top of each other, these theories focus on the planning process rather than the end result and take a bottom-up approach to problem-solving (Fainstein & Defilippis, 2016). Advocacy planning, which set the framework for equity planning and justice planning, emphasized power imbalances in the planning process that lead to unjust decisions (Fainstein & Defilippis, 2016). Based on these theories, the position of the planner gradually moved from the technical expert to a reflective facilitator position that values transparency, communication, and diversity among diverse groups (Whittemore, 2015). While younger theories of planning work to confront power imbalance in the planning process, it is argued that the planning work enacted by local governments today predominantly mirrors the rational comprehensive model (Whittemore, 2015).

### **2.2.2. Planning as a Colonial Tool**

Planning in practice has been rightfully criticized for its historical involvement in actualizing colonial expansion and extraction in the desire for settlement (Porter, 2010; Barry et al. 2020). Planning and settlement are linked, as Barry et al. (2020) argues by definition, settlement is “a way of inscribing the legal and regulatory order that facilitates the socio-spatial and material inhabiting of particular lot, neighbourhood, city, or region” (pg. 422). Planning tools have been used to prescribe jurisdiction over Indigenous lands and deny Indigenous rights to steward, care, and plan for their own ancestral land. Furthermore, planning has been described as “spatialized oppression” through the removal and control of Indigenous people from their territories and the establishment of the reservation systems (Porter, 2010). Often through justification of supporting the “public interest”, effectively prioritizing settler interests in attempts to legitimize the colonial state (Lennon, 2017).

Planning and property, or the ordering of land into uses, types, and landscapes, is central to the colonial settlement of Canada (Dorries, 2022). Planners delineate between land uses and decide the area of “best use” for development, conservation, and its associated economic value (Dorries, 2022; Blomley, 2017). Planning sustains the ownership model of private property, a colonial notion that applies domination over distinct pieces of land (Dorries, 2022). The ownership model divides land between

owners, whether it's privately or publicly owned. The nature of planning relies on and sustains the ownership model of private property which ultimately limits the extent of planning activities to address injustices (Dorries, 2022). Historically in Canada, only white settlers were legally allowed to own property and excluded Indigenous peoples to do so while simultaneously stealing Indigenous land (Bhandar, 2018). The function of planning is entangled in the ownership model, effectively reinforcing settler colonial ideologies.

Planners have rationalized their impact to land use rather than ownership (Blomley, 2017). Yet planners are intimately involved with the ownership model as their tools dictate primarily privately owned land through zoning, bylaws, and development permits. Planning has the power to dictate the actions of land owners, affecting private property “rights” by allowing or denying alterations to the land (Blomley, 2017). These “rights” from a settler perspective imply autonomy over decision making on “their” land, a colonial manifestation that is upheld by the legal institution of the state. Planning-related oppression is evident in the countless cases of environmental racism throughout Canada enforced through planning tools and decisions. Exclusionary zoning practices have enforced racist and discriminatory sentiments towards Black, Indigenous, and Asian communities in urban planning (Wideman, 2021). The extent of planning inflicted oppression in the aims of supporting the agenda of the settler-colonial state go beyond the scope of this research but is necessary to understand in the context of colonial control of ICH and the planner’s impact on the local level (Barry et al., 2018; Porter et al., 2017).

### **2.2.3. Planning & ICH**

Heritage planning is the application of heritage conservation through programs, plans, and policies. Local governments may have designated heritage planners responsible for identifying and protecting heritage places or more generally integrate heritage planning goals into the community planning process (Kalman & Létourneau, 2020). As with all planning, heritage planning also seeks solutions that balance the interest of all residents with the proposed loss of a historic place (Kalman & Létourneau, 2020). Heritage planning in the context of community planning is relatively new which is a stark contrast to Indigenous communities who have long been the stewards of their own cultural heritage.



The Heritage Branch has provided some funding and programs for the integration of heritage planning into municipal planning programs/policies, such as the 2003 Community Heritage Planning Program which ended in 2009 (Heritage Branch, 2021). It is unclear if this Program focused on or even included ICH and given that there is zero mention of ICH in the annual surveys completed by the Heritage Branch, it was unlikely a priority of the Program (Heritage Branch, 2020). Municipal governments have been identified through the DRIPA renewal process as having an important role in improving heritage protection at the local level through tools available to them in the *Local Government Act*, specifically under Section 15 which addresses heritage (Shaepe et al., 2020; King et al., 2011). However, this power only extends to built structures and other tangible aspects of heritage (Maclean et al., 2022).

Furthermore, Indigenous forms of tangible heritage are mostly considered archaeology and fall under the Provincial jurisdiction and responsibility of the HCA (Maclean et al., 2022). Under these legislations, the legal powers for local government's responsibilities to protect ICH are limited and doesn't apply to intangible, living components of ICH. This colonial dissection of ICH is emphasized by the divisions of responsibility to culture, heritage, and archaeology among various Provincial departments like the Heritage Branch, Archaeology Branch, and Arts & Culture Branch (Aird et al., 2019). The definition and separation of heritage from archaeology and culture come in stark contrast to Indigenous descriptions of ICH and creates additional bureaucratic barriers for protection.

## **2.3. Indigenous Self-Determination & ICH**

This section explores the literature on Indigenous self-determination and the opportunities for Indigenous cultural heritage policies to honour relational self-determination to ancestral lands and protect ICH at the local level. It then applies Indigenous heritage policies as a pathway to ICH protection through co-existence with dominant governments.

### **2.3.1. Indigenous Self-Determination**

Respecting and protecting ICH requires more than holistic definitions and adequate policy but for the state to relinquish authority to First Nations to access, benefit from, and

make decisions for their own heritage (Nicholas & Smith, 2020). ICH is inherently tied to land and if the state were to transfer control and decision-making authority to Indigenous communities, land development could be majorly impacted (Warrick, 2017). This sentiment, and lack of meaningful action, is part of the larger critique of state-based application of Indigenous self-determination, one that recognizes Indigenous rights to live autonomously, but only in the confines of existing colonial structures (Boron & Markey, 2020; Daigle, 2016; Bryce & Corntassal, 2012). Self-determination that is conditionally granted by the state on the premise that it does not confront existing structures is assimilative in nature (Daigle, 2016; Bryce & Corntassal, 2012).

Relational self-determination in academic literature is often discussed with themes of Indigenous resurgence and the rejection of political recognition (Bryce & Corntassal, 2012; Daigle, 2016). Relational self-determination focuses on the community-centered process of connecting with cultural practices that honour relational responsibilities (Bryce & Corntassal, 2012). Such practices aid in cultural resurgence aimed at “reconnecting with homelands, cultural practices, and communities... centered on reclaiming, restoring, and regeneration homelands relationships (Bryce & Corntassal, 2012, pg. 153).

After a decade of refusal, Canada adopted the UNDRIP in 2016. Article 5 of the Declaration centers self-determination and the right to choose how ancestral lands are used (Cole & Harris, 2022). In 2019, the BC Government passed Bill C-51, the *Declaration on the Rights of Indigenous Peoples Act* to facilitate reconciliation with First Nations in BC (LeBourdais, 2022). The BC Government is slowly reforming provincial legislation to align with the UNDRIP, much of which focuses on shared-decision making with First Nations (LeBourdais, 2022). DRIPA’s action plan was developed with multiple levels of engagement with Indigenous Peoples, leadership, and organizations (Government of BC, 2022; Nadeau, 2021). Four themes guide the action plan, the first being “self-determination and inherent rights of self-government”. While promising on paper, the extent that DRIPA honours Indigenous self-determination is met with cynicism. Concerns remain that shared-decision making agreements will effectively mirror existing colonial structures (LeBourdais, 2022).

### **2.3.2. Indigenous Cultural Heritage Policies**

Indigenous-led heritage protection initiatives are emerging among First Nations to better protect ICH due to the long history of failures and inadequacies with the provincially mandated process. Indigenous-led heritage stewardship can take many forms, including policies, programs, assessments, and laws. Common among all Indigenous-led ICH stewardship initiatives is that they are grounded in responsibility to land, communities, ancestors, and future generations (Hammond, 2009). This responsibility indicates "the level of personal, rather than fiduciary, duty that Nations expect to heritage management" (Hammond, 2009, pg.84). Indigenous-led ICH stewardship best reflects community values, and in turn best protect ICH as a whole, with specific care to the intangible elements (Schaepe et al., 2020; Nicholas, 2021). Indigenous-led heritage stewardship is still emerging in terms of written declarations in the form of policies, programs, and laws. It is not legally required by Canadian law for project proponents, private property owners, or government officials to follow Indigenous-led heritage stewardship outside of reserve lands.

The specific content and implementation of Indigenous cultural heritage policies (CHPs) can vary between First Nations and reflect the contextual nature and knowledge of ICH to each community. CHPs can be particularly important in honouring intangible and living elements of cultural heritage while also reconnecting communities to ancestral heritage and promoting cultural continuity (Schaepe et al., 2020). CHPs recognize the inherent rights of Indigenous peoples to their ICH and affirm their right to maintain that heritage. CHPs merge community values and priorities into requirements provided to guide any development that may impact a communities' cultural heritage (Hammond, 2009). CHPs often share a similar model to the Archaeology Branch permitting process that allow First Nations to track development compliance within their territory, but in accordance with their own terms, definitions, and management measures that go beyond the requirements of the HCA (Hammond, 2009; English et al., 2023)

Increasingly, First Nations in BC are developing permitting systems to monitor the archaeological work conducted in their territories. Permit systems provide a formal mechanism that investigators need to abide by if they wish to conduct archaeological or cultural heritage related activity. Permits represent a source of revenue for Nations that can cover the costs of additional archeological work, which in turn can assist with further

protection of ICH. These systems and the permit requirements themselves differ between Nations and between project types (English et al., 2023). The Stó:lō Nation, in particular, have created a highly successful permit system that has been modelled by several other Nations in the province including the Sts'ailes, the Tseil-Waututh, Musqueam and Katzie First Nations (English et al., 2023).

In 2003, Stó:lō First Nation published their Heritage Policy Manual, this policy was part of Stó:lō's long battle in asserting self-determination over their ICH (Shaepe, date). The Policy outlines its purpose, central principles, definitions, cultural sites/landscapes, and management processes to follow (Stó:lō First Nation, 2003). Stated in part of the purposes, the Policy will allow Stó:lō to “maintain healthy relations between the contemporary Stó:lō community and Stó:lō ancestors – past, present and future” by adhering to “Stó:lō values, beliefs and traditions” (Stó:lō First Nation, 2003, pg. 2). Based within Stó:lō's ontological worldview, the policy encapsulates the Nation's interconnection to self, kin, ancestors, and the land; respectfully and meaningfully protecting cultural heritage. Included in the Policy Manual is their permitting system, used a tool to ‘occupy the field’ and assert jurisdiction on their Territory on the basis of their inherent rights and title (English et al., 2023). The permit application process is overseen by the Stó:lō Research and Resource Management Centre (SRRMC) who issue approximately 400 permits each year, the majority of which are investigative permits. Those wishing to conduct investigations relating to cultural heritage or archaeological studies within S'ólh T'éméxw must submit an application form and accompanying \$350 processing fee. The application form sets out terms and conditions, including that the investigator must be familiar with the Stó:lō Manual, and that the permit holder will hire a trained Stó:lō community member to assist in identifying cultural sites and objects (Stó:lō Nation Lalems ye Stó:lō Si:ya:m, 2003).

Stó:lō First Nation, among many others, are filling gaps in the provincial inadequate heritage management through the implementation of these policies. These policies promote the transfer of power and control of cultural heritage from the state to Indigenous communities. This transition of powers accommodates the resurgence of Indigenous laws to be expressed through community stewardship (Curran et al., 2020). The policies reflect the diverse needs, aspirations, and priorities of Indigenous communities and work towards redressing historical injustices.

While each CHPs differs amongst communities, there are core components across most CHPs that are publicly available to view. An analysis of 5 First Nation's CHPs showed similarities among core principles and approaches, some with permitting systems similar to Stó:lō First Nation. Simpcw First Nation, Skwxwú7mesh Úxwumixw (Squamish First Nation), Nlaka'pamux Nation (Lower Nicola Indian Band), Lake Babine Nation, and the Okanagan Indian Band CHPs presented the following core components: Statements of authority over territories, definitions of cultural heritage sites and objects, consent protocols, application (what/who must apply), principles of respect and responsibility, management and mitigation requirement of archaeological work, ancestral remains procedure, chance find procedure, necessary permits, and list of preferred archaeologist (Simpco First Nation, 2015; Squamish Nation, 2021; LNIB, 2017; Lake Babine Nation, 2019; Okanagan Indian Band, 2023).

