

UCHUCKLESAHT TRIBE GOVERNMENT


**CULTURAL HERITAGE PROTECTION
ACT**

UTS 69/2022




This law enacted on April 30, 2022

Signed


Charlie Cootes, Chief Councillor of the
Uchucklesaht Tribe

DEPOSITED IN THE
REGISTRY OF LAWS AND
OFFICIAL RECORDS

ON 04 / 30 / 2022

M D G

Signature of Law Clerk

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CULTURAL HERITAGE PROTECTION ACT UTS 69/2022

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PREAMBLE

The Uchucklesaht Tribe asserts that we have occupied, benefited from and governed our Hahoulthee (traditional territory) since time immemorial. Through our inherent right to self-government, the Uchucklesaht Tribe has preserved and protected our traditional territory and we accept the obligations and responsibilities inherent in governing Uchucklesaht lands.

Our sacred principles require us to protect objects and sites of archaeological, historical or cultural significance to Uchucklesaht Tribe and to treat them with the utmost respect and sensitivity. These objects and sites are core to our culture and demonstrate our deep and longstanding connection to our lands.

The Uchucklesaht Tribe adopts this Act based on these values.

PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Cultural Heritage Protection Act.

Executive oversight

1.2 The member of the Executive holding the lands and resources portfolio is responsible for the executive oversight of this Act.

Application

1.3 (a) This Act is enacted under

(i) 21.2.1 of Chapter 21 of the Maa-nulth Treaty,

(ii) section 3.2(p) of the Constitution, and

(iii) section 3.1(a)(i) of the Foreshore Agreement.

(b) Unless otherwise provided in this Act, this Act applies to all Uchucklesaht lands.

(c) This Act does not apply to the Uchucklesaht Tribe as represented by the Uchucklesaht government.

(d) For certainty, in accordance with 21.3.1 of Chapter 21 of the Maa-nulth Treaty, the Heritage Conservation Act (British Columbia) does not apply on Uchucklesaht lands.

Definitions

1.4 In this Act,

“director” means the director of lands and resources;

“disturb” means to modify, alter, damage, desecrate, destroy, remove or relocate;

“excavation activity” means the removal of an area of land that is more than one metre in depth or one metre in length;

“heritage designation” means a designation made under section 6.1(a);

“heritage object” means, whether designated under this Act or not,

(a) archaeological human remains located or found on Uchucklesaht lands that are not the subject of a police or a coroner investigation, or

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- (b) an object, including a culturally modified tree but excluding any other plant or animal, of archaeological, historical or cultural significance to Uchucklesaht Tribe that is not the personal property of a person;

“heritage site” means, whether designated under this Act or not, lands that have archaeological, historical or cultural significance to Uchucklesaht Tribe;

“heritage work” means a physical examination or other research necessary to

- (a) identify the heritage value of an object or land,
- (b) reveal the history of land, which may include the recording, removal and analysis of anything necessary for the purpose of the work, or
- (c) if the object or land is a heritage object or heritage site, establish the need for heritage designation or conformance with heritage designation requirements;

“work order” means an order issued under section 4.1(a);

“work permit” means a permit issued under section 3.1(b);

“qualified archaeologist” means an individual who is a member in good standing with the British Columbia Association of Professional Archaeologists.

PART 2 - HERITAGE PROTECTION

Heritage objects and heritage sites on Uchucklesaht lands

- 2.1** For certainty, Uchucklesaht Tribe owns any object discovered in a heritage site after the effective date unless another person establishes ownership of that object.

Duty to report

- 2.2** A person who discovers a possible heritage object or heritage site on Uchucklesaht lands must report the discovery to the Executive within 30 days.

Offence to disturb

- 2.3** Subject to section 6.1(b)(iii), a person must not disturb a heritage object or a heritage site or undertake any excavation activity on Uchucklesaht lands except as authorized by a work permit or required by a work order.

Heritage record

- 2.4** The director must keep a record of all heritage objects and heritages sites known to the director and make that record available for examination and inspection by Uchucklesaht citizens at the Uchucklesaht administrative office during regular business hours.

Heritage objects and heritage sites outside Uchucklesaht lands

- 2.5** If a heritage object or heritage site is discovered outside Uchucklesaht lands, the Executive may seek to negotiate on behalf of Uchucklesaht Tribe the ownership, return, care, custody or control of the heritage object or heritage site.

PART 3 - WORK PERMITS

Application for permit

- 3.1 (a) An application for a work permit must be submitted to the director in the prescribed form with the prescribed fee.
- (b) If the director determines that an application submitted under subsection (a) is complete and satisfactory, the director may issue a work permit authorizing heritage work.

