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Indigenous cultural heritage policies as a pathway for Indigenous sovereignty and the role of local governments: an example with K'ómoks First Nation, British Columbia

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Indigenous cultural heritage (ICH) is threatened worldwide, driven by factors like development, private property rights, and colonial planning. Indigenous communities are increasingly navigating the inadequacies of ICH protection by exerting their rights through laws, protocols, and policies. These initiatives assert sovereignty and relational responsibility to ancestral cultural heritage outside of the mandated colonial systems of management. This study centers on the Comox Valley in British Columbia, where the ICH of K'ómoks First Nation is under increasing threat of erasure due to private and commercial development. In response, the K'ómoks First Nation has developed their own Cultural Heritage Policy (CHP), and accompanying archaeological permits to protect their cultural heritage where provincial archaeological legislation fails to. In the context of the K'ómoks First Nation, we explore three interconnected questions associated with the assertion of Indigenous Peoples' rights and responsibilities around protecting their ICH: how do Indigenous communities exert self-determination over their ICH, how does ICH interact with local planning processes, and how can local (settler) governments strengthen ICH protection at the local level? Our findings reveal that local level implementation of Indigenous cultural heritage policies help to ensure that ICH protection strategies are effective and meet the needs of Indigenous communities. Challenges remain, however, regarding jurisdictional barriers to formal policy adoption within the colonial regulatory regime, capacity limitations, and the need for public education and communications regarding Indigenous-led heritage policies.

KEYWORDS

Indigenous cultural heritage, planning, archaeology, Indigenous rights, co-existence

Introduction

Over the last decade there has been increasing advocacy for the need to protect Indigenous cultural heritage (ICH) as an inherent human right (Vrdoljak, 2018). Globally, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP Article 11.1) and the Convention for the Safeguarding of the Intangible Cultural Heritage have recognized this right and the importance of ICH to the health and cultural continuity of Indigenous Peoples (Vrdoljak, 2018; Nicholas, 2021). Within Canada, these sentiments are upheld in Provincial law such as British Columbia's *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), adopted in 2019. However, despite this growing recognition, Indigenous cultural heritage is under threat worldwide, driven by many factors including development, private property rights, and colonial land planning systems that dictate land use.

Indigenous communities are increasingly navigating the inadequacies of colonial heritage protection(s) by exerting their right to ICH through laws, protocols, and policies. Initiatives are varied and community-specific, but all are grounded in responsibility to the land, communities, Ancestors, and future generations (Hammond, 2009). In British Columbia (BC), some Nations have their own heritage policies and have also developed permitting systems to protect culturally important lands, including those where both registered and unregistered archaeological sites are present (e.g., Stó:lō Nation Lalems ye Stó:lō Si:yam, 2003; Simpcw First Nation, 2015; Squamish Nation, 2021; LNIB, 2017; Lake Babine Nation, 2019; KFN, 2020; Okanagan Indian Band, 2023; Tsleil-Waututh Nation, 2010; Musqueam, 2023). In contrast to top-down, state-driven colonial laws, these initiatives reflect community values, and as such are well-situated to protect each community's holistic view of ICH and avoid pan-Indigeneity (Schaepe et al., 2020; Nicholas, 2021). Importantly, they also fill gaps in heritage protection under the provincial *Heritage Conservation Act* (HCA).

Despite increasing exertion and recognition of Indigenous territorial rights and title, Canadian law does not require that project proponents, private property owners, or government officials follow Indigenous-led heritage stewardship outside of reserve lands. This disconnect often leaves local planners, who are responsible for planning and regulating municipal and regional land use, in a difficult position. Local governments may make non-binding statements about valuing ICH and support the self-determination efforts of Nations regarding the stewardship of their ICH resources; however, they lack formal jurisdiction over archaeological sites—and may be presented with situations where they are jurisdictionally mandated to approve development applications that may negatively impact ICH.

This research addresses this tension by exploring the role of policy and planning in the context of one Indigenous-led heritage initiative in BC. The research is a part of the larger Xwe'tay/Lasqueti Archaeological project (XLAP; <https://www.sfu.ca/rem/lasqueti/archaeology/>), centered on Xwe'tay (Lasqueti Island) in the Salish Sea (Figure 1). The project is a partnership that actively engages with five local First Nations with connections to the island (Qualicum, Tla'amin, K'ómoks, Halalt, and Wei Wai Kum) and the island (settler) resident community. By bringing

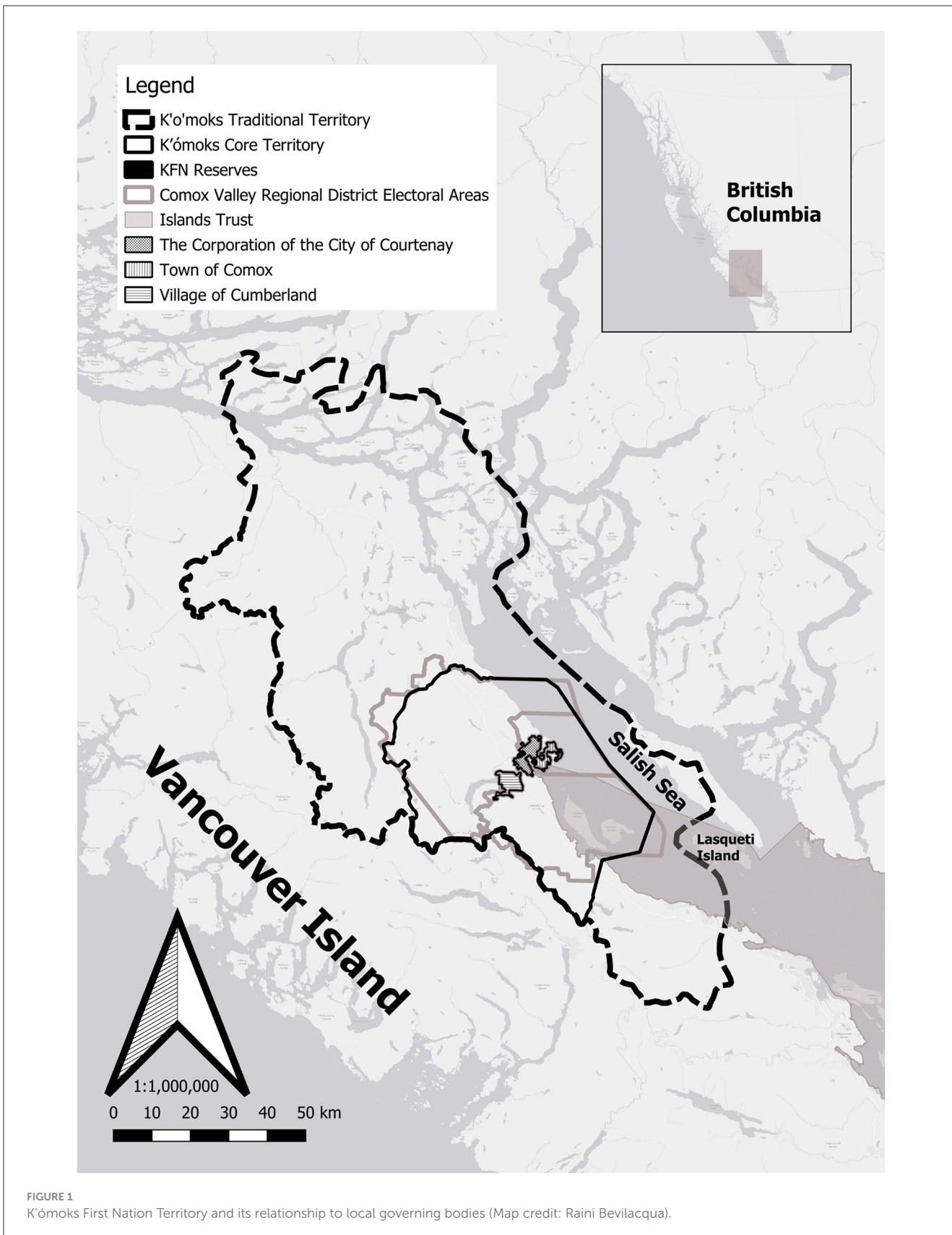
together archaeology and local policy and planning, the project seeks to increase awareness of and respect for Indigenous cultural heritage. This paper fits into this larger goal by exploring three interconnected themes: how Indigenous communities exert self-determination over their ICH; how ICH interacts with local planning; and how local governments can respond to strengthen ICH protection at the local level.