### **2.3.3. Pathways Towards Co-Existence**

Co-management agreements between First Nations and colonial governments have gained significant popularity in the realm of environmental management and have been celebrated as a "stepping stone to Indigenous self-determination" (Grey & Kuokkanen, 2019, pg. 1). Such agreements work to share authority and responsibility through an equal decision making process (Pinkerton, 2003). With care to not undermine such agreements that have been negotiated and fought for, and have resulted in positive outcomes for First Nations, critiques of co-management focus on its inability to address power dynamics and honour relational self-determination (Grey & Kuokkanen, 2019; Nadasdy, 2003). Co-management or shared-decision making has been criticized for merely falling under the guise of reconciliation while effectively reducing Indigenous rights to what can be understood or granted by colonial governments (Grey & Kuokkanen, 2019).

For ICH management in BC to align with relational self-determination it must be in accordance with Indigenous laws, practices, and customs and Indigenous-led (Grey & Kuokkanen, 2019; LeBourdais, 2022). As mentioned above, Indigenous-led ICH management, such as Indigenous heritage policies, upholds inherent rights to govern ICH while effectively changing the dominant landscape of colonial ICH management in BC. These policies aren't requiring First Nations to negotiate their rights but instead are exerting them on the ground (Shaepe, 2020). This dynamic moves away from co-

management and towards notions of co-existence, depending on the response from dominant governments. Coexistence literature explores ethical relationships between First Nations and colonial governments that focus on sharing space and respecting distinct worldviews and cultural aspirations (Porter & Barry, 2016; Porter et al, 2017; Howitt & Lunkapis, 2016). In planning literature, this has been coined as the “third space” where Indigenous and state planners can come together to discuss collective actions, reconciliation, and partnership (Porter et al, 2017).

This notion of respectful co-existence through the “third space” has also been applied to ICH management by Schaepe’s (2018) introduction of the “three-row model”. This model is based on the Haudenosaunee two-row wampum belt framework that supports Indigenous resurgent practices by proposing that Indigenous peoples and settlers can exist in parallel to one another, “living together under separate sovereignties” (Schaepe, 2018, p. 14). Similar to the “third space” of planning, the “third-row” is a space where conversations and actions for decision-making and management can take place, while the two other rows: Indigenous and state, maintain their own “laws, cultures, and beliefs” (Schaepe, 2018, p.16). The third space and row advocate for relationships built on trust and transparency, working with each other without requiring First Nations to mold their laws and protocols of ICH protection into colonial limitations. Provincial and local governments with the intention of reconciling relationships with First Nations must be careful not to re-producing longstanding inequalities and look towards creating space to honour the aspirations of Indigenous-led ICH protection.

## **Chapter 3. Research Methods & Case Context**

This section begins by describing the methods of data collection and analysis used for this report. The context of the Comox Valley case study is described in detail, including the regulatory and political landscape of ICH management and reconciliation in BC.

### **3.1. Methodology Overview**

The foundational methods of the XLAP project are grounded in Community-Based Participatory Research (CBPR). CBPR involves partnerships between academic research and community members or groups and promotes trust, power sharing, and equal governance between partnered relationships (Wallerstein, 2021). Across health and social sciences, CBPR or, community-engaged research (CER), is increasingly considered necessary to achieving equitable processes and outcomes of academic research. CBPR moves away from research “about” to research “with” or “led” by the people or communities involved (Wallerstein, 2021; Atalay, 2019). The XLAP research is based on community-engaged archaeology (CEA) practices that “foregrounds the knowledge and experience of community partners to guide the process of archaeological research ... with partners rather than as people whose heritage is simply the object of study” (Atalay, 2019, pg. 514).

The XLAP research is partnered with Tla’amin, K’òmoks, Qualicum, Halalt, and Wei Wai Kum First Nations who can define their needs of the research in relation to their own community priorities. They are part of 13 First Nations with ancestral connections to Xwe’etay. The XLAP research also engages settler communities who wish to be involved in volunteering their time and property for archaeological assessments. The XLAP research employs a CBPR methodology to support First Nation and educate settler communities, increasing trust and building relationships, capacity, and reflection and inciting a sense of urgency and action for ICH conservation (MacLean, 2022).

My portion of the larger XLAP was born through our partnership with K’òmoks First Nation (KFN), my work on this project began within a year of the XLAP origins and with already established relationships between my academic advisors/project leads and our community partners. My research used a qualitative case study methodology that included predominantly semi-structured interviews and active participant observation in

CEA. This research is framed in grounded theory, a systematic yet flexible process where data collection and analysis are conducted simultaneously and in can occur in multiple forms. Grounded theory takes an inductive approach that promotes reflectivity as the categories and codes are developed from the data versus preconceived conceptions (Noble & Mitchell, 2016; Bryant, 2017).

## **3.2. Case Study Design**

I employed a single case study design to conduct this research. Case studies, as defined by Yin (2009) are “an empirical inquiry which investigates a phenomenon in its real-life context” (pg. 18) Case studies involve an in-depth study of a phenomenon and can be descriptive in nature, focusing on describing details of “inter-subjectivity and interpersonal relations” among participants (Yin, 2009; Priya, 2021). This research investigates how Indigenous heritage policies can be adopted by local governance and influence change in the provincial management of ICH. Given the recent implementation of DRIPA and provincial promises of a heritage sector renewal, a case study methodology is well suited to explore local solutions to heritage management that are Indigenous-led.

The limitations regarding a case study design are issues of validity and reliability (Priya, 2021). External validity refers to how well the findings of a study can be carried over and address similar issues in other cases or places (Priya, 2021). In the case of ICH protection, relationships among local governments and First Nations will vary, with no one-size fits all solution available. Takeaways from this case study can be applied to different contexts, informed by the place-based nature and priorities of First Nations and local governments. Furthermore, the information gathered in this case study can be understood in a broader sense that is relevant in the wider landscape of heritage management across BC.

### **3.2.1. Semi-structured Interviews**

From spring 2021 until summer 2023, 40 interviews were conducted by XLAP team members: myself, Madeleine MacLean (Master of Resource Management grad), Dr. Sean Markey, Dr. Dana Lepofsky, and Owen Wilson (Master of Resource Management candidate). My analysis draws from the full dataset of 40 interviews.



Of this dataset, I conducted 17 semi-structured interviews, directed at gathering information for the case study context and Indigenous CHPs. The interview participants included 2 First Nation Government staff, 2 First Nation knowledge holders, 1 archeologist, and 12 local governments members from the Comox Valley Regional District, the City of Courtenay, the Town of Comox, the Village of Cumberland, the Town of Qualicum Beach, and the Islands Trust.

Interview participant recruitment included networking referrals, online government directories, and local government websites. Local government participants were chosen based on the relevant positions that align with the goals of this research, ie. planners, elected officials, and chief administrative officers. Interviews ranged from 30 to 90 minutes in length and took place predominantly in person and some over Zoom video. With participant consent, the interviews were recorded to be later transcribed into a written document.

The interviews were guided by a pre-determined set of questions depending on the participant (i.e. local government official/staff, Indigenous knowledge holder, or First Nation government staff member). The interview content was not limited by the set of questions in order to gain a thorough understanding of the ICH regulatory landscape and how local government can support Indigenous-led protection of ICH. Following each interview, I transcribed the recordings and uploaded them to NVivo.

The interviews were coded in NVivo to collect, analyze, and visualize qualitative data to produce meaningful results (Dhakal, 2022). To capture themes in the data, I utilized a thematic analysis methodology to analyze the interviews (Nowell et al., 2017). This process involved familiarizing myself with the data through re-reading interview transcripts, generating initial codes to capture high level themes, re-reading transcripts and sorting quotes into codes and sub codes to form a codebook. The data collected within and across themes are the basis of the findings of this research.

### **3.3. Case Context**

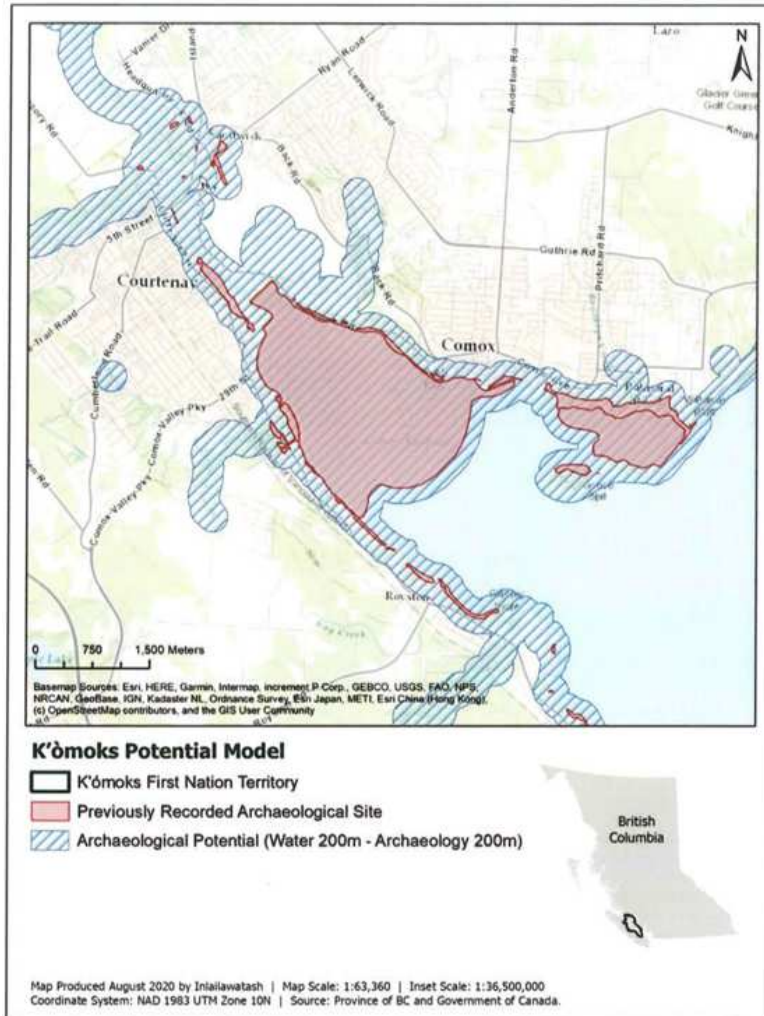
This section details the context of this research in the Comox Valley. I begin by describing the geographic characteristic of the region and K'ómoks First Nation's Territory before providing a brief history and political context of the area. I then provide a

description of the relevant regulatory, political, and legislative landscape that interacts with ICH and local planning.

### **3.3.1. Comox Valley**

The geographic scope of this research centers around the application of K'ómoks First Nation's Cultural Heritage Policy (Policy) in the Comox Valley. The Policy applies to KFN's entire Territory, the Land of Plenty, but its application within the Comox Valley area is the case study geographic focus for this research (Figure 1). Located along the central, eastern coast of Vancouver Island, Comox Valley is nestled below Mount Washington and the White Whale, known as the Comox Glacier (KFN, n.d.). There is regional overlap of shared territory with Tla'amin, Homalco, Snaw-Naw-As, Cape Mudge, Wei Wai Kum, We Wai Kai, Qualicum, and Kwíakah First Nations (City of Courtenay, 2023).

The communities within the Comox Valley wrap around the K'ómoks Estuary, the name "Comox" is anglicized and derived from the Kwákwála term for "kw'umalha" meaning plenty or abundance. The 2021 census indicates that the Comox Valley is home to more than 72,000 residents and encompasses the City of Courtenay, Village of Cumberland, Town of Comox, and the CVRD's electoral areas, including Hornby and Denman Island (City of Courtenay, 2023).