Permit requirements

- 3.2 A work permit must specify
- (a) the permit holder,
 - (b) the work authorized by the permit,
 - (c) the area to which the permit applies, and
 - (d) how long the permit is to remain in effect.

Permit conditions

- 3.3 A work permit does not authorize entry onto land or into a building without the permission of the owner or occupier.

Additional conditions

- 3.4 A work permit may include any terms or conditions the director considers necessary or advisable, including
- (a) requiring the permit holder to consult with or obtain the consent of one or more persons whose heritage the object or site represents or may represent,
 - (b) requiring the permit holder to provide the director with plans or reports satisfactory to the director,
 - (c) requiring that the heritage investigation be carried out by a qualified archaeologist or another person the director considers appropriate,
 - (d) specifying any approvals, rules, procedures or ceremonies that must be obtained, held or followed if evidence of human remains is discovered or before disturbing a heritage object or possible heritage object,
 - (e) specifying a repository for heritage objects that are disturbed, or

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- (f) requiring that the permit holder take actions to preserve the integrity and condition of land covered by the permit while the permit remains in effect.

3.5 A permit holder must comply with all the terms and conditions of the work permit.

Power to suspend, cancel or amend permit

- 3.6** (a) The director may suspend, cancel or amend a work permit if the director has reasonable grounds to believe that
- (i) the permit application omitted a material fact or contained false or misleading information relevant to a material fact,
 - (ii) the permit holder has not complied with the permit,
 - (iii) the permit holder has contravened a provision of this Act or a regulation,
or
 - (iv) any other prescribed consideration applies.
- (b) If the director determines that it is necessary or advisable, the director may at any time amend a work permit to impose additional conditions or change existing terms.

Offence to interfere

3.7 A person must not interfere with work authorized under a work permit.

PART 4 - WORK ORDERS

Work order

- 4.1** (a) If the director considers that an object or land located on Uchucklesaht lands
- (i) is or may be a heritage object or heritage site, and
 - (ii) for any reason, is likely to be disturbed, is being disturbed or has been disturbed,
- the director may order that heritage work be conducted.
- (b) If a work order relates to any of the following activities, the director may require the person removing, expropriating, extracting, subdividing or developing the object or land to undertake or pay for the heritage investigation:
- (i) removal of an object or land from Uchucklesaht lands;
 - (ii) expropriation of Uchucklesaht lands by British Columbia or Canada;
 - (iii) extraction or harvesting of resources from land;
 - (iv) subdivision of land; or
 - (v) development of land.

Work order requirements

- 4.2** A work order must specify
- (a) the person who is the subject of the order,
 - (b) the purpose of the heritage work,
 - (c) the area to which the order applies, and
 - (d) how long the order is to remain in effect.

Additional terms and conditions

- 4.3** A work order may include any terms or conditions the director considers necessary or advisable, including
- (a) requiring the person who is the subject of the order to consult with or obtain the consent of one or more persons whose heritage the property represents or may represent,

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- (b) requiring that the heritage investigation be carried out by a qualified archaeologist or another person the director considers appropriate,
- (c) requiring the person who is the subject of the order to provide the director with plans or reports satisfactory to the director,
- (d) specifying any approvals, rules, procedures or ceremonies that must be obtained, held or followed if evidence of human remains is discovered or before disturbing a heritage object or possible heritage object,
- (e) specifying a repository for heritage objects that are disturbed, or
- (f) requiring that the person who is the subject of the order take actions to ensure the preservation of the integrity and condition of land subject to the order while the order remains in effect.

Duty to comply

4.4 The person who is the subject of a work order must comply with all terms and conditions of the work order.

Entry authority for work orders

- 4.5**
- (a) A work authorizes the person who is the subject of the order and any person identified under section 4.3(b) to enter land identified in the order at any reasonable time for the purposes of the heritage work.
 - (b) Before entering land under subsection (a), a person must make reasonable attempts to notify the owner or occupier of the land and, if requested, present proof of authorization.
 - (c) Nothing in this section or in a work order authorizes entry into a building without the permission of the owner or occupier.

Offence to interfere

4.6 A person must not interfere with work required under a work order.

Compensation for property damage

- 4.7**
- (a) A person whose property is damaged as a result of work required under a work order may apply in the prescribed form to the Executive for compensation for the damage.
 - (b) An application under subsection (a) must be made no later than six months after the expiry of the work order.

