

BILL 14 – 2019
HERITAGE CONSERVATION AMENDMENT ACT, 2019

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1 Section 1 of the Heritage Conservation Act, R.S.B.C. 1996, c. 187, is amended

(a) by adding the following definition:

"authorized official" means a person or class of persons

(a) employed in any ministry of the government, and

(b) authorized by the minister in writing to be an official for the purposes of a provision of this Act or the regulations; ,

(b) by repealing the