**Figure 1. Comox Valley, High Archaeological Potential**  
 Source: KFN, 2020

K'ómoks First Nation (KFN) is descendant of two formerly separate tribes, the K'ómoks and Pentlatch Peoples. KFN First Ancestors arrived in the Territory following the end of the last ice age (KFN) and have occupied the area for thousands of years (KFN, n.d.). Prior to European contact up until the 1700s, Pentlatch and K'ómoks populations were dense across their Territory. In 1782, a smallpox epidemic devastated the majority of Coast Salish Nations, killing up to 90% of KFN's population (KFN, n.d.). Following the Salish-Lekwiltok Wars, the remaining KFN population groups relocated to the Comox Valley; by 1852, their population was down to 2,000 (KFN, n.d.).

Following the arrival of colonists and the Joint Independent Reserve Commission, Pentlatch and K'ómoks tribes were merged into one and given the name "Comox First

Nation” and allocated three reserves despite advocating for more: Comox IR#1, Puntledge IR#2, and Goose Spit IR#3. By 1875 the E&N Railway Act transferred large areas of KFN Territory into private land, stripping KFN access to much of their Territory. KFN has been negotiating the K’ómoks Treaty since 1992, entering into the final stages of negotiations with BC and Canada in 2012. The Treaty is expected to be finalized within the next year with as much as 12,500 acres of land returning to KFN and a co-management/shared governance agreement to be implemented for all of KFN’s Territory (KFN, n.d.)

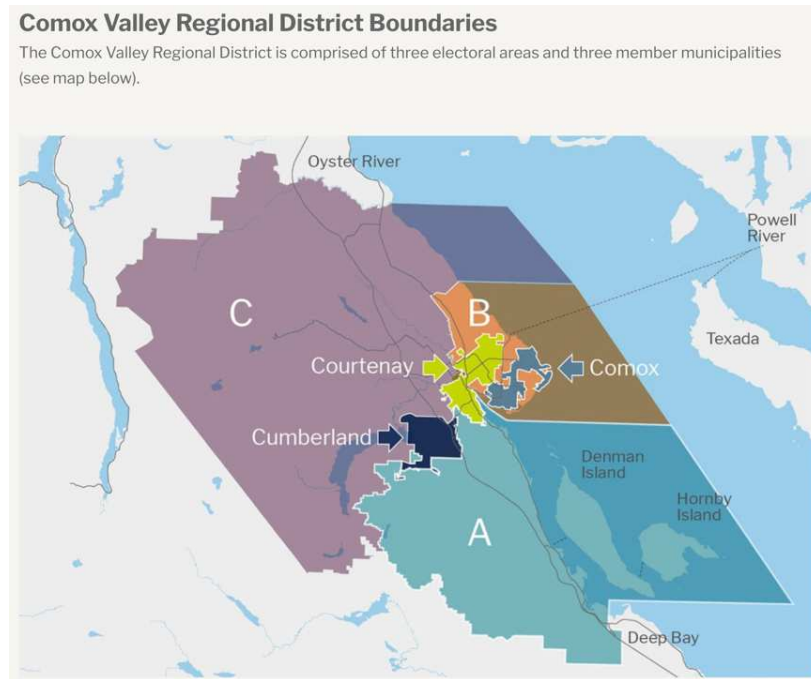
### **3.3.2. Settler History**

The Comox Valley attracted settlement with the promise of farming, fishing, logging, and mining. The initial wave of settlement followed the discovery of coal in 1852 near Comox Lake, attracting hundreds to the region to participate in the mining boom. Within the span of a few years a railway was built to transport coal to the Comox wharf. The Village of Cumberland was incorporated in 1898, the closest settler community to the coal mine, many of which were Japanese and Chinese immigrants (VCGG, 2018). Following the mining boom, settlement of Courtenay began when the City of Victoria advertised the land for farming and was incorporated in 1915 (VCGG, 2018). The construction of the Comox wharf resulted in the establishment as Comox as a naval training base, the town of was incorporated in 1946. The rapid development and incorporation initiatives shaped the land-use of the Comox Valley (KFN, 2014). The Comox Valley continued to expand, with the region being one the fastest growing areas across BC in the 1990s (CVRD, 2010).

## **3.4. Local Planning Context**

The Province grants jurisdictional authority to municipalities through the LGA (2015) and the Community Charter (2003) (Ministry of Municipal Affairs, n.d.). The LGA asserts that municipal and regional governments have authority over local land use planning processes through OCPs (Part 14 - Planning and Land Use Management, 2015). However, any power granted to local and regional governments is still subject to provincial authority as per the Community Charter (Part 2 - Municipal Purposes and Powers, 2003). Comox Valley is within the local planning jurisdiction of the Comox

Valley Regional District, Courtenay, Comox, Cumberland, and the Islands Trust (Figure 2).



**Figure 2. Comox Valley Local Governments**  
Source: City of Courtenay, n.d.

The following sections provide an overview of the responsibilities and powers of each of these local governing bodies as they relate to Comox Valley. The CVRD is a local governing body that has jurisdiction over 1,725 square kilometres of land. The CVRD serves a population of 66,527 and provides the following services: land use planning, emergency management, environment, homelessness support, fire, water, sewer, waste collection, transit, legislation services, and bylaws and bylaw compliance (CVRD, n.d.). The CVRD services and responsibilities apply to all land within its electoral area besides the areas under municipal or KFN jurisdiction (CVRD, n.d.). While Denman and Hornby Island fall within the electoral areas of the CVRD, they are under the land use planning jurisdiction of the Islands Trust.

Courtenay, Comox, and Cumberland all have the same local government structure and are responsible for all planning and municipal services within its boundaries. The Islands Trust planning responsibilities are performed by the Local and Regional Trust Committee responsible for Denman and Hornby Island and overseen by the Islands Trust Council.

The following section outlines the local governments planning authority and responsibilities relevant to ICH granted to them through the LGA.

## **3.5. ICH Regulatory Context**

### **3.5.1. LGA / Local Planning**

The local governments obtain all powers as defined by the LGA, each within their municipal or electoral boundaries. Although the LGA states that a local government may “recognize the heritage value or heritage character of a heritage property, an area or some other aspect of the community's heritage” (599(1)) as well as apply other municipal tools to heritage protection, any plans to do so must align with provincial guidelines and gain approval from the Heritage Minister (Part 15 - Heritage Conservation, 2015). Local government powers to protect ICH are also limited when it pertains to archaeology, which ultimately is under the prevailing authority of the HCA (Heritage Conservation Act, 1996).

There are some avenues for local government protection measures through OCPs to guide advocacy of ICH protection but there is no regulatory requirement, nor are they enforceable management strategies (MacLean et al., 2022). Regulating land-use decisions within municipal limits through by-laws and development permits in one area of opportunity for protection; however, this authority is still limited by the LGA and what municipalities can or cannot approve.

### **3.5.2. Official Community Plans**

OCPs are a long-range planning tool that creates a vision and goal to guide land-use decisions and municipal services into the future. OCPs are a bylaw that is adopted by local government elected councils, they must be in compliance with the LGA. OCPs are typically developed with extensive community engagement and apply to all lands within local government boundaries; guiding land-use decisions and informs all departments and operations for the municipality.

CVRD

The CVRD's 2014 Rural Comox Valley Official Community Plan included a regional objective and policy section specifically for "Cultural Heritage Resources". It's not explicitly clear what CVRD's definitions of "cultural heritage" pertains to but I have assumed the following applies to ICH:

Objectives:

- To encourage and facilitate the identification, protection and conservation of important cultural heritage resources, including archaeological resources and cultural heritage landscapes.
- To manage the demolition, destruction, deterioration, and inappropriate alteration and use of cultural heritage resources in accordance with the legislative framework.
- To identify cultural heritage conservation issues early in the land use planning process, and make reference to cultural heritage conservation issues throughout the planning decision-making process.
- To encourage public education initiatives and foster public awareness of the value of cultural heritage resources and conservation principles.

Policies:

- Support community initiatives to identify and create an inventory of cultural heritage resources with First Nations' cultural values in the Comox Valley
- Consider bylaws or other measures, pursuant to relevant legislation, for cultural heritage resource conservation and management.
- Consider requiring owners of properties that overlap with or are in proximity to potential archaeological sites, to provide an archaeological impact assessment, as prepared by a professional consulting archaeologist, in order to identify and mitigate development-related impacts to archaeological sites. (CVRD, 2014).

Courtenay

The City of Courtenay released their new OCP in 2023, guided by four directions reconciliation, community well-being, equity, and climate action. Courtenay's OCP states the following intentions for ICH protection:

- Collaborate with K'ómoks First Nation to conserve, promote, and build appreciation for local archaeological sites, heritage assets, and other cultural interests in coordination with their long-term planning policies such as

K'ómoks First Nation's Comprehensive Community Plan policies and the Community Action Plan.

- Ensure enhanced protection of archaeological sites and places of cultural significance. This includes supporting the K'ómoks First Nation in obtaining information requirements to fulfill their Cultural Heritage Policy and Cultural Heritage Investigation Permits when applicable.
- Continue to identify and document heritage assets, including historic sites, structures, and landscapes in consultation with the K'ómoks First Nation and the Heritage Advisory Commission and continually update the Housing Inventory and Heritage Register as per the provisions of the Local Government Act and Heritage Conservation Act for promoting the heritage of Courtenay. (City of Courtenay, 2023).

#### Comox:

The Town of Comox's 2011 OCP included a preamble on its engagement with KFN. The OCP included a "Historical and Cultural Resources" section that states the following:

There are important historical and cultural resources in Comox and in the Comox Valley. These include archaeological sites as the Town is located within the traditional territory of the K'ómoks First Nation. Archaeological, heritage sites and cultural resources transcend several jurisdictions and their documentation and protection should be undertaken in consultation with other local governments in the Comox Valley, the K'ómoks First Nation, and other interested stakeholders (Comox, 2011).

#### Objectives:

- To document, protect and recognize the archaeological, historical and cultural resources in the Town and the Comox Valley; and
- To consult with and gain an appreciation of the historical perspective of the K'ómoks First Nation as a "Land of Plenty" (Comox, 2011).

#### Supporting Policies:

- Work in cooperation with the K'ómoks First Nation to protect and document archaeological, historic sites and cultural resources. As Comox is within the traditional territory of the K'ómoks First Nation, the absence of a provincial archaeological designation does not confirm a site has no archaeological potential.
- Promote better understanding of the archaeological, historic and cultural resources of the Comox Valley through interpretive signage along walkways, parks and historic sites.



- To consider a Heritage Strategic Plan with the CVRD and the K'ómoks First Nation in order to provide a focus for the identification of historic and cultural resources and the establishment of a regional heritage program (Comox, 2011).

#### Cumberland:

The Village of Cumberland's 2014 OCP designated a section to "Heritage Preservation" which has a strong focus on settler-built heritage to protect the downtown area. There are no clear mentions to ICH protection with the OCP, this is part due to Cumberland's inland location with fewer archaeological locations than it's coastal local government counterparts (Cumberland, 2014).

#### Islands Trust:

Denman Island and Hornby Island each have an OCP to guide land-use planning. The Denman Island 2008 OCP was consolidated in 2023. Neither OCP has much mention of ICH beyond their responsibilities to inform landowners of the HCA requirements. The Denman OCP included the following mentions of ICH protection under "Guiding Objectives - Archaeological, Historic and Natural Heritage Sites":

- The Local Trust Committee should encourage the preservation and protection of known heritage features and develop regulations as necessary to protect historic buildings, archaeological features and natural heritage features.
- The Local Trust Committee should consult with the First Nations before considering bylaw amendments or the issuance of a permit in areas that may have archaeological significance. Landowners are encouraged to contact the Provincial Archaeology Branch before beginning construction in areas that may have archaeological significance (Denman Island Local Trust Committee, 2023).

The local governments within this case study are all geographically close together, and in close proximity to KFN's reserve lands. Community relationships amongst local governments with KFN were unknown prior to commencing this study but hypothesized to be an important factor in ICH protection. Local governments are increasingly recognizing their responsibility to reconcile with local First Nations (CIP, 2019). Based on a desktop search, the following section describes the local governments in the Comox Valley commitments to reconciliation.

### K'ómoks First Nation Protocol Agreement:

In 2010, the CVRD, the City of Courtenay, the Town of Comox, the Village of Cumberland and KFN signed a historic protocol agreement that lays out a shared understanding of key interests in the Comox Valley best served by working together based on shared communication and cooperation (CVRD, 2021).