- (c) In determining an application made under subsection (a), the Executive may consider
 - (i) whether one of the circumstances set out in section 4.1(b) applies and the applicant is the person removing, expropriating, extracting, subdividing or developing the object or land,
 - (ii) the condition of the property before it was damaged,
 - (iii) the extent of the damage,
 - (iv) the current and proposed uses of the property, or
 - (v) any other matters the Executive decides are relevant.
- (d) If the Executive determines, in its sole discretion, that compensation to the applicant is warranted, the Executive may grant compensation to the applicant in an amount that is no more than commensurate with the damage to the property caused by the heritage work.
- (e) For certainty, the Executive may grant compensation under subsection (d) in an amount that is less than commensurate with the damage to the property caused by the heritage investigation ordered under section 4.1(a).
- (f) The Executive must
 - (i) notify the applicant of its decision within 60 days of receiving an application under subsection (a), and
 - (ii) advise the applicant of the applicant's right to request a review of the decision in accordance with subsection (g).
- (g) A person who has received notification under paragraph (f)(ii) may request a review of the compensation decision under the Administrative Decisions Review Act.

PART 5 - STOP WORK ORDERS

Stop work order

- 5.1** (a) If the director considers that an object or land
- (i) is or may be a heritage object or heritage site, and
 - (ii) for any reason, is likely to be disturbed, is being disturbed or has been disturbed,
- the director may issue a stop work order that prohibits any disturbance of the object or land for a period of up to 120 days.
- (b) The director may include in the stop work order any terms or conditions the director considers appropriate.
- (c) The director may extend a stop work order or issue further stop work orders in relation to the same object or land.

Duty to comply

- 5.2** The person who is the subject of a stop work order must comply with all terms and conditions of the stop work order.

PART 6 - HERITAGE DESIGNATION

Heritage designation

- 6.1** (a) The director may designate
- (i) an object as a heritage object, or
 - (ii) land as a heritage site.
- (b) A heritage designation may specify one or more of the following:
- (i) policies or procedures regarding the provision of financial or other support for the conservation of the heritage object or heritage site;
 - (ii) rules respecting access by Uchucklesaht citizens or the public to the heritage object or heritage site;
 - (iii) the types of disturbances to the land which may be made without a work permit; and
 - (iv) policies or procedures concerning the issuing of a work permit in respect of the heritage object or heritage site.

Designation procedure

- 6.2** Before a heritage designation is made, the director must deliver notice in accordance with Uchucklesaht law of the proposed designation to each of the following persons:
- (a) in the case of an object,
 - (i) the person who has possession of the object, if any,
 - (ii) each person who, according to the records of the personal property registry established under the Personal Property Security Act (British Columbia), has a registered interest in the object, and
 - (iii) any other person who, in the opinion of the director, has or may have a proprietary interest in the object;
 - (b) in the case of land, each person who has an interest in or licence in relation to the land; and
 - (c) any other prescribed person.

Compensation for heritage designation

- 6.3**
- (a) If a heritage designation causes or will cause at the time of designation a loss in value of an object or land, the owner of that object or land may apply to the Executive for compensation for the loss in value.
 - (b) An application under subsection (a) must be made no later than six months after the heritage designation is made.
 - (c) If the Executive determines, in its sole discretion, that compensation to the applicant is warranted, the Executive may grant compensation to the applicant in an amount that is no more than commensurate with the loss in value of the designated object or land.
 - (d) For certainty, the Executive may grant compensation under subsection (c) in an amount that is less than commensurate with the loss in value of the designated object or land.
 - (e) The Executive must
 - (i) notify the applicant of its decision within 60 days of receiving an application under subsection (a), and
 - (ii) advise the applicant of the applicant's right to request a review of the decision in accordance with subsection (f).
 - (f) A person who has received notification under subsection (e) may request a review of the compensation decision under the Administrative Decisions Review Act.

PART 7 - GENERAL PROVISIONS

Delegation authority

- 7.1 The Executive may delegate to the director, in writing, the performance of any of the Executive's duties or the exercise of any of the Executive's powers under this Act, except the powers set out in section 7.2.

Regulations

- 7.2 (a) The Executive may make regulations which it considers necessary or advisable for the purposes of this Act.
- (b) Without limiting subsection (a), the Executive may make regulations
- (i) prescribing any matter that may be prescribed under this Act,
 - (ii) prescribing the forms to be used under this Act, and
 - (iii) prescribing fees to be charged under this Act.

Commencement

- 7.3 This Act comes into force on the date it is enacted.