We focus our explorations of ICH on how one of the XLAP partners—K'ómoks First Nation (K'ómoks), manages their cultural heritage within their (traditional) territory (Figure 1). In particular, we explore the history and context of the development of the K'ómoks Cultural Heritage Policy (CHP) and how the implementation of the Policy interfaces with local and regional governing bodies. We focus especially on K'ómoks' work to protect their archaeological heritage through the development of their Cultural Heritage Investigation Permit (CHIP) system for archaeological work (<https://komoks.ca/wp-content/uploads/2021/05/KFN-Cultural-Heritage-Policy-2020.pdf>).

By demonstrating the potential for and efficacy of ICH protection that is Indigenous-led, K'ómoks heritage initiatives serve as an example to other communities whose heritage is also threatened by private developments and are looking to create similar policies. The study also acts as an example of the opportunities and challenges associated with local government alignment with Indigenous heritage policies regarding land use, with implications for reconciliation that may be of interest to other local governments (and similar local, regional governance agencies). The findings reveal that local-level implementation of Indigenous cultural heritage policies may help ensure that ICH protection strategies are place-based, effective, and appropriate. This implementation can simultaneously assist in fostering relationships and enhancing cross-cultural knowledge and respect. However, given the lack of regulatory (and capacity) support, planners must engage in extra-regulatory activities to fully realize the potential of Nation-led cultural heritage policies.

Managing Indigenous cultural heritage in British Columbia

Disconnects between Indigenous and settler-colonial ideas about heritage protection ultimately arise from fundamental differences in the way heritage is conceived and the relative value afforded to it. In Canada and other colonial settings, conceptions of heritage have been narrowly focused on tangible components of heritage such as structures, buildings, monuments, and archaeological deposits (Aird et al., 2019; Schaepe et al., 2020). In contrast, for many Indigenous Peoples, heritage encompasses both tangible components, such as those evident in the archaeological or ecological records, and intangible understandings, such as songs, stories, and places. ICH in the broadest sense is seamlessly woven into Indigenous ontologies and essential to cultural continuity and understanding of self (Nicholas, 2021). ICH understandings are shaped within cultural worldviews of interconnectivity and relationality that are created and reified within specific cultural contexts. Given the culture-specific context of ICH (and inherent



rights), it stands to reason that Indigenous Peoples are best suited to manage their heritage. From our experience working with Coast Salish Peoples in British Columbia, Indigenous People

here consider jurisdiction over their cultural heritage one of their stewardship obligations—this heritage belongs to them and it is their duty to protect it. However, within Canada, federal and

provincial legislation and practices have restricted Indigenous Peoples from fully stewarding their cultural heritage (Dent, 2020).

In BC, the Archaeology Branch is the provincial governing body responsible for the management of archaeological heritage; other forms of tangible and intangible heritage often fall through legislative cracks (Lepofsky et al., 2020). Through the Provincial HCA, the Archaeology Branch is responsible for protecting archaeological heritage older than 1846 (Heritage Conservation Act, 1996)—the colonially relevant date of the Oregon Treaty establishing British sovereignty over BC. Burials and rock art sites are, however, protected regardless of their age. The Archaeology Branch's main responsibilities include managing the site registry and overseeing the permit system. The latter involves coordinating evaluations of how proposed developments may impact archaeological sites, and most often the issuance of permits for archaeological investigations designed to mitigate the destruction or alteration resulting from development. However, the HCA fails to protect unregistered archaeological sites and sites postdating 1846 (except for burials, rock art, and ship wrecks), and only requires between 5%–10% systematic data recovery of intact archaeological deposits, depending on the assessed significance of the deposits (Heritage Conservation Act, 1996). The Heritage Conservation Act Transformation Project which is currently underway (British Columbia, 2024)—is intended to address these deficiencies, but in the meantime, Nations are taking it upon themselves to protect their own cultural heritage through archaeological permit systems.

The province of BC adopted the United Nations Declaration of the Rights of Indigenous People (UNDRIP) in 2019 with the passage of the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA). This act requires the Province to bring existing legislation into accordance with UNDRIP. The HCA was identified as one of the primary pieces of existing legislation that is not in accordance with UNDRIP (particularly Article 11.1) and would require significant change to align it with key principles therein acknowledging Indigenous Peoples' rights to protect their cultural heritage. Rather than replacing the HCA, the province has launched the Heritage Conservation Act Transformation Project (British Columbia, 2024). The project is intended to address these deficiencies, but the authors' expectations regarding substantive and timely positive changes are low based upon initial Branch communications. At the time of writing, the HCA Transformation Project is poised to create a series of legislative amendments within the current mandate, but the release of these changes is currently on hold. In the meantime, Nations are taking it upon themselves to protect their own cultural heritage through archaeological permit systems.