### Comox Valley Regional District:

In 2020, the CVRD released an Indigenous Relations Framework that aims to address UNDRIP in the scope of the CVRD's authority. Building on this Framework, the CVRD In 2021, the CVRD released an Indigenous Relations and Reconciliation Assessment report to identify and develop long-term strategies and actions to support and advance reconciliation (CVRD, 2021). The Indigenous Relations and Reconciliation Assessment report contains several mentions of KFN cultural heritage and actions/strategies for protection including:

- Develop a plan or policy to support Indigenous place making and visibly recognize Indigenous history and locations significant to local Indigenous People in the Comox Valley.
- Develop a Cultural Heritage Protection Protocol to set out how the CVRD will work with KFN to integrate the KFN Cultural Heritage Policy into CVRD practices, and to assess and manage potential impacts to KFN cultural heritage resources during land development process.
- Provide all employees involved in projects that involve ground disturbance with mandatory training on issues related to archaeological and cultural resource management (e.g., archaeological due diligence, chance find procedures, KFN's Cultural Heritage Policy). Explore opportunities to partner with KFN to develop and provide this training (CVRD, 2021).

### **3.5.3. HCA / Provincial Management**

As provided in Chapter 2, ICH in BC is primarily regulated by the Archaeology Branch through the HCA. The HCA was passed in 1977 and has since gone through a series of amendments in 1994, 1996, and some minor revisions in more recent years (MacLean, 2022; Klassen, 2008). Amendments made in 1996 followed the *Delgamuukw v. BC* supreme court case and included Section 4(1), setting the provisions for the Archaeology Branch to enter into a shared decision-making agreement with First Nations. However, to date, only one Section 4 agreement has been signed between the

Province and an Indigenous Nation: The S’ólh Téméxw Stewardship Alliance and BC HCA s.4 Agreement (Ministry of Forests, 2022).

The HCA “affords discretionary authority in determining if, and what conditions, permits are granted” for archaeological research (British Columbia Government, 2021). In this process, if a site is under investigation for heritage designation, First Nations are notified and given 30 days to respond and/or object to the designation (Heritage Conservation Act, 1996). This timeline is particularly difficult for First Nations in British Columbia, who are operating under minimal capacity and unable to visit/investigate each proposed site (Nicholas et al., 2015). Often First Nations have to rely on independent archaeologists and the Archaeology Branch to determine the significance of the location/object without their input on the cultural, intangible elements (Schaepe et al., 2020). The Provincial Government will ultimately decide what is considered “significant” and acceptable mitigation strategies to proceed with development (Schaepe et al., 2020, pg. 56).

The following table provides a breakdown of the relevant policies included in the HCA that apply to ICH protection:

**Table 1. Heritage Conservation Act (1996) Policies**

Topic	Details	Notes
Types of Heritage	<p>Heritage objects (personal property) and heritage sites (land) that have heritage value to BC, a community, or an Indigenous people.</p> <p>Heritage value is defined as having “historical, cultural, aesthetic, scientific, or educational worth or usefulness”</p> <p>Heritage wrecks are the “remains of a wrecked vessel or aircraft”</p>	<p>The province may define the types of heritage objects/sites, as well as site boundaries.</p> <p>Included within the Act are burial places, rock paintings and carvings, artifacts, wrecks, archaeological materials or features, and evidence of human habitation.</p>
Heritage Recording	<p>Heritage sites, objects, buildings, structures, or “other heritage property” must be recorded in the Heritage Register.</p>	<p>Heritage sites that are post-1846, as well as some federally recognized sites, are recorded in the BC register of Historic Places through the Heritage branch. These do not include archaeological heritage.</p>

Topic	Details	Notes
Agreements with First Nations	<p>The province may enter into a formal agreement with a First Nation for the management or conservation of their heritage sites or objects.</p> <p>A treaty First Nation may include laws in their final agreement for the conservation and management of heritage sites and objects within their treaty area.</p>	The Minister must consider any policies regarding heritage management with the Haida Gwaii Reconciliation Act as if they are provincial heritage policies.
Heritage Protection	<p>Burial places, rock art, heritage wrecks, and pre-1846 sites are automatically protected (even if they are not recorded). Heritage sites may be protected through an agreement with a First Nation. Heritage sites or objects may be designated for protection.</p>	Some “heritage places” may be formally recognized rather than designated. In these cases, they are included in the heritage register but they are not officially protected.
Permits	<p>All permit applications are reviewed by the archaeology branch.</p> <p>The Minister may approve, amend, or refuse any permit application.</p>	Burials, rock paintings and carvings, wrecks, registered sites, and un-registered sites or objects pre-dating 1846 cannot be damaged, desecrated moved, removed, altered, excavated, or covered, without a valid permit.
Heritage Designation	A heritage object or site, including a whole or part of a property or multiple properties, may be designated a provincial heritage site or provincial heritage object.	Processes and requirements for designation, including notifying property owners, are included in Part 2 Division 1 of the HCA.
Heritage Investigation Permits	Permits for investigating an archaeological site to gather significant information for research and recording purposes. Investigations are higher impact and often include excavation through archaeological methods.	This process can be triggered by development (through a development permit application), through application by an individual or community for various reasons, or by Ministerial order for registered and unregistered sites.
Site Alteration Permits	Permits for altering and removing archaeological objects or sites after an inspection and/or investigation has been completed and all archaeological material has been recorded.	These are provided by the archaeology branch when a developer wants to continue a project where archaeological material exists.

Topic	Details	Notes
Fees and Compensation	<p>Property owners may apply for financial compensation from the provincial government within 1 year if heritage registration decreases the market value of the property.</p> <p>The individual who applies for a permit must pay the required fees.</p> <p>If property is damaged during investigation, the property owner is entitled to repairment at the expense of the government, or compensation if repairment is not possible.</p>	
Powers and Enforcement	<p>The HCA is legally binding and prevails over other legislation regarding heritage.</p> <p>A stop work order that prohibits the alteration of property for 120 days may be issued by the Minister if a property is considered to have heritage value or if heritage is likely to be, is being, or has been altered.</p> <p>The Minister may delegate or sub-delegate their powers and duties under the HCA to a person in any ministry of government, excluding the power to authorize or establish an advisory committee for heritage conservation.</p> <p>Interference with an inspection or an investigation is not allowed.</p>	<p>Non-compliance with the Act regulations may result in an injunction, a restoration or compliance order, or legal charges.</p> <p>If a person is charged with offense under this Act, then they are liable to a fine of up to \$50,000 and/or up to 2 years imprisonment.</p> <p>If a corporation is charged with offense under this Act, then they are liable to a fine of up to \$1,000,000.</p>

Source: (Heritage Conservation Act, n.d.; MacLean, 2022).

As introduced in Chapter 2, the Province is slowly reforming provincial legislation to align UNDRIP, responding to the TRC Calls to Actions through the Bill C-51, the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA). The purpose of DRIPA is to affirm UNDRIP into Provincial Law and to “support the affirmation of, and develop relationships with, Indigenous governing bodies” (DRIPA, 2019, s.2). Section 4 of DRIPA requires the Province to develop an action plan, which was released in 2022, titled The Declaration Act Action Plan. The Action Plan has 89 priority actions with applicable steps to be implemented in the next 4 years (Government of British Columbia, 2022).

The four main goals of The Action Plan are:

1. “Self-Determination and Inherent Right of Self-Government;
2. Title and Rights of Indigenous Peoples;
3. Ending Indigenous-specific Racism and Discrimination;
4. Social, Cultural and Economic Well-Being” (Government of British Columbia, 2022).

The Action Plan mentions some specific for ICH protection, including the following:

- “Respect for Indigenous cultures is tangibly demonstrated through Indigenous maintenance, control, protection and development of their cultural heritage resources, intellectual property, art, spiritual traditions, knowledge systems, economic systems, food systems and spiritual and sacred sites.
- Indigenous Peoples are thriving in their role as stewards and managers of their cultural heritage and receive funding and support to develop community based cultural heritage plans and programming that will assist with: documenting oral histories and cultural traditions; managing cultural heritage sites, objects and systems; and supporting the intergenerational transmission of cultural knowledge; and showcasing and commemorating Indigenous cultural heritage.
- First Nations create archives for historical community records, mapping services and place-naming” (Government of British Columbia, 2022).

The action committed by the Province with regards to cultural heritage is “4.35 Work with First Nations to reform the Heritage Conservation Act to align with the UN Declaration, including shared decision-making and the protection of First Nations cultural, spiritual, and heritage sites and objects (Ministry of Forests, Ministry of Tourism, Arts, Culture and Sport)” (Government of British Columbia, 2022).

To honour the goals listed in DRIPA’s Action Plan, particularly around self-determination, is the introduction of s.7: Decision-making agreements (DRIPA, 2019). This section enables a Minister (or other member of the Cabinet) to negotiate and enter into agreement with an Indigenous governing body to either (a) “exercise of a statutory power of decision jointly” by the Indigenous governing body and the government or other decision-maker, or (b) to require the consent of the Indigenous governing body prior to any “exercise of a statutory power of decision” (DRIPA, 2019).

This broad legal mechanism is quite promising, as it offers what appears to be an ambiguous path towards joint decision-making or co-governance in potentially any legal area. It also may be relatively easier to establish agreements than under s.4 of the HCA because s.7 of DRIPA requires Cabinet approval to negotiate, but only the approval of the responsible Minister for the final agreement (English et al., 2023). Accordingly, advocates have called for a general Cabinet mandate to negotiate s.7 agreements with Nations for heritage protection according to clear, common criteria and timelines (English et al., 2023); however, the novelty of DRIPA means this section has not been used very often and has not been used for heritage protection as of yet.

## **Chapter 4. Research Findings**

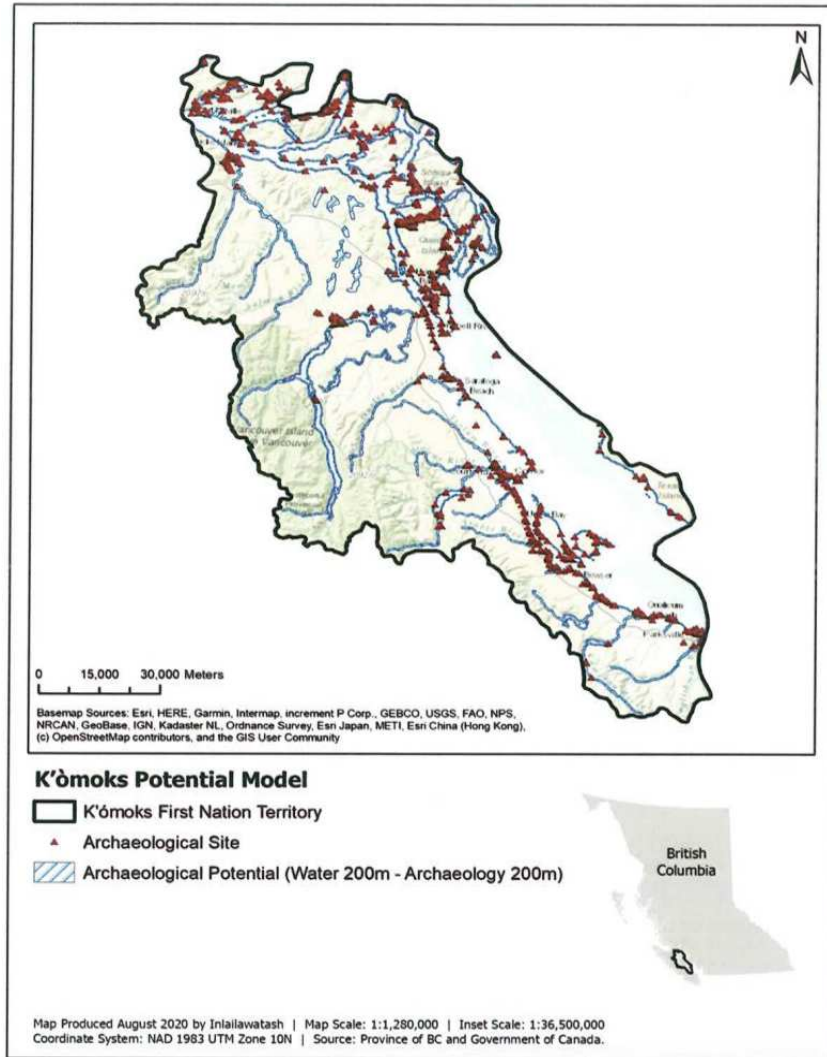
Through our interviews and literature review, it became clear that Provincial and local governments are failing to protect ICH effectively, and Indigenous heritage policies stand as a promising alternative or addition to current legislation and management. Interview participants within the case study context were all aware of ongoing issues regarding ICH protection. The depth of knowledge regarding ICH and KFN's heritage policy, however, varied between participants. These findings are explored in the following sections to convey what's unfolding in the case study area to highlight the mechanisms of KFN's Cultural Heritage Policy and how it interacts with local governments. The findings from the research will be presented using the following themes: Policy Development, Local Government Relationships, Policy Application, and Challenges to Enforcement.