Local planners in BC operate at the intersection between provincial governments and community members to coordinate the delivery of services, manage development, and engage community members to determine needs (Hodge et al., 2021; Cullingworth, 2015). The tools available to local planners are mostly regulatory by nature, including permits, zoning, bylaws, community plans, and other development control regulations. Although local governments may “recognize the heritage value or heritage character of a heritage property, an area or some other aspect of the community's heritage,” according to the *Local Government Act* [599(1)], this only applies to built

structures on the landscape rather than archaeological heritage. The distinction between “heritage” and “archaeology” in both the HCA and the *Local Government Act* means that the provincial government considers Indigenous-built structures (e.g., shell middens, clam gardens, fish traps, house platforms, etc.) to be elements of archaeology, while settler colonial structures (i.e., heritage buildings, heritage towns) are considered “heritage.” This means that the formal powers granted to local governments to protect heritage under the *Local Government Act* only apply to colonial heritage; this creates a double standard where higher heritage value is placed on non-Indigenous than Indigenous heritage at the local level. For example, you are not allowed to destroy a heritage house or signage, or even modify it in a way that detracts from its character. By comparison, once granted an archaeological permit 95% of an Indigenous heritage site may be altered or destroyed, depending on the assessment.

In several ways, the current state-driven legislation and system of evaluation and mitigation, and focus on settler heritage protection, does not serve the heritage needs of First Nations. In the absence of local control, Indigenous heritage sites on public and private land are being destroyed by development, resource extraction, urbanization, and theft (English et al., 2023; Nicholas, 2021; Hutchings, 2017). The failure of the current system and ongoing destruction of millennia-old heritage is a form of violence against Indigenous Peoples (Nicholas and Smith, 2020). More specifically, Canada is undergoing significant population growth (coupled with a lack of housing due to decades of infrastructure neglect), and a range of recent provincial and federal policies have been enacted to expedite development by limiting municipal approval processes. These trends will further endanger ICH and limit local planners' abilities to mitigate impacts.

For these reasons, and more, First Nations throughout the Province have been advocating strongly to change the status quo; many Nations, such as K'ómoks, are taking heritage management into their own hands by developing their own cultural heritage policies and archaeological permitting systems. However, enacting these policies often requires the full support of local planners who are willing to go beyond the confines and status quo typical of their positions and the regulatory environment in which they operate.

Methods

As part of the overarching goal of the larger XLAP project to explore the role of policy and planning in local heritage management, the XLAP team has been conducting interviews with First Nations, settler policy makers, planners and local Xwe'tay residents. This paper draws on these previously collected results, including 22 interviews with knowledge holders and local/regional planners that focused upon local planning processes and the intersection with ICH, as well as an additional 17 semi-structured interviews with people involved in cultural heritage management in K'ómoks Territory from Spring 2021 to Summer 2023, including, 2 K'ómoks First Nation staff, 2 K'ómoks First Nation knowledge holders, 1 archaeologist, 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. The interviews were coded in NVivo to collect, analyze, and visualize qualitative data (Dhakal, 2022). The goal of these interviews was to gather information on the creation of K'ómoks' Cultural Heritage Policy (CHP) and its enactment within the Comox Valley within what K'ómoks identifies as their core Territory (Oyster River to Deep Bay, including Denman Island and Hornby Island). We also conducted reviews of local and regional planning documents (e.g., City of Courtenay, 2022; Comox, 2011; Cumberland, 2014; CVRD, 2010, 2014, 2021; Islands Trust, 2023; SRD, 2022).

In addition to the interviews, the views of K'ómoks First Nation are represented by the contributions of co-authors Tarle, Barnett, Bevilacqua, and Morin—who are K'ómoks staff and consultants. Newman is former staff and current Elected Councillor with experience in K'ómoks' ICH management. Together, they speak to the K'ómoks experience with their permitting process and management of archaeology more generally. They also provide a “reality check” on the current efficacy of the K'ómoks CHP since its release in 2020, especially noting divergences between expectations and practical realities as experienced on the part of both municipal planners and K'ómoks staff. The relationships between K'ómoks and municipal jurisdictions regarding the management of ICH continues to evolve. The various voices and experiences represented here provide a powerful example of the potential of Indigenous-led heritage management to promote heritage protection. However, they also reflect the challenges associated with local implementation and the opportunities available to local governments to help facilitate and support Indigenous heritage policy adoption using both regulatory and extra-regulatory practices.

K'ómoks First Nation and cultural heritage management

K'ómoks First Nation is made up of about 380 members who primarily self-identify as K'ómoks, Pentlatch (Northern Coast Salish ethnolinguistic groups) or Kwakwaka'wakw (speakers of Kwak'wala, formerly Kwakiutl). K'ómoks was created through the amalgamation of the Pentlatch-speaking Pentlatch, ayajuthem speaking K'ómoks, and Eiksan, and later the Kwakwala-speaking Hahamatsees (Kennedy and Bouchard, 1990). K'ómoks Territory today represents the combined traditional territories of the K'ómoks and Pentlatch peoples (Figure 1; Kennedy and Bouchard, 1990). K'ómoks has four reserves; only KFN IR 1, at the mouth of the Courtenay River, is developed and is where about 150 K'ómoks members live. This reserve/community is situated between the City of Courtenay and the Town of Comox in the Comox Valley region. This broader region is home to more than 72,000 residents, meaning that K'ómoks members are vastly outnumbered in their own lands (City of Courtenay, 2022).

Like almost everywhere in BC, K'ómoks' Territory overlaps with the asserted territory of several other neighboring First Nations: Tla'amin, Homalco, Snaw-Naw-As, Wei Wai Kum, Wei Wai Kai, Qualicum, and Kwikah First Nations (City of Courtenay,

2022). This means that the Archaeology Branch has a legal duty to consult with all of these First Nations for projects occurring within K'ómoks Territory. However, the depth of the duty to consult with a First Nation varies in relation to the “strength of claim” or weight of evidence supporting that Nation's territorial claim. This includes historical, oral history, place name, and archaeological evidence of Indigenous use and exclusive occupation of a defined territory as defined as admissible in Canadian law (Hogg et al., 2023; Martindale and Armstrong, 2020; Miller, 2011; Ray, 2011). Within First Nations' territorial assertions, there are often smaller “core territories”¹, typically in the vicinity of their primary pre-AD 1846 settlements, where a Nation can demonstrate a much stronger body of evidence to support their territorial claim. The Comox Valley is recognized by the federal and provincial governments and hence the Archaeology Branch as K'ómoks core Territory. K'ómoks' core Territory is defined by K'ómoks leadership and is well-supported by ethnohistoric evidence of exclusive use and occupation by their Pentlatch ancestors.

The Comox Valley is within the local planning jurisdiction of the Comox Valley Regional District (CVRD), City of Courtenay, Town of Comox, Village of Cumberland, and the Islands Trust (Figure 1). The local governments obtain powers as defined by the *Local Government Act*, each within their municipal or electoral boundaries. Although the *Local Government Act* states, as noted, 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 (Ministry of Municipal Affairs, 2015). There are some avenues for local government protection measures through Official Community Plans 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 is one area of opportunity for protection; however, this authority is still limited by the *Local Government Act* and municipal jurisdiction. Further, as noted above, several provincial and federal policies directed at increasing housing supply will act to further limit decisions made under the *Local Government Act*.

As with many Indigenous groups in BC, K'ómoks has experienced a long history of frustration with the Provincial Archaeology Branch to protect archaeological heritage in their Territory. As a result, the Nation is proactively protecting their cultural heritage in ways that are appropriate for them. This involves intercommunity education, working with local elected officials, and public outreach. It is within this context that K'ómoks created their CHP. Only in one case, the Islands Trust (a special purpose government agency serving islands in the Salish Sea), has K'ómoks staff directly engaged with municipal planners.

1 The concept of “core territories” among the Coast Salish was first introduced in 1984 by Wayne Suttles to Randy Bouchard to describe his understanding of Coast Salish territoriality (Bouchard and Kennedy, 1986, p. 120).

Development of the K'ómoks cultural heritage policy

Prior to developing the CHP, K'ómoks' heritage concerns such as impacts to burial sites and major pre-contact settlements were treated on a case-to-case *ad hoc* basis. This involved drafting response letters to the Archaeology Branch regarding permits allowing impacts to archaeological sites in K'ómoks Territory. Since around 2015, the Comox Valley area has been undergoing rapid urbanization and development, as people from other parts of British Columbia and Canada move to Vancouver Island. Consequently, the coastline that was formerly peppered with small houses on large lots has rapidly been infilled with new large houses and suburban development. These highly desirable water-front lots are precisely the places where K'ómoks Ancestors lived for thousands of years and thus are major archaeological sites with great cultural significance. As a result, there has been a corresponding rapid increase in the volume of archaeology permit applications as well as HCA contraventions associated with these developments.

Under the HCA, any disturbance to an archaeological site is prohibited without an archaeological permit. In regions that require development permits, the Archaeology Branch reviews the Provincial site registry to assess the potential for disturbance of areas in and around registered sites. If there is the potential to damage a site, a permit is required prior to development. Alternatively, if a development happens to encounter an unregistered archaeological site during land modification, then development must stop, and the Archaeology Branch determines what permits are needed to go forward. Situations like this can involve delays of 6–18 months in development due to capacity constraints in permitting processes at the Archaeology Branch. If a project unexpectedly encounters archaeological materials and does not cease immediately, the proponent would be investigated for an infraction and potential prosecution.

According to Provincial Archaeology Branch policy, all Provincial Archaeology permit applications must be vetted by all Nations in whose traditional territory the proposed work falls. The affected First Nations are given 30 working days to respond with any concerns or comments about the proposed project and associated archaeological work (commonly called a “referral”). If concerns are identified with a permit application, the Archaeology Branch may require the proponent to adjust their proposed work. In practice, the Archaeology Branch has been variable in its integration of First Nations' comments/concerns, and we know of no case where they have rejected a permit application based on First Nations' concerns. In short, the Archaeology Branch must demonstrate that their decisions are justifiable, and there has been reasonable consultation to satisfy their legal duty to consult First Nations on potential impacts to their rights and title.

Prior to and concurrent with K'ómoks' implementation of their own permitting process, under the Provincial system, the Archaeology Branch would forward the HCA permit application to K'ómoks. K'ómoks is part of a larger First Nations umbrella organization serving 6 regional Nations called N̓anw̓akolas. N̓anw̓akolas provides support for member Nations in reviewing and prioritizing referrals from the Provincial government, including archaeological permits. Staff at N̓anw̓akolas screen

incoming referrals for the respective member Nations against internal GIS databases including traditional use study data, Indigenous place names, archaeological data, ecological data, and other layers of historical or cultural information. They then prioritize referral response by potential impact to a Nation's rights, title, and interests. This information package is forwarded to the designated KFN staff, consultant, or elected chief/councilor for a referral response. The level of effort in response to these archaeology referrals has to be balanced with all the other demands put on a First Nations government.

Under this system, K'ómoks was not always able to respond to all provincial archaeology permit referrals and has historically missed referrals with large impacts to K'ómoks cultural heritage due to capacity constraints. These issues often lead to conflicts between K'ómoks and the Archaeology Branch and/or proponents/developers after permits are issued and work begins. Under the system described above, K'ómoks concerns as communicated to the Archaeology Branch are rarely addressed and instead are communicated to local Cultural Resource Management (CRM) companies to work out with K'ómoks after the HCA permits are issued (i.e., informally delegating the duty to consult to the CRM companies).

In this context of rapid development, K'ómoks is witnessing scores of their archaeological sites impacted and between 20–50 of their Ancestors' resting places disturbed every year. Most proponents and developers are following the HCA and obtaining permits that allow massive impacts to archaeological sites, and correspondingly modest effort at quality systematic data recovery. Other developers, especially in more rural areas, are ignoring the HCA entirely and causing breathtaking levels of destruction to significant archaeological sites. Finally, archaeological sites are being damaged through development in locations that, according to the HCA, do not require permits or any manner of investigation in advance of construction. These forces were very strong impetus for K'ómoks to develop their own policy and procedures protecting archaeological sites within their Territory.

To gain greater control over managing their own archaeology, K'ómoks created their own Cultural Heritage Policy (CHP) (<https://komoks.ca/departments/lands-program/>) to address the practical shortcomings of the status quo of HCA-governed archaeology. The goal of the K'ómoks First Nation CHP was to protect archaeological sites and Belongings (artifacts) within K'ómoks Territory. In developing the K'ómoks CHP, K'ómoks formalized an explicit set of management expectations and procedures for all activities that have the potential to have an impact on archaeological sites or Belongings; it is intended to be used by developers, archaeologists, and various levels of government to design projects in accordance with K'ómoks expectations. In short, K'ómoks withholds consent for all projects with the potential to impact their cultural heritage unless these expectations are met.

The K'ómoks CHP was created through deep consultation with K'ómoks Elders, hereditary chiefs, Knowledge Keepers, elected leaders, and staff, and written by the second author, Dr. Jesse Morin in 2020. The aims of these deep consultations were to collate community concerns with the status quo, ideas for improvements, tabling ideas, assessing ideas, and ultimately reviewing drafts. These individuals provided guidance of all aspects of creating the Policy, from philosophy to methodology and thresholds. By assembling

this collective knowledge, K'ómoks could be true to their traditional culture(s), and vastly more protective of their cultural heritage.

Because of the immediate and intense development pressure on K'ómoks lands, the K'ómoks CHP is focused on the protection, management, and study of their Ancestral burial and village sites and material culture. K'ómoks may elect to expand the CHP for the protection of cultural ecosystems and intangible cultural sites in the future. Two core principles guide K'ómoks ICH management: “taking care of the ancestors and the ancestors looking out for you” (KFN, 2020, p. 6). The CHP applies to all K'ómoks Territory² (Figure 1), including private, crown, K'ómoks lands, intertidal areas, and submerged lands. The Policy states K'ómoks 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 the KFN 2016 Land Code. K'ómoks Indigenous law is based on K'ómoks and Pentlatch teachings and their authority over decision-making comes from K'ómoks unextinguished Indigenous title to their Territory (KFN, 2020, p. 4). K'ómoks laws specify their responsibility to steward their lands for future generations and the requirement to respect and protect their Ancestors and their cultural heritage (KFN, 2020). The Policy states the measures required for protecting K'ómoks cultural heritage and that any impacts will require K'ómoks consent, including clear steps for obtaining K'ómoks consent. The range of archaeological sites protected under the K'ómoks CHP are described therein (KFN, 2020, p. 10–13).