### **4.1. Policy Development**

#### **4.1.1. KFN's Cultural Heritage Policy:**

KFN's Cultural Heritage Policy (Policy) guides the appropriate protection, management and study of KFN's cultural heritage in accordance with their ancestral laws and teachings. The Policy applies to all KFN Territory (Figure 3), including private, crown, KFN lands, intertidal areas and submerged lands.





**Figure 3. KFN Territory, High Archaeological Potential**  
 Source: KFN, 2020

The Policy states KFN’s authority over their cultural heritage is derived from several legal systems, including Indigenous law, UNDRIP, DRIPA, Section 35 of the Canadian *Constitution Act*, 1983 and KFN 2016 Land Code. Their Indigenous law is based on K’ómoks and Pentlatch’s teachings. Authority over decision-making comes from KFN’s decision-making authority through their “unextinguished Indigenous title to our territory” (KFN, 2020, pg. 4). KFN’s laws specify their responsibility to steward their lands for future generations and the requirement to respect and protect their ancestors and cultural heritage (KFN, 2020). The Policy states the protective measures required for all KFN cultural heritage and that any impacts will require KFN consent.

Based on UNDRIP and now DRIPA, the Policy outlines what “free, prior, and informed consent” means to KFN:

1. Provided KFN with all relevant available information regarding the project,
2. Provided KFN with the appropriate time and means to review the project information and identify potential concerns,
3. Provided KFN opportunity to discuss aspects of the project with the proponent,
4. Addressed all and any potential concerns identified by KFN regarding the project,
5. Obtained confirmation from KFN in writing, or in the form of the KFN Cultural Heritage Investigation Permit, that any potential concerns with the project will be mitigated to the satisfaction of KFN (KFN, 2020).

#### **4.1.2. Development & Community Involvement**

The Policy grew out of various land management decisions being developed at KFN, such as the 2016 Land Code, which allowed KFN to adopt their own laws and regulations otherwise under Federal jurisdiction. The Policy was partly developed as a political leverage point due to ongoing issues and conflict between KFN and the Archaeology Branch over specific archaeological projects.

Prior to the Policy, KFN’s archaeology referral process moved through staff and an external organization before a briefing note was presented to Chief and Council. With the previous system, KFN didn’t have anyone with an archaeology background involved in the process. It would sometimes require the Chief and Council to consult a professional archaeologist in order to make final decisions. With the introduction of the CHIP, KFN receives applications from project proponents directly. While the CHIP is still a new, evolving process, it has created internal consistency for KFN. The CHIP application fee of \$400-\$600 funds the Archaeology Referrals Coordinator position. An interview participant describes the benefits that the consistency and clarity of the CHIP has provided:

The money that's coming in funds the training to have an individual dedicated to just dealing with archaeology application and making an informed decision. This is really helpful in terms of people actually following the CHIP, following the guidelines, understanding what KFN wants. People are trying to make a decision to minimize the impact to archaeology when

there are clear impacts to human remains and burial sites. People are getting on board with the repatriation costs, burial lots, and ceremony and things like that. – Participant 10

The Policy was developed with KFN's laws and values are the forefront of its vision and purpose. An advisory group consisting of KFN Elders and knowledge holders were provided guidance throughout its development, specifically in areas related to ancestral remains and how people should proceed when encountering burial sites.

### **4.1.3. HCA Issues**

There are two methods for triggering archaeological assessments through the HCA. The first applies to regions that require development permits, during which the application is reviewed in relation to RAAD to determine if the development is on or near a known or expected archaeological site. If it is, then an archaeology permit is required for inspection/investigation prior to development. The second method is through the chance find protocol, which maintains that if a development happens to encounter an archaeology site during land modification, then development must stop, and the Archaeology Branch determines what permits are needed to go forward. Interview participants within and beyond the case study context who are familiar with the HCA criticized the legislation for its reactive and delayed response to ICH protection. Participants expressed frustration regarding the delay for reported sites to make it onto the database. Without the sites formally registered, they do not show up on RAAD, and aren't flagged by individuals with access to RAAD, such as local planners. This issue was brought up by several interview participants:

The archaeological branch is totally reactive. There's the known sites, but my understanding is that it's supposed to be an iterative, like it's supposed to grow. I'm not sure how good they are, in terms of getting up to date. They're very under-resourced branch. – Participant #9

And

There so many sites that have the paperwork produced, because there's been artifacts or something on a site but it's still not even showing up in RAD. There's like 1000s of them that are like that right now. Our artifacts have been discovered in these areas and that information is not available in RAD because the province hasn't gotten around to getting it entered yet. That comes back to the province lack of funding to that branch that is, you

know, a key branch to Indigenous governments all over British Columbia –  
Participant #1

Across most interview participants, there was collective agreement that the HCA is relatively weak in protecting ICH in part due to the underfunded and under-resourced Archaeology Branch. From the local government perspective, all the planners interviewed expressed the minimal correspondence or direction provided from the Archaeology Branch. One local planner interview participant describes the difficulties in facilitating this communication:

In terms of working with the branch, it's interesting as they are very under-resourced. That's very clear, you can just tell by the way they don't have the ability to respond to emails and things ... a lot of the time there are big delays in communication and I just don't have relationships with those people – Participant #18

Additionally, three interview participants critiqued the Archaeology Branch's absence as being particularly offensive to First Nations given that the Branch is within the Ministry of Forests. They described the disconnect between the large revenue streams entering the Ministry and the inability for the Archaeology Branch to enforce the HCA. An interview participant reflects on this:

We know that that they are a crazy underfunded and underfunded Branch within one of the richest or most revenue generating ministries in the Province. I think there's a disconnect there. There's a lot of revenue that comes into the Ministry, and yet they significantly underfunded the Arch Branch, which really, from a reconciliation perspective, is really offensive. Because they know that the majority of archaeology and cultural heritage within BC is related to First Nations and yet they aren't funding that one branch? so I see it as a huge disconnect. – Participant #2

The HCA is not set up to work proactively, it's designed to record sites and ensure that development applications comply with protocols. Yet the lack of regulation and enforcement results in dependence on the honour system, it's up to the property owner or developer to report the site. With the inability for the Archaeology Branch to effectively monitor development, archeological finds go unreported, several interview participants described this impact to ICH:

We know that a lot of developers, you know, they go hit some arch stuff, and they'll just keep moving on. I think that's been the practice, generally, since the early colonial periods, right? It's just kind of, hey, this doesn't matter to us colonialists, let's build whatever we want here and disregard any cultural heritage. – Participant #2

#### 4.1.4. The CHIP

KFN Cultural Heritage Investigation Permit (CHIP) is the primary mechanism of the Policy and a straightforward process for obtaining KFN consent for a project. All development within an KFN's high archaeological potential areas requires the proponent to obtain a CHIP to avoid unnecessary impacts to KFN cultural heritage. The CHIP intervenes in the existing regulatory landscape by requiring any development project occurring within the high-priority area to apply for the CHIP directly from KFN. The CHIP addresses critical issues within the HCA and Archaeology Branch processes by:

- Increasing KFN's knowledge of proposed development within their Territory,
- Proactively protects unsurveyed archaeology,
- Provides clear definitions of archaeology, cultural heritage sites, and objects,
- Provides specific requirements regarding Ancestral Remains,
- Ensures that archaeological work adheres to KFN's of investigation and mitigation requirements.

The CHIP enables KFN to be aware of the development ongoing within their Territory and can actively monitor potential damages to sites before they occur. The CHIP addresses issues with RAAD, it flags locations in close proximity to registered sites as described below:

One of the main things that CHIP really addresses is the fact that the Heritage Conservation Act, even though it says it protects archaeology in surveyed and unsurveyed areas, when people don't know how to identify cultural material, it gets destroyed on a daily basis. The fact that when you buy a property and reach out to the Province and you do the site information request, they'll say if you are developing within the registered site, then you are required to get the permit. If you're developing outside of the registered site, then you are recommended to get a permit. And as soon as somebody sees recommended, they instantly are going to cut corners, and they're not going to get the permit. And so it happens all the time, the boundaries are just so arbitrary. – Participant #1

The CHIP also provides clear terminology and requirements for the archaeological standards that KFN expects which differs from the HCA (Table 2). In addition to ensuring that KFN concerns are addressed, the CHIP helps deter large development from happening in known or expected areas of significant archaeological findings, such as

burial sites. An interview participant reflects on the impact this has had on the development community:

According to the Archaeology Branch, if you're encountering intact deposits, you have to hand excavate 5% of them, while KFN's policy call for 50%. For larger projects, developers are going to encounter a lot of deposits which is a significant difference in the budget and scope of an archaeological assessment. So, I think it's started to really get that idea across to deter them [developers] from undertaking projects in those really sensitive areas. – Participant #10

### **Applicant & Investigation Process**

The CHIP applies to all projects involving subsurface work in areas of high archeological potential which includes all areas within 200m of waterways, within 200m of the boundaries of registered archaeological sites, and in areas considered by KFN to have high potential based on known sites, landforms, and KFN ethnohistoric information (KFN, 2020). Once a project proponent has applied for the CHIP, KFN will decide if a KFN Cultural Heritage Investigation is required prior to development. If deemed necessary, a KFN Archaeological Monitor will coordinate with the project proponents and complete the Investigation. Projects within these areas that involve subsurface construction/disturbances beyond 10m<sup>2</sup> requires preliminary field reconnaissance by a KFN Archaeological Monitor. If KFN discovers archaeological evidence requiring mitigation, the project proponents must then hire an archaeologist, from KFN's preferred list of archaeologists, to complete an Archaeological Impact Assessment.

**Table 2. HCA vs. CHIP Comparison**

<b>Categories</b>	<b>HCA</b>	<b>CHIP</b>
Vision Statement / Purpose	Vision Statement: N/A. Purpose: "encourage and facilitate" the protection and conservation of heritage property.	Vision Statement: "As descendants of the K'ómoks and Pentlatch tribes, we have inherited rights and title to all our territory. With our inheritance comes the responsibilities to care for the lands and waters, including our cultural heritage sites and artifacts.  Purpose: "Guide the appropriate protection, management, and study of our cultural heritage in accordance with our ancestral teachings".