The cultural heritage investigation permit

K'ómoks developed the Cultural Heritage Investigation Permit (CHIP) as the primary mechanism for enacting the Nation's CHP. The development of the CHIP to conduct archaeological investigations is a significant part of the process of K'ómoks managing their own archaeological heritage and a need to address critical issues within the HCA and Archaeology Branch processes. The CHIP system is a straightforward process for obtaining K'ómoks consent for a development project within already recorded sites and areas of high archaeological potential. The KFN area of high archaeological potential is defined by a 200 m buffer around recorded archaeological sites, the marine and lacustrine shorelines, rivers, and major streams (see Figure 1). A proponent will not be issued a CHIP unless their proposed archaeological methodologies are in accordance with the K'ómoks CHP, and all projects lacking a K'ómoks CHIP are considered to lack K'ómoks consent. The K'ómoks CHIP application has recently been revamped to increase usability for proponents, municipalities, and archaeologists.

Importantly, because the CHIP was created in tandem with K'ómoks' new Archaeology and Referrals Coordinator position, K'ómoks has built capacity to monitor and prevent cultural heritage impacts in their Territory via CHIP applications from proponents and/or archaeologists. By 2023 the Archaeology and Referrals Coordinator was at capacity and K'ómoks hired two full-time Archaeologists to manage the CHIP permits, and advocate for the

protection of K'ómoks' cultural heritage (Tarle and Bevilacqua, co-authors on this paper).

The CHIP allows proponents and archaeologists to develop their projects in alignment with K'ómoks expectations in advance of applying for HCA permits or K'ómoks permits. If necessary, K'ómoks communicates with proponents to modify their projects to bring them into alignment with the K'ómoks CHP. The Policy is designed to make clear to proponents that the effort and cost required to mitigate proposed impacts to archaeological sites almost always far outweigh the costs associated with project redesign to minimize impacts.

Additionally, because the K'ómoks CHP requires investigations of areas of high archaeological potential, and not just registered sites—something not required under the HCA—it provides far greater certainty that developments in high potential areas avoid and/or mitigate impacts to unregistered archaeological sites. In such areas of high archaeological potential, a preliminary field reconnaissance of the property is required to assess whether additional archaeological investigation is warranted.

As one interviewee notes,

“...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

Furthermore, as expressed by participants in this study, since there is often a significant delay (often years) in including newly recorded sites into the Provincial database (RAAD), newly registered sites are often not identified in a query of RAAD and thus are not flagged for provincial protection. While the staff at the Archaeology Branch is rapidly growing, it faces an immense backlog of site information because of a massive expansion of archaeological investigation across the province—primarily associated with resource extraction and infrastructure development. Delays in HCA permit issuance have also become a major issue over the last ~3 years. However, since K'ómoks archaeologists are now involved with the identification and registration of new sites under the CHIP system, they can identify recently discovered sites during the CHIP application process that would not otherwise be identified or protected by the province—and they can and require archaeological work accordingly.

The CHIP also provides clear terminology and requirements for the archaeological standards that K'ómoks expects. These differ from the HCA requirements in several important ways. One major difference is that while the Archaeology Branch requires that 5%–10% of intact archaeological deposits within a site be investigated via systematic data recovery (i.e., controlled manual stratigraphic excavation), K'ómoks' requirement is up to 50%. This is especially important in sites with diverse deposits or highly culturally sensitive remains, such as burials. In these cases, 5%–10% would not well represent the complexity and cultural significance of those sites. The 50% systematic data recovery requirements will have an effect on development

² Since its roll out in 2020, the KFN CHIP has only been actively applied and administered to KFN's core territory.

decisions, as the time and cost associated with such recovery are economically significant. This difference in requirement is intended to influence proponents to move forward with low-impact development methods.

As we describe in more detail below, a project proponent applies for a CHIP at the encouragement of the municipal governments—to whom their original development permit application was made. The CHIP application fee (\$400–\$600) is affordable and applicants can expect a timely turnaround for K'ómoks to issue the permit, provided that the project design adheres to the CHIP.

Within the K'ómoks heritage process, projects in an area of high archaeological potential and involving more than 10 m² require a preliminary field reconnaissance (PFR) of the location by a qualified archaeologist and a K'ómoks representative. The recommendations within the PFR report then guide next steps: either no additional work, or if archaeological remains are observed (i.e., discovery of a new archaeological site), an archaeological impact assessment (AIA) would be required prior to development. Notably, approximately 25% of these PFRs identify new archaeological sites in areas that would not require any archaeological investigation in advance of construction under the HCA.

An AIA requires HCA permits, which are held by a professional archaeologist. A K'ómoks representative is required for all PFR, AIAs, and other archaeological investigations. K'ómoks maintains a list of preferred CRM archaeologists and shares this list with proponents upon request. While the CHIP is still a new, evolving process, it has created internal consistency for K'ómoks. Importantly, the CHIP application fee helps to fund the K'ómoks Archaeology & Referrals staff to oversee, mitigate, and prevent impacts to archaeological sites in K'ómoks core Territory. This added capacity is important for communicating and enforcing K'ómoks CHIP requirements and values.

Local government adoption of and commitment to the CHIP

The close physical proximity of K'ómoks and the local governments combined with the relative insularity of the Comox Valley creates a unique dynamic for developing working relationships. All local governments express commitment to collaborative relationships with K'ómoks, and all have made formal commitments to supporting UNDRIP. The Cultural Heritage Policy was formally adopted by K'ómoks in October 2020, and was presented to local governments as an articulation of UNDRIP in relation to K'ómoks protection of archaeological sites in their Territory. As local governments had already endorsed UNDRIP, K'ómoks requested that they formally follow the CHIP for all developments under their jurisdictions. In response, and with varying consistency, local governments have been referring municipal, regional, and private developers to the K'ómoks CHIP. Unfortunately, very few local governments withhold or delay development permits until a project has been issued a K'ómoks CHIP.

Where present, buy-in from the local governments may in part also be related to the fact that they and K'ómoks are unified in

their dissatisfaction with the current Provincial system of heritage management. Interviewees from both K'ómoks and the local governments noted that the HCA is relatively weak in protecting ICH in part due to the fact that the Provincial Archaeology Branch is underfunded and under-resourced.

A more significant issue preventing site protection is the relative inability or unwillingness of the Crown to seek prosecution for non-compliance with the HCA. This is a conscious decision of the Crown prosecutor's office to not prosecute people who have clearly acted in violation of the HCA. Prosecution for an HCA infraction can result in fines of up to \$1 million for a corporation, and a 2 year prison sentence for the offender. The HCA does not discriminate between impacts to registered vs. unregistered archaeological sites. However, in recent years, the Crown has stated that they will not pursue prosecution unless it can be demonstrated that the individual actually knew they were in non-compliance with the HCA, a legal threshold that does not need to be met for any other offense. In some cases, the Crown advocates a restorative justice model, where apologies and perhaps modest compensation are the proposed remedies for illegal impacts to ICH.

For all these reasons, it is not surprising that some of the local Comox Valley governments welcome the clarity of the K'ómoks CHIP. Even though the requirement to follow the CHIP is not legally binding within current Canadian law and Provincial regulations, the five local governments in K'ómoks' core Territory have committed to adopting the CHIP in their planning processes, though the degree of current adoption and implementation varies between municipalities in practice. Without this commitment, it would be difficult to operationalize the CHIP. That being said, K'ómoks staff have strong concerns that political leaders are more concerned with appearing to embrace UNDRIP and reconciliation than they are about ensuring K'ómoks' goals of protecting their cultural heritage are supported in actionable ways ("reconcili-action"). Statements of support are far easier than operational changes and testing the boundaries of municipal legislation to protect ICH. High-level support for K'ómoks' CHIP has unfortunately not universally translated into meaningful and consistent policy or operational changes on the ground.

To effectively implement the CHIP model, local governments must commit to notifying, educating, and ensuring that those seeking a development permit apply for the CHIP in advance of ground alteration. All applications for the construction or alteration of buildings, structures, and/or land are made through the local governments and thus the governments are aware of proposed land alterations that may impact ICH within municipal limits. This includes both developers/proponents and municipal infrastructure itself. The permit application process also establishes a communication stream between the local government planners and private property owners that is not initially available to K'ómoks until the applicant is in contact with K'ómoks directly. This initial contact is listed as an option on the permit application itself. As described by one of the regional government interviewees:

And so on our application form and on our website, we say very clearly "Did you confirm this with KFN (K'ómoks)?" 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

Other on-going initiatives support relationship building among K'ómoks and the local governments, and thus the enactment of the CHP. For instance, interview participants identified Community to Community (C2C) Forums as a valuable educational opportunity to bring K'ómoks and local governments together. C2C Forums, funded through the Ministry of Municipal Affairs, bring together municipalities and First Nations to discuss best practices and shared experiences to reach common goals, agreements, and memorandums of understanding (UBCM, 2023). The C2C meetings held between the CVRD, municipal representatives from Comox, Cumberland, and Courtenay, and K'ómoks were instrumental in laying the foundation for the implementation of the CHP, which requires ongoing engagement and education. One interviewee from the CVRD describes this:

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. 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

Although support for the CHP by the local governments was indicated by their stated commitments to reconciliation, there is uncertainty as to how to effectively enact this support. Local government interviewees noted that there had been minimal direction from the Province on DRIPA's impact on local governments, particularly around ICH. The CHP provides clear guidance and expectations on how to support K'ómoks inherent rights and jurisdiction over ICH in their Territory, and local governments' commitments to reconciliation can be proven by their efforts to enforce compliance with the K'ómoks CHP as an actionable manifestation of UNDRIP and recognition of K'ómoks inherent and Section 35 rights.

Interviews with local government planners and high-level staff revealed variation in the extent of commitment or sense of responsibility among local governments to the CHIP process. Since adoption of the CHIP process does not require significant changes to existing planning processes, it is relatively easy for all planners across the five local governments to notify project proponents of the K'ómoks permitting system. However, at the time of interviews, some local government planning departments were seeking additional measures to ensure compliance with the CHIP through communication and zoning strategies. Interviewees from K'ómoks Staff noted that when project proponents are well-informed about the CHIP from the early stages of development, there tends to be a smoother process for the K'ómoks archaeology permit process.

However, since local governments are legally bound by the provisions in *the Local Government Act*, they cannot withhold a development permit based on archaeology concerns alone. As one local government participant explains, this creates a disconnect 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.³ 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

Interview participants from local governments discussed the role that municipalities 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 litigation would override their desires to do so. Another interview participant from a local government noted how re-zoning applications could be withheld via council discretion based on a lack of CHIP approval.

The local governments in the Comox Valley are in the process of developing and/or releasing long-term planning documents to guide their future growth such as Official Community Plans, master plans, and regional growth strategies. The CHIP provides a framework for local governments to address ICH based on the direction from K'ómoks. Despite the short time since the introduction of K'ómoks Cultural Heritage Policy and the enactment of the CHIP at the time of the interviews, interviewees estimated that amongst the developer community there has been a high compliance rate with the CHIP. Interview participants stated that compliance has also been moderately high amongst private landowners, but knowledge of the Heritage Policy is lower.

Even though planners are limited in their ability to enforce the CHIP if a project proponent does not want to comply, planners can still support the CHIP process by communicating with K'ómoks about all development applications. While this option informs K'ómoks of upcoming development, it does not prevent damage as the permit has already been issued (and places a burden on K'ómoks to somehow retroactively enforce a CHIP). As one local planner interviewee explains:

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 K'ómoks. So it's more around language of expectations as opposed to the city withholding a permit because they didn't talk to K'ómoks. 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 K'ómoks what's happening and allow them to access the enforcement provision in their policy. So, at the very least, K'ómoks 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

³ We note that this characterization is incorrect; s.35 of the Canadian Constitution protects Aboriginal rights, including title, and is not limited to reserve lands.

To date, there has been variable uptake by local developers. Interviewees suggest that building and maintaining positive relationships within the Comox Valley and “doing the right thing” were motivating larger developers to apply for the CHIP. In addition to building relationships through corporate responsibility, interview participants explained how the CHIP encouraged compliance by improving certainty of the development timeline and cost reduction. Reasons why applying for a CHIP benefits the proponent are made clear at the time of application.

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

Interviewees report that while not all interactions have been positive and vary across the Comox Valley, most applicants grasp that the proactive nature of the CHIP is not only beneficial for K'ómoks but for facilitating the development as well. Three interview participants noted the importance of local government providing information about the CHIP on their websites to help increase understanding and adoption early in the development process.

Limitations of local government implementation

Since the roll out of the K'ómoks CHIP, the relationships between K'ómoks and various local governments with regard to implementation of the CHIP have evolved in different directions. While local governments strongly endorsed the K'ómoks CHIP when it was released, K'ómoks staff have experienced various levels of frustration at the limited efforts of implementation by municipalities. This includes both municipalities recommending rather than requiring developers to follow the K'ómoks CHIP process, and the municipalities themselves not always following the K'ómoks CHIP process. The general sentiment among K'ómoks staff is that municipalities have not gone far enough in implementing the K'ómoks CHIP process, presenting it as optional rather than as required, and feel that most of the statements from municipal planners above reflect an early stage of endorsement, and not the practical reality of 2 years experience in implementation.