Jurisdiction	<p>Provincial jurisdiction to exert the HCA provisions over private and public lands.</p> <p>The HCA is legally binding and prevails over other provincial legislation. Non-compliance with the Act regulations may result in an injunction, a restoration or compliance order, or legal charges.</p>	<p>KFN is exerting jurisdiction over heritage protection and conservation within their Territory. Jurisdiction redrived from: Indigenous Law, UNDRIP, DRIPA , Section 35, Constitution Act, 1982, KFN Land Code</p>
Indigenous Consent	<p>Engagement process: First Nations have 30 days to respond to the Archaeology Branch referrals to comment on a Site Alteration Permit.</p>	<p>“Free, prior and informed consent” to KFN means: Provided all relevant available information regarding the project Provided appropriate time and means to review the project and discuss with the proponent Addressed all potential concerns identified by KFN Obtained confirmation from KFN</p>
Site Requirements for Assessment	<p>Direct overlap with protected archaeological site: Recorded archaeological site protected under the HCA is recorded within property or project area. Must obtain a site alteration permit issued by the Archaeology Branch before impacting the site. The archaeological site impact management and permit process is summarized on page 2. If you have questions about the process, contact the Archaeology Branch.</p> <p>Direct overlap with an area of high archaeological potential: Property or project area has been previously assessed for potential or there is a known archaeological site within 50 m that may extend beyond its recorded boundaries. Recommends hiring a consulting archeologist.</p>	<p>KFN Potential Model: Require that all projects within Recorded archaeological sites Within 200m of the boundaries of registered archaeological sites Within 200m of the ocean, river, or lake shore Areas identified by KFN such as cemeteries and known burial sites.</p>
Investigation	<p>Archaeological Impact Assessment Permitted assessment Identify and evaluate archaeological sites Data collection, analysis and assessment with management recommendations Doesn't typically include a preliminary field reconnaissance.</p>	<p>KFN Cultural Heritage Investigation Projects within an area of high archaeological potential will require a KFN Cultural heritage investigation prior to development or harvesting. Consists of preliminary field reconnaissance by KFN Arch Monitor.</p>

	<p>Requires HCA S.12.2 Permit</p> <p>Gathers information about the scope, nature, and significance of any sites in conflict with the development footprint</p> <p>Provides site management recommendations</p> <p>Supports any applications for a S12.4 alteration permit</p>	<p>Will determine whether or not further investigation, in the form of an Archaeological Impact Assessment (by a professional arch) is required.</p> <p>Will not accept Archaeological Overview Assessments of such areas recommending no further investigation.</p>
Archaeologist	Professional registered archaeologist.	KFN list of preferred archaeologists with considerable experience in KFN Territory.
Dates	Archaeological sites and objects that pre-date 1846.	<p>All cultural remains re-dating AD 1900 are automatically protected.</p> <p>All KFN ancestral remains dating to all period of time are protected.</p>
Ancestral Remains	<p>Human Remains Policy:</p> <p>Fortuitous Discoveries</p> <p>Upon notification of the discovery of human remains that are not of forensic concern, the Archaeology Branch will take steps to facilitate the respectful handling and disposition of those remains within the limits of existing funds and program priorities.</p> <p>if remains are determined to be of aboriginal ancestry, the branch will attempt to contact the relevant First Nation(s)</p> <p>Permitted Archaeological Projects:</p> <p>the remains are to be handled in accordance with the methods specified in the permit, respecting the expressed wishes of the cultural group(s) represented, to the extent that these may be known or feasible.</p> <p>if the permit does not specify how remains are to be handled and if the cultural affiliation of the remains can be reasonably determined, the field director or permit-holder should attempt to contact an organization representing that group. The permit-holder or field director should advise the branch of the organization contacted, and any wishes expressed by that organization.</p> <p>the branch, in consultation with the appropriate cultural group(s), will determine disposition of the remains.</p>	<p>Specific requirements regarding Ancestral Remains:</p> <p>All work ceased and KFN to be contacted immediately – they will not be moved without KFN consent.</p> <p>KFN will make decision is remains are to be excavated or remain in place.</p> <p>KFN to determine location for remains if moved.</p> <p>Project proponent will cover all costs associated with the excavation, storage, analyses, reburial of the remains.</p>



<p>Mitigation &amp; Data Recovery</p>	<p>Archeological Impact Assessment mitigations:</p> <p>Various options are available for the mitigation of adverse impacts on archaeological sites including changes in project design, the implementation of site protection measures, systematic data recovery.</p> <p>The mitigative measure(s) which should be implemented in any specific case depends on:</p> <ul style="list-style-type: none"> <li>the significance of the resource;</li> <li>the nature and extent of the impact;</li> <li>the relative effectiveness of the measure;</li> <li>research and resource management priorities and needs; and</li> <li>project objectives, conditions and constraints.</li> </ul>	<p>Higher data recovery threshold: systematic data recovery of 50% intact cultural sediments</p> <p>Inspection (such as raking) of 100% of disturbed cultural sediments</p> <p>Appropriate collection and analysis of faunal remains</p> <p>Appropriate collection and analysis of lithic artifacts</p> <p>Allocate funds for radiocarbon dating for projects that impacts intact cultural sediments or wet sites.</p> <p>List of required mitigation strategies for specific cultural heritage site types.</p>
<p>Permit</p>	<p>S12.2 Inspection permit: Information gathering Issued to archaeologist. Identify and assess sites through survey and subsurface testing. Generally low impact to the landscape, rights and title</p> <p>S12.2 Investigation permit: Research Issued to researchers, archaeologists</p> <p>S12.4 Alteration permit: Issued to developer, possibly archaeologist. Authorizes alterations to a site Branch confirms impacts to site are well-understood (and minimised)</p>	<p>CHIP: To ensure that all developments proceed in accordance with KFN's preferred mitigation measures.</p>

(KFN, 2020; BC Archaeology Branch, 2022; Heritage Conservation Act, 1996)

## **4.2. Local Government Relationships**

### **4.2.1. Adoption by Local Government**

The requirements to follow the CHIP outside of KFN reserve lands are not legally binding within current Canadian law and Provincial regulations. Additionally, private property owners may not be aware that CHIP exists. Local governments operate at the intersection between private property owners and intergovernmental relations with KFN. The five local governments within KFN's Territory have committed to adopting the CHIP into their planning processes including the CVRD, Comox, Courtenay, Cumberland, and the Islands Trust. The CHIP intervenes in the land-use planning process when residents submit a development permit application for the construction or alteration of buildings, structures and/or land. Through these building permits, the local governments hold a thorough knowledge base of proposed land alterations within municipal limits as well as an established communication stream between the local government planners and private property owners. In adopting the CHIP, local governments have committed to notifying, educating, and encouraging those seeking a development permit to contact KFN and apply for the CHIP. This process is described by one of the local government interviewees:

We put in our development application forms [in reference to this CHIP] that we expect applicants that are within the area of interest that KFN had identified will have made contact with KFN and will have confirmed whether they need a CHIP or not. And so on our application form and on our website, we say very clearly "Did you confirm this with KFN?". We use our referral process then to ensure that that's truly the case so we often do a double check with the KFN coordinator who will tell us if they have an interest in a project or if they don't have an interest so then we know directly from KFN. First, we make very clear for an applicant that we expect them to get that before they even apply for a development permit. – Participant #18

### **4.2.2. Community Relationships**

The close proximity of KFN and the local governments within the Comox Valley creates a unique dynamic for local relationships. A thorough investigation into the history of community relationships was not covered in this study. However, it became clear that relationship dynamics played an important role in local governments adoption of the CHIP and willingness to support KFN. Community relationships between KFN and local

governments have improved in recent years. From the perspective of the local government interview participants, the current relationship is the most positive it's been. An interview participant described recent progress:

In the last four years, there's been a change on the political side, and the last two years has been a change on the administrative side [referring to their local government]. So we're trying to work to build those bridges and relationships that probably weren't nurtured or valued in the past. So it's something that we're trying to do and get better at right now. Our council in 2021, adopted the principles of UNDRIP, as well identified one of their strategic priorities to improve the relationships with the KFN. So we're on a path to improve, but it really is the first steps to that improvement. – Participant #9

Several interview participants identified the Community to Community (C2C) Forums as a valuable educational opportunity to bring KFN and local governments together to build relationships and learn about the CHIP. C2C Forums are funded through the Ministry of Municipal Affairs, they are intended to bring together municipalities and First Nations to discuss best practices and shared experiences to reach common goals, agreements, and memorandums of understanding ([UBCM](#), 2023). A series of C2C meetings have been held between the CVRD, Comox, Cumberland, Courtenay and KFN. A participant reflected on the C2C meetings:

They have been absolutely fundamental to really strengthening our relationship. And I think it's because it really showed sincerity in terms of that relationship, really going back to the basics, really trying to understand the history. And really try and understand what it means to reconcile. – Participant #5

In 2020, a C2C meeting was held to introduce the CHIP and its importance in protecting KFN's cultural heritage and how the process relates to development in the Comox Valley. Given the scale of the CHIP, the CVRD decided a regional approach was best to approach local government partners and lay the groundwork to help increase education around ICH and its importance. The 2020 C2C meeting brought together KFN and the four local governments, an interview participant who attended reflected on this meeting:

It was really about understanding that [archaeology] can be more than just an artifact, which is often what people assume that's all it is. And so it was really trying to introduce our local government partners to the idea that this is actually helping First Nations to achieve self-determination, self-governance through archaeology, through cultural heritage. We reached out to CAOs, and senior management, and hosted a session that provided

a really comprehensive overview of cultural heritage, the value of it, and then the role it plays in reconciliation and self-determination. – Participant #5

Concurrently, local governments in the Comox Valley were developing and/or releasing their commitments to reconciliation, such as adopting UNDRIP. Local government interview participants provided examples of their reconciliation-related work:

Reconciliation is something that we think needs to be woven through everything that we do. There are just so many aspects that are not considered, like every development, whether it's in an archaeological area or not, there are impacts. As an example, there's some forested land that someone wants to develop ... but for KFN, that's a medicine gathering place. So, I think we need to start thinking beyond that's a sensitive site but really that this whole area is sensitive. We need to look at all the kind of nuances around these lands, you know, the land that we're on and the traditional uses of this land – Participant #22

Interview participants from local governments noted that there had been minimal direction from the Province on DRIPA's impact on local governments, particularly around ICH. In comparison, the CHIP provides clear guidance and expectations on how to support KFN's self-determination over their Territory. Local governments' commitments to UNDRIP and reconciliation became a leverage point for KFN, one interview participant working with KFN expressed this sentiment:

Strategically, why we did release it [the Policy] enshrined in UNDRIP is because some of these communities are endorsing UNDRIP. And so we said, well, this is exactly what UNDRIP means to KFN, so if you endorse that, then this is it. It holds them accountable and allows us to say if you're not endorsing this policy, then you're not endorsing UNDRIP. – Participant #10

### **4.2.3. Local Government Responsibilities**

Local government endorsement of the CHIP does not require significant changes to the existing planning processes. As mentioned above, in adopting the CHIP, local governments have committed to notifying, educating, and encouraging those seeking a development permit to contact KFN and apply for the CHIP. Interviews with local government planners and high-level staff revealed that the extent of commitment or sense of responsibilities varied between local governments. While all planners across the 5 local governments notify project proponents of the CHIP, some local government's

planning departments are seeking additional measures to ensuring compliance with the CHIP through communication and zoning strategies.

Project proponents who are well-informed about the CHIP from the early stages of their development tend to create a smoother process for the KFN archaeology monitors. One local planner interview participant describes their communication strategy for the CHIP:

I am careful in saying that we expect an applicant to have obtained the CHIP. We understand legally that we cannot actually require it. So all the language is around strong expectations and good communication with KFN. So it's more around language of expectations as opposed to the city withholding a permit because they didn't talk to KFN. What we can commit to at the staff level is that if we know a developer is within an area of KFN interests and we can't withhold our permit, we can still issue our permit to the developer and tell KFN what's happening and allow them to access the enforcement provision in their policy. So, at the very least, KFN is always aware if developments are about to happen somewhere where they may have an interest, and they can then follow up the way they need to. – Participant #18

Local governments are legally bound by the provisions in the LGA and cannot withhold a development permit based on archaeology concerns alone. One local government participant reflects on the disconnection between their aspirations to require the CHIP and the restrictions in doing so:

The difficulty in something like this lies in the fact that we have legal and political jurisdiction over municipal boundary, and KFN, despite having a very large traditional territory and which we recognize is unceded, the state only recognizes their legal jurisdiction over their reserve lands. So as local governments, we're unsure if we have the authority to require a permit from KFN. As of right now, I think we've received the opinion that we cannot hold up a development permit or a building permit, because someone hasn't received a CHIP from KFN. So that's difficult. – Participant #6

Three interview participants discussed the role that council discretion could play in withholding a development permit based on the archaeology/the CHIP. One participant explained the possibility that their council could delay approving a permit but ultimately the threat of possible legal litigation would triumph their desires to do so. One interview participant from a local government noted how re-zoning applications could be withheld via council discretion based on the lack of CHIP:

You have to be careful as a municipality, as we don't get to choose what we permit and what we don't permit. Developers and landowners have legal rights that we need to process. So when you get into areas where you have

discretion, and that's Council discretion, that's when you're talking about re-zonings. We are telling people if their development is triggered by the CHIP to go and work with KFN and get your CHIP permit or else we wouldn't approve your rezoning and there's no way you'll get a discretionary approval from the town if you don't have that in place. – Participant #13

The local governments in the Comox Valley are all in the process of developing and/or releasing long-term planning documents to guide their future growth such as OCPs, master plans, and regional growth strategies. The CHIP provides a framework for local governments to address ICH based on the direction from KFN. The significance of this finding became clear when interview participants outside of the case study context reflected on the role of local governments in protecting ICH:

The challenge is that we are a municipality, so we're given powers from the province, we can't work beyond the powers that were given. And archaeology is one of the provincial powers that we're very limited in how we deal with. – Participant #21

### **4.3. Policy Application**

Local governments in the Comox Valley started to implement the CHIP in June 2021; by the time interviews were conducted in 2022 (June-November) the CHIP was still relatively new. Elected officials (councillors and mayors) and senior staff such as chief administrative officers often began the discussions/interviews by outlining the process of passing the CHIP at local government council meetings. Interviews with local government staff provided insight into how the Policy trickled down to planning operations and interacted with other government departments like engineering. Local government planners and staff discussed their experience interacting with project proponents regarding the CHIP and while some conversations required convincing, staff reported an overall positive response from project proponents.