There are three key limitations to local government implementation of the K'ómoks CHIP process highlighted by K'ómoks staff. First, the *Local Government Act*, as noted above, has the provision for the protection of heritage sites, however it defines heritage sites solely as settler heritage, such as buildings, signs and trails, not archaeological sites or other types of Indigenous heritage sites (King et al., 2011). Within this legislative context, the limitations of local government implementation of the K'ómoks CHIP process are perhaps to be expected. To enforce compliance

with the CHIP, local governments must be willing to test the boundaries of local planning tools and the *Local Governments Act* to reflect the values of the UNDRIP.

Second, most local governments have not taken action to make the K'ómoks CHIP process a (defacto) requirement of their development permits. Local governments insist that they cannot require adherence to the K'ómoks CHIP process as a condition of their permitting processes (e.g., development permits). Of all the local governments, only the Islands Trust will delay issuance of development permits (siting and use permits) until a K'ómoks CHIP has been obtained by the proponent, thereby defacto making following the K'ómoks CHIP process a requirement rather than a recommendation. K'ómoks staff have learned through their municipal engagement work that there are avenues under the *Land Act* s.219, such as applying restrictive covenants to archaeological sites within municipal boundaries, that local governments could consider to transform their implementation of the K'ómoks CHIP from a recommendation to a defacto requirement (until mandated by provincial policy change). The issue of local government enforcement of the K'ómoks CHIP process is a complex issue that is still being explored by K'ómoks and local governments, and we note that in Canada these matters are typically settled in the courts.

Third, some local governments have failed to obtain K'ómoks CHIPs for their own developments, or have failed to adhere to the conditions of their K'ómoks CHIPs. This has included activities that have impacted K'ómoks cultural heritage and Ancestral Remains. To K'ómoks staff, these actions erode trust and highlight the disjuncture between the outward-facing embracement of reconciliation, and the limited internal operationalization of the K'ómoks CHIP as a manifestation of reconciliation. Stewardship of K'ómoks ICH via the CHIP is, to K'ómoks staff, an ongoing struggle toward compliance with considerable room for action on behalf of local governments.

Challenges to the CHIP process

While the CHIP does not require extensive additional work or change of practices at the local government level, there are ongoing capacity issues experienced by K'ómoks as they respond to the rapid pace of development taking place in their Territory. In 2021 27 CHIPs were issued, 42 in 2022, 65 in 2023, and 45 in the first quarter of 2024 (at the time of writing). Several years ago, K'ómoks interview participants stated that as applications increased, K'ómoks would soon require one archaeologist entirely focused on CHIP process, and another focused on policy and cultural heritage advocacy. This growth into two positions occurred in late 2023. Currently, there is no funding from the Archaeology Branch to support the K'ómoks CHIP system, but CHIP permit fees fund the K'ómoks staff Archaeologist positions. We note that an individual CHIP could include a project as simple as a 1-h surface inspection or as complex as a multi-year investigation involving scores of excavation units and near-certain recovery of Ancestral Remains. Several large archaeological projects and increased compliance with the K'ómoks CHIP process will undoubtedly further increase demands on K'ómoks staff archaeologists.

Another challenge to the CHIP is that landowners who are unfamiliar with development procedures have been more likely to be hesitant of the CHIP than developers. Planners described that this is partly because many landowners are applying for development permits for the first time vs. developers with experience applying for permits and are aware of changing regulations. The almost archetypical example is a moderately well-off retiree, who has migrated from elsewhere in Canada to Vancouver Island and who never imagined there could be archaeological issues on waterfront properties. This one-time developer has a budget and a timeline that did not consider the time and effort required for archaeological investigation (and were not adequately informed throughout the real estate purchase process). These situations are difficult and can get quite emotional. Another example, is municipal grant funded projects that have certain timelines and budgets that do not adequately consider potential archaeological concerns.

Interview participants note the lack of information available about the CHIP before landowners apply for municipal development permits. Interview participants empathize that development requirements can be overwhelming and frustrating for landowners:

[What] 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

The uncertainty about when and if an archaeological assessment will be required (also an issue with the HCA process), instills fear in project proponents regarding cost and delays of their project, especially because an AIA must occur before all development. Interview participants from local governments describe how local planners are responsible for mediating frustrations experienced from project proponents throughout the development process—including navigating the archaeological assessments. Part of the planner's role in the development permit arena is to coach landowners and developers through the process and provide realistic timelines. They also note that anxiety and fear can lead to non-compliance.

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, 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 vs. doing the right thing and going through the proper process.
—Participant #21

Interview participants did express hope that any future changes to the *Local Government Act* and *HCA* facilitated by *DRIPA* could change the regulatory requirements and clarity for local governments concerning ICH and archaeology. While such amendments hold promise for change, it doesn't solve K'ómoks' current ICH concerns during a period of extensive development growth. K'ómoks also face a capacity burden of being the de facto archaeology information booth for the Comox Valley, given the barriers to the general public to access information from the Archaeology Branch in a timely manner.

Discussion

The ongoing destruction of Indigenous heritage in all its guises, is a global crisis (Vrdoljak, 2018; Nicholas, 2021). In many parts of the world, this is largely due to common features of colonialism—population growth, industrialization, racist laws and policies, and actions that perpetuate a disconnect between Indigenous understandings of heritage and the way in which heritage is managed by the colonial state. The specifics of the struggles to protect Indigenous heritage are of course varied, and place- and culture-specific, but many are centered around protecting land and the tangible and intangible heritage that is woven into it (Yukon First Nations Heritage Group, 2017).

In the western settler-colonial worldview, where private property is sacrosanct, the preservation/destruction of Indigenous heritage as represented in the archaeological record has become a flashpoint for clashes revolving around the protection of ICH. From the perspective of the property owner, the discovery and potential preservation of archaeological heritage is often viewed as a burdensome cost and threat to inherent freedoms people often associate with private property. Fear of losing these freedoms, compounded by unclear or inconsistently enforced heritage laws, often leads to non-compliance and stealth development.

Indigenous cultural heritage policies seek to address colonially imposed gaps and injustices in the protocols and management of ICH and provide an avenue for Indigenous Peoples to exercise inherent rights and jurisdiction (i.e., modern stewardship). In the case of archaeological heritage specifically, permitting systems are an actionable way for Indigenous governments to manage their archaeological heritage and for settler-colonial planners within local and regional governments to work alongside them to support these systems by requiring that developments adhere to them.