#### **4.3.1. Proponent Compliance**

Despite this short time period of implementation across the Comox Valley, local governments reported a high level of compliance with the CHIP. Interview participants (#2, 10, 18, 6, 9) estimated that amongst the developer community (as opposed to private landowners building a house for the first time) there has been around a 100%

compliance rate. Interview participants stated that compliance has also been high amongst landowners but all noted the significant success with developers.

Interview participants suspected that the positive response from developers is due to a variety of reasons. Building and maintaining positive relationships within the Comox Valley and “doing the right thing” was suspected to be a partly business motivated willingness to apply for the CHIP. In addition to building relationships through corporate responsibility, interview participants explained how the CHIP provided other factors encouraging compliance including improved certainty of the development timeline and cost reduction. An interview participant explains how planning departments have appealed to developer’s motives to apply for the CHIP:

The planning department gives a lot of reasons why it's in people's best interest to do it. Because do you want your project halted halfway through? you're going to lose a ton of money when it's halted. You shouldn't have to appeal to the pocketbook argument. But that seems to be the language that many people speak. So if people are not prepared to do it, because it's the right thing to do, then kind of applying some pressure if they're not going to do it because they don't believe it's important – Participant #22

Local planners provided examples of the variety of conversations and responses they’ve had from project proponents about the CHIP. While not all have been positive and vary across the Comox Valley, the majority of applicants grasp the importance of the CHIP. As described previously, the CHIP is proactive which is not only beneficial for KFN but for development as well. Evaluating the potential archaeological significance of a site prior to development saves the proponent time and money, reducing the risk that their project will be halted halfway through in the case of a chance-find. One local planner describes the responses they’ve received from proponents:

We’re not getting resistance, it seems that people understood that this is important. You know, from a liability perspective, or risk management, a smart developer is going to realize they don't want to pull that kind of headache down onto themselves and take a risk and start destroying archaeology. I've spoken to more mom-pop developers like someone just owning a property wanting to do something for the first time. Even amongst these peoples, no one is saying “what do you mean, why do I have to do that?”. I think there must be a lot of awareness and respect in this community, because it's just it that's not rising in how we're interacting with potential applicants. – Participant #18

### 4.3.2. Local Government Projects

As discussed, local governments can't legally require the CHIP but they have committed to integrating the Policy into their own projects and protocols. In discussing municipal projects with local government interview participants, they emphasized the opportunity it has provided to educate staff on the process from start to finish. This has been beneficial for providing examples to proponents and setting a precedent for what is expected. An interview participant explains this as part of their municipality's role in adopting the CHIP:

Our role is really being aware of ourselves and making sure that our own practices are consistent with the policy, but also promoting it and making sure the larger community is aware to the extent that we can. – Participant #7

The CVRD shared insights into one of their projects that actively involved the CHIP before commencing construction, leading to valuable changes in the resulting project. The project, known as the sewer conveyance project, is a multi-year construction initiative aimed at replacing sewer pipes and upgrading pump stations. The new system will redirect sewer pipes further inland, thus eliminating their vulnerability to damage from waves, rocks, and logs. The CVRD collaborated with KFN and the Town of Comox as it directly traverses through their lands. CVRD applied for the CHIP and initiated early engagement with KFN. Unknown to the CVRD's planning and engineering department, the original proposed alignment would have passed through areas with high potential for archaeological significance. Through consulting with KFN through the CHIP, an alternative alignment and construction methodology was chosen to minimize the risk of impacting archaeology sites. An interview participant noted that the CHIP played a crucial role in preventing impact to KFN's cultural heritage:

[In reference to the sewer project] The replacement project they've had to realign based on archaeology. The permit process [the CHIP] helped to flag where things may have not been caught in the HCA permit process. - Participant #5

The early engagement with KFN through the CHIP provided valuable knowledge of known and predicted archaeology that the RAAD and Archaeology Branch would not have addressed. The CHIP informed the CVRD of the likely possibility that the original alignment could come across 100 or more burials that were not registered with RAAD. If/when that occurs, the HCA would be enacted and the project would likely be delayed



for substantial archaeology assessments and mitigation to occur. The proactive nature of CHIP ended saving the CVRD substantial time and money. An interview participant described working with the CVRD to re-route the alignment:

I have been working with CVRD for probably a year on the sewer project ... the way the engineers really wanted to run it would have been faster, you know, mechanically simpler. But in terms of archaeology, it might be like \$5 million more. But if you just bend your line and go around, you know, maybe cost more for engineering purposes but it's still going to be faster and cheaper, because you're not going to pay for all archeology work they would have encountered. And most important, you can just keep moving right, rather than be delayed for three years – Participant #10

## **4.4. Challenges**

This section outlines the challenges experienced by KFN archaeology staff and local governments in adopting and implementing the CHIP. This section will also touch on discussions with interview participants about foreseeable barriers to ICH protection in the Comox Valley.

### **4.4.1. Capacity Issues / Work falls on KFN**

The CHIP does not require extensive additional work or change of practices at the local government level. The main capacity issues have/will be experienced within KFN as they continue to keep up with the development taking place in their Territory. Currently there is no funding from the Archaeology Branch to support KFN's Cultural Heritage Policy. The Archaeology Referrals Coordinator is funded through the CHIP fees, however several interview participants state that as applications increase, this position will become overwhelmed if not already at capacity. One interview participant described what the future holds for KFN's archaeology program:

I could see down the road where that we have a full time archaeologist on staff and a full arch department. It really comes down to funding really, funding that capacity with the Nations. That's definitely something that BC needs to step up to the plate on. – Participant #2

Another component contributing to this capacity issue is the perception of local governments in terms of their required involvement in the CHIP process. The extent of education and information provided to project proponents helps alleviate some of the communication work require between KFN and the CHIP applicants. Several interview

participants reflect on the importance of local government providing information on their websites regarding the CHIP to help increase understanding from the onset of development projects. One local government interview participant's perceived responsibility of their role in the CHIP is reflected here:

It's easy for us, because KFN is handling all of it, we just have to say, hey, go talk to KFN and make sure you get your chip. Once they get that chip, it comes back to us and put it in your file. It's just a check for us – Participant #13

Landowners who are unfamiliar with development procedures have been more likely to be hesitant of the CHIP than developers. Interview participants, specifically planners, described that this is partly due to the fact that many landowners are applying for development permits for the first time versus developers with experience applying for permits and are aware of changing regulations. Interview participants theorize that a lack information about the CHIP before they start the project or apply municipal develop permit applications is an issue. Interview participants empathize that development requirements can be overwhelming and frustrating for landowners as described here:

I have experienced with local developers or homeowners is the lack of information available before they start the project. A lot of the times, what is happening is their building permit is being issued and on that day is the first time they're being informed that they're being recommended to apply for this cultural heritage permit. And, it doesn't happen in a day, like the timeline of having an archaeological assessment done on your property is dependent on a lot parts. - Participant #1

#### **4.4.2. Fear & Uncertainty**

The unknown timelines of the CHIP, and if a formal archaeological assessment of a property will be required, instills fear in project proponents over the uncertainty of their development. Interview participants from local governments describes that regardless of archaeology, local planners are responsible for mediating frustrations experienced from project proponents throughout the development process. Part of the planner's role in the development arena is to coach landowners and developers through the process and provide realistic timelines. One interview participant describes this tension:

I think generally, any city permitting process where people have the most anxiety and fear is about any unknowns, and especially unknowns with the timelines and costs. Because often, it's a homeowner who's the applicant,

not a developer, it's maybe it's their first time dealing with City Hall other than paying their taxes. They're not equipped to deal with the risks in terms of timelines and costs. So, if we introduce any approval process, more uncertainty about timelines and costs, then that creates fear. And then the fear of the unknown leads to non-compliance. People saying I'd rather risk getting caught versus doing the right thing and going through the proper process – Participant #21

The CHIP fee itself is affordable and applicants can expect a timely turnaround for KFN to evaluate the sites and issue the permit. The majority of project walk-throughs do not find significant archaeological potential and the project moves forward as planned. In the case that KFN's Archaeology Referrals Coordinator does find or predict an impact to KFN's cultural heritage, the project proponent must have a formal archaeological assessment completed by professionals prior to development. If this is the case, the project proponent would likely have encountered archaeological later during development, triggering the chance-find protocol and a required archaeological impact assessment.

The fear expressed by landowners ultimately stems from time and money constraints, which is amplified if there is a lack of understanding or acceptance for the importance of ICH protection. This frustration with the lengthy HCA process and high archeological fees facilitated by the Province has been transferred and targeted at KFN. One local government interview participant describes how conversations with landowners over the CHIP varies, with some deeply frustrated by the process:

I've had a lot of phone conversations with private property owners about this. Some of them have been very uplifting, some of them have been very discouraging, there are certainly still some racist sentiments. And some attitudes like "why would I bother to do this if it's not required?" – Participant #6

#### **4.4.3. Voluntary**

The voluntary nature of the CHIP is a barrier to ensuring ICH protection. This barrier speaks to the lack of available ICH protection mechanisms in the LGA and limits of local governments. As discussed, local governments don't have the legislative authority to hold up building permits due to archaeology alone. If a project proponent has received approval from the Archaeology Branch to begin or continue development, a local

government cannot withhold approving their building permit application despite archaeological potential or evidence.

Interview participants did express hope that DRIPA related changes to the LGA and HCA could change the regulatory requirements for local governments concerning ICH and archaeology. Ultimately, an amendment to the legislation is needed to make it enforceable. While this is promising for the future, it doesn't solve KFN's current ICH concerns. Furthermore, a change in the permit legislation will not affect these landowners if they're not required to apply for a development permit in the first place which is the case for some of KFN's Territory outside this case study area. A local government interview participant located outside of the case study area whose government electoral area does not require building permits described the pushback their constituents and council have expressed to introducing further regulation:

Regulation is an extremely dirty word. What little we have has been done with great discord. I don't think the next board will touch it ... it's part of the culture of people who think that they live in a rural area and can do what they want, when they want, where they want and government will stay out of their way out of the way. – Participant #20

The challenges with the voluntary nature of the CHIP also applies to local government adoption within KFN's Territory. While local government implementation with the Comox Valley has been successful, local governments outside of the study area have not. An interview with a local planner within KFN's Territory but outside of the Comox Valley revealed that they have yet to adopt the CHIP and hadn't yet heard of it. This individual explained that their local government has an established relationship and engagement process regarding archaeology with their closest neighbouring First Nation.

In another instance outside the case study, KFN notified the Strathcona Regional District (SRD) of the CHIP in June, 2021. In a letter sent to the SRD, KFN asked and advised the SRD to implement the CHIP into core area of KFN Territory south of the Oyster River (SRD, 2022). This area falls under the SRD's Electoral Area D which requires development permits for any land altering project, making the process of implementing the CHIP and notifying proponents relatively simple. Only recently has KFN's CHIP been approved by the SRD's Regional Board, as of July 2023 the CHIP has not been implemented into the planning department's operations or policies.

## **Chapter 5. Discussion**

This chapter addresses the research findings in relation to concepts explored in the literature review and key findings. It begins with a discussion on Indigenous self-determination over ICH. This leads into the following sections on Challenging Regulatory Landscape of ICH management, which considers the gaps filled by KFN's Policy. The next section discusses the Local Community Relationships and their place-based response to reconciliation and unsettling the local government planning process. Finally, I discuss the impact the CHIP has on the Land-Owner Relationship and the collective and personal responsibility of settler communities to ICH protection.