Through their CHP, K'ómoks is asserting their inherent rights as the rightful stewards of their own ICH in accordance with K'ómoks laws, ontologies, and relational responsibilities. Rather than waiting for the Province to engage in shared decision-making agreements or renew the *HCA* to align with *DRIPA*, K'ómoks is asserting their rights in a colonial land use planning process within their Territory. The Policy guides ICH management with clear definitions, required mitigation measures, and an explicit process regarding ICH discovery—all of which align with K'ómoks community values and responsibility to their Territory and their ancestral teachings. This process 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 their Policy, K'ómoks ensures that their rights and responsibilities to their cultural heritage are protected by participating as the decision-maker, dismantling the Provincial Archaeology Branch's sole authority. Instead of relying on and operating within the provincial process, K'ómoks states what ICH protection means to them and provides a clear pathway to obtaining consent, i.e., obtaining a K'ómoks CHIP. Thus, they make decisions based on their own laws, rather than merely be given the opportunity to comment on the provincial process. Their Policy effectively alters the existing landscape of ICH management within K'ómoks Territory, moving away from a process entrenched in colonial relationships and toward creating a new pathway and space for ICH protection.

While the success of the CHIP system, as a practical manifestation of the K'ómoks Cultural Heritage Policy, is a direct result of K'ómoks' clear vision for protecting its heritage, the system benefits from the ongoing cooperation of planners within the local and regional governments. Business as usual for planners is that they are in a conflicted and jurisdictionally removed position with respect to the protection of Indigenous cultural heritage. This arises because planners are legally responsible for land use at the municipal level but have no obligation to protect Indigenous heritage. This leaves planners in a compromised position which is compounded by the fact that the Provincial Archaeology Branch is strained and lacks capacity to fully monitor, communicate, and enforce their obligations and protocols.

Even though formal regulations don't require the implementation of the CHIP, our findings reveal instances where municipal planners are using whatever powers they do have to work-around the jurisdictional and regulatory and enforcement limitations of the Provincial Archaeology Branch. They have actively engaged with the CHIP system on their own land use projects and are working on ways to better inform developers and private landowners about the importance of following the CHIP.

Reconciliation movements among local governments in the Comox Valley set the stage for K'ómoks enacting their CHIP. Elected councils across the Comox Valley are increasingly promoting reconciliation and UNDRIP as part of their election platforms. This commitment is evolving in practice within planning departments, leading to variable levels of advocacy and support for the implementation of the K'ómoks Policy into planning processes.

Agreements between K'ómoks and local, regional governments and engagement by local planners, while variable, stand in stark contrast to the inaction of other local planning bodies who have basically thrown up their hands saying there's nothing they can do to protect ICH. Planners' willingness to partner with K'ómoks, it could be argued, reflects a larger shift toward the decolonization of planning—whose focus has historically been actualizing colonial expansion and on prescribing jurisdiction over Indigenous lands (Porter, 2010; Barry et al., 2018; Lennon, 2017). Support of the CHIP is a small but positive step toward undoing planners' role in denying Indigenous rights to steward, care, and plan for their ancestral lands.

There remains a disconnect, however, between what local political leaders have committed to, and the actions of local bureaucrats that have limited increased compliance with the K'ómoks CHIP. This disconnect exists as a tension between the enthusiasm voiced by local planners regarding the existence of the CHIP, and the experience of K'ómoks staff in uptake and

implementation. From K'ómoks perspective, there are several avenues by which local governments could require developers, including themselves, to adhere to the K'ómoks CHIP. We specifically note that the Islands Trust is the only local government that delays issuing their development permits (siting and use permits) until a K'ómoks CHIP has been obtained. The recommendation rather than the requirement of compliance with the K'ómoks CHIP transfers the burden of convincing developers to follow the CHIP to be borne by K'ómoks staff. In the current context of rapid development and population increase in the Comox Valley, voluntary rather than required adherence with the K'ómoks CHIP will undoubtedly lead to unnecessary impacts to and destruction of K'ómoks ICH.

Permitting systems such as the CHIP also allow pathways for reconciliation on the part of private landowners. 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 acts of reconciliation. On-going education about the importance of the CHIP has the potential to shift landowners' perspectives from individualistic private property rights to embracing accountability toward K'ómoks rights. This landowner interaction with ICH, and the adoption of Indigenous heritage policies assists in unsettling individualistic notions of private property.

Future success of the K'ómoks CHP is dependent on several factors, some of which are entirely beyond K'ómoks control. First, K'ómoks is on the verge of voting on a treaty with Canada. If this takes place, K'ómoks will become a local government and the largest land owner in the Comox Valley. In this situation, the K'ómoks CHP will become a law on K'ómoks lands. Its success is also dependent on which avenues K'ómoks and local governments enact to support enforcement of the CHP, including pursuing a court case. Finally, and most importantly, is how serious the province of B.C. is about implementing UNDRIP. If the HCA transformation project, or other binding agreements between the Archaeology Branch and K'ómoks, results in substantive changes toward recognition of Indigenous authority over their cultural heritage, the K'ómoks CHP will be the local model for heritage management. If the HCA transformation project does not result in such alignments with UNDRIP, the matter will inevitably be tested by a First Nation in court. Ultimately, K'ómoks' position is that their duty to protect their cultural heritage is a protected right under s.35 of the Canadian Constitution and that this right cannot be infringed upon or impeded by local government policies. Regardless of the particular path forward, they will continue to strive to bring all parties to value and protect their cultural heritage as defined in the CHP.

Concluding thoughts

Respecting and protecting ICH requires the state to create space for First Nations to access, benefit from, and make decisions about their own heritage (Nicholas and Smith, 2020). A lack of meaningful action to recognize Indigenous rights to their own heritage 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 and Markey, 2020; Daigle, 2016; Corntassel and Bryce, 2012). 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 and Markey, 2020; Corntassel and Bryce, 2012).

Committing to enacting Indigenous heritage policies such as the CHP is a concrete first step to supporting Indigenous rights to manage their own heritage. In the case of the Comox Valley, the K'omoks have presented a pathway for reconciliation and relationship building that is open to governments and planners. Planners' reconsideration of the private property regime and notions of land ownership (and access) are critical to unsettling planning processes and ideologies by challenging dominant forces (Barry et al., 2018; Blomley, 2017). With upcoming policy opportunities to influence legislation reform in alignment with UNDRIP, planners and local governments must actively advocate for the introduction of locally-enacted ICH protection mechanisms (e.g., granting planners the ability to delay or deny development permits based on archaeological concerns). This conclusion holds true as much for the K'omoks as it does for other Indigenous Peoples globally who are asserting their rights to manage their heritage in the face of on-going industrial development on private and public lands.

Data availability statement

The original contributions presented in the study are included in the article/supplementary material, further inquiries can be directed to the corresponding author.

Ethics statement

The study was approved by the Simon Fraser University Ethics Board. The study was conducted in accordance with local legislation and institutional requirements. The participants provided their informed consent to participate in this study.

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