### **5.1. Self-Determination over ICH**

In Canada, the application of self-determination for Indigenous communities has been conditionally granted, the condition being that it does not challenge existing structures (Daigle, 2016; Bryce & Corntassal, 2012). This approach of "recognizing" Indigenous rights to autonomy but only within the confines of existing colonial structures perpetuates oppressive and paternalistic relationships between the Canadian state and Indigenous Nations (Boron & Markey, 2020; Daigle, 2016). As Chapter 2 describes, ICH is inherently tied to the land, which the state has been unwilling to relinquish control of, and much of which falls under private property. The Provincial management of ICH in BC through the HCA and Archaeology Branch has imposed colonial conceptualizations of tangible ICH, its value, and the decision-making process regarding its protection or lack thereof. This state control over ICH and deference to private property rights directly opposes First Nations' ability to freely exercise self-determination, which requires the maintenance and transmission of cultural lifeways for future generations (Boron & Markey, 2020; Bryce & Corntassal, 2012).

Relational self-determination, as described by Indigenous scholars, rejects the idea that the state can grant the right to self-determination. Instead, it focuses on community-centered processes that honor relational responsibilities and connect with cultural practices (Bryce & Corntassal, 2012). As argued by Boron & Markey (2020), self-determination can be co-constructed

(1) through the empowerment of Indigenous, community-based decision-making processes that are effective in articulating Indigenous knowledge and responsibility-based value systems (Muller et al., 2019; Napoleon & Overstall, 2007), and (2) by dismantling western policies, plans, and programs that entrench colonial relationships (Pasternak, 2014), in order to foster a setting that centres Indigenous decision-making processes in environmental management decisions (pg.157).

Through the Policy, KFN is asserting their position as the rightful stewards of their own ICH in accordance with KFN laws, ontologies, and relational responsibilities. KFN's Policy states the inherited responsibility to care for their Territory as described as the teachings from ancestors. Two core principles guide KFN's ICH management "taking care of the ancestors and the ancestors looking out for you" (KFN, 2020, pg. 6). The Policy guides ICH management with clear definitions, required mitigation measures, and process regarding the discovery of ancestral remain, all of which align with KFN community values and responsibility to their Territory and ancestors. This stands in stark contrast to the Provincial regulatory landscape governed through the HCA, which limits the opportunity for making ethical, place-based decisions regarding ICH protection.

Through the Policy, KFN ensures their rights and responsibilities to their cultural heritage are protected by participating as joint decision-makers, dismantling Archaeology Branch' the authority to operate as the sole governing body. Instead of relying on and operating within the provincial process, KFN states what ICH protection means to them and provides a clear pathway to obtaining consent. Thus, they make decisions based on their own laws, rather than merely given the opportunity to comment on the provincial process. The Policy effectively alters the existing landscape of ICH management within KFN Territory, moving away from a process entrenched in colonial relationship.

## **5.2. Challenging the Regulatory Landscape**

The introduction of Indigenous heritage policies into the regulatory landscape of ICH management is a crucial step in addressing critical gaps present in the protocols and management set forth by the Archaeology Branch. The existing system relies on outdated legislation steeped in colonial definitions and aspirations to dictate the management of ICH, coupled with limited enforcement from the Archaeology Branch. The archaeology sites formally registered within RAAD only cover a portion of areas with known or high potential for archaeological significance. Assessments and permit from

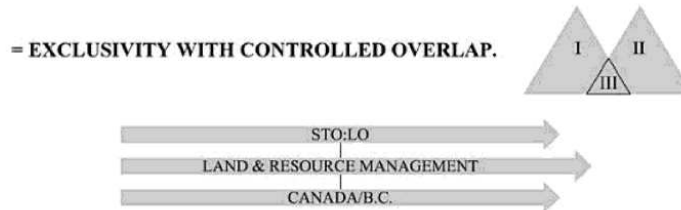
the Archaeology Branch are only required in locations within the boundaries of registered sites, leaving the rest of ICH protection to rely on the chance-find protocol. This reactive management structure fails to proactively protect ICH through stealth development and non-compliance with reporting chance-finds.

It's clear that the Archaeology Branch is strained in terms of monitoring, communicating, and enforcing their obligations and protocols. This is reflected in the lack of communication and collaboration with local planners, landowners, developers, and First Nations. Interview participants expressed frustration with the Provincial government's disregard for protecting ICH and its inability to foster unique solutions. For KFN, this path-dependent nature of the Archaeology Branch has facilitated significant development throughout their Territory, leading to the degradation of their cultural heritage. Rather than waiting for the Province to engage in shared decision-making agreements or renew the HCA to align with DRIPA, KFN is asserting their rights on the ground. This localized, community-specific response to the inadequacies of the existing regulatory landscape creates a new pathway and space for ICH protection.

KFN's Policy creates a new space outside of the Provincial process, aligning with the "three-row model" introduced in Chapter 2 (Figure 4). Within KFN's Territory, the Policy introduces a separate stream of ICH management parallel to the HCA/Archaeology Branch. The third row represents a space where conversations and actions for decision-making and management can occur, while the two other rows—Indigenous and state—maintain their own "laws, cultures, and beliefs" (Schaepe, 2018, p. 16). Indigenous heritage policies, like KFNs, represent Indigenous Nation's sovereignty over Territory, with the understanding that the state isn't disappearing. Exclusivity and co-optation can be maintained between distinct and differing worldviews. In this case, KFN cultural heritage knowledge, values, and protocols are not being molded or assimilated into the Provincial policies but instead stand alone, respected as a separate, equal governing body.

## **'THREE ROW' MODEL of RELATIONSHIPS**

- Each maintains their own Laws, Culture & Beliefs (I & II) – i.e., exclusive IPs.
- Each shares in managing the land (III) – shared material economy/heritage management.
- Set against a backdrop of mutual respect.



**Figure 4. The Three Row Model**  
Source: Shaepe, 2018

### **5.3. Local Community Relationships**

In the Comox Valley, local governments are navigating the “third row” of ICH management or “third space” as it’s similarly understood in planning literature. The significance of local community relationships, especially given proximity of communities within the Comox Valley, has created a unique willingness to nurture relationships between local governments and KFN. This place-based response to the introduction of KFN’s Policy is an example of mutual respect required for the “third space” to operate. From the perspective of local governments, they are responding to two separate authorities operating within the same arena of ICH management.

Reconciliation movements among local governments in the Comox Valley have paved the way for the implementation of KFN’s Policy. Elected councils across the Comox Valley are increasingly promoting reconciliation and UNDRIP as part of their election platform. This commitment has permeated planning departments, operating with support from Councils to advocate and support the implementation of the KFN’s Policy into planning processes. Planners have successfully intervened in future development projects, educating landowners, and advocating for KFN’s self-determination over their cultural heritage.

Planners play a crucial role here, as they must be intentional advocates committed to building relationships across communities and cultures. It’s important to note that KFN’s Policy is not legally binding in Canadian law and has not received official approval from the Archaeology Branch or other Provincial bodies. However, local governments and



KFN are not waiting for confirmation or direction from the Province regarding the adoption of UNDRIP; KFN has presented a pathway for reconciliation and relationship-building, and local governments are listening.

While this marks a positive step in nurturing and repairing relationships throughout the Comox Valley, it's essential to acknowledge that local governments and planners still have a long way to go in terms of reconciling their position within KFN's Territory. KFN's Policy aligns with local government capacity in fulfilling their role and responsibility in informing project proponents of the CHIP. However, this should not be the endpoint of their advocacy efforts. Planners' direct involvement in the private property regime and notions of land ownership is critical in unsettling planning processes and ideologies by challenging dominant forces (Barry et al., 2018). With upcoming policy opportunities to influence Provincial legislation reform in alignment with UNDRIP, planners and local governments must actively advocate for the introduction of ICH protection mechanisms within the LGA. For example, this could entail granting planners the ability to delay or deny development permits based on archaeological concerns.

Furthermore, local governments in the Comox Valley have a direct framework for ICH protection provided by KFN's Policy and do not need to wait for LGA amendments to begin advancing ICH protection within their own policy and processes. Given KFN's Policy clear purpose, requirements, and identified areas of archeology potential, local governments should continue to align their own bylaws to better protect KFN's cultural heritage. This can include amending OCPs, regional growth strategies, zoning, and heritage conservation areas based on KFN's identified areas and priorities. ICH Policies, like KFNs, provide a pathway for local governments in which local governments aren't re-inventing the wheel of local ICH protection, but following and implementing direction based on local First Nation priorities.

## **5.4. Land-Owner Relationship**

Throughout XLAP's research, a recurring obstacle to the protection of ICH has been the pervasive presence of landowner "fear." This deep-rooted apprehension has hindered the progress of safeguarding ICH and preserving its rich cultural significance. One contributing factor to this fear is the lack of clarity and transparency from the Archaeology Branch, creating an environment of uncertainty for landowners. This lack of

clear guidance and information on processes, protocols, and impacts of heritage policies can trigger anxieties regarding potential consequences and outcomes. Settler-colonial perceptions of landownership and private property rights also adds to this fear and actively conflicts with Indigenous ways of understanding relational responsibility to ancestral lands (Barry et al., 2018). This conflict between worldviews and fear from landowners on private property majorly inhibits proactive and meaningful protection of ICH.

Addressing multifaceted fears and improving communication across communities are vital steps towards fostering an environment of mutual understanding and collective commitment to the preservation ICH. Education and communication about the role of ICH protection in reconciling with Indigenous Nations are necessary at the individual and landowner level. While this research project does not delve into landowner perceptions of ICH protection in the Comox Valley, the successful adoption of the CHIP indicates a high level of community understanding. Although KFN's Policy may not eliminate the fear or uncertainty regarding the outcome of archaeological investigations, it does provide a formal and local process, one that has been agreed to by landowners' own accord.

The willingness of landowners across the Comox Valley to participate in the CHIP reflects a broader dialogue of individuals reconciling their personal relationship with the land they inhabit. The CHIP offers practical answers to questions like "what is my role in reconciliation?" and provides landowners with tangible act of reciprocity. With continuous education on why adhering to the CHIP is crucial for building positive relationships with KFN, it's imagined that landowners will continue to shift their perspective from individualistic private property rights to embracing accountability towards KFN's rights. This landowner interaction with ICH, and the adoption of Indigenous heritage policies, assists in unsettling individualistic notions of private property.

## Chapter 6. Recommendations & Conclusions

This section provides an overview of the recommendations that have emerged from this research followed by concluding remarks.

### 6.1. Recommendations

1. Supporting ICH policies: Funding should be provided from the Province to support the development of ICH policies. Local governments should work with local First Nations to support the implementation of their ICH policies and protocols.
2. Foster community relationships: Local governments, specifically regional districts, should work on nurturing and building relationships between local governments and First Nations. This included applying for funding and hosting educational meetings to learn from and support local ICH initiatives.
3. Existing policy amendments: existing heritage policies at the provincial level should be amended according to Indigenous calls for action so that they reflect the needs of descendent communities. These policies should support the implementation of regulations by First Nations and local governments.
4. Shared decision making: Authority over ICH should be transferred from the Province to a shared-decision making framework with First Nations. Approximately 40% of First Nations in BC have their own formal process of ICH management (Archaeology Branch, 2022) that should be respected, upheld, and followed by the Archaeology Branch and local governments.
5. Local Ally-ship: new bylaws should be created at the local level. This will require advocacy for ICH conservation through community education and new regulations. Planners should apply an “unsettling” lens to their practice and apply the third space/row model to planning activities.
6. Education and outreach: increased community engagement regarding cultural heritage and reconciliation, as well as increased education for planners about these

issues will be critical for ensuring sensitive, appropriate, and effective ICH conservation.

## 6.2. Conclusion

The underlining drive to this research, and my own personal and professional development, is to support the initiatives brought forth by Indigenous Nations exerting their inherent self-determination over ancestral lands. In the many conservations I've had the privilege to listen in on throughout this research journey, it quickly became adamantly clear to me that ICH is best protected by descendant communities. And as Hammond (2009) states, *addressing injustices perpetuated through colonial land theft, control, and private property regimes "represents more than the desire that we all "get along". It means—and this is where the real effort comes in—that we consider the needs and aspirations of other groups as seriously as we do our own* (pg.152). Working towards unsettling planning practices and reconciliation is not a simple task but one that requires dedication to reimagining relationships that create space to support the needs and initiatives of local First Nations. If the Province isn't willing to adequately conserve ICH then it's protection can be fostered at the local level, simultaneously building relationships across communities and cultures based on understanding the responsibility to act as good ancestors... perhaps how it's always meant to be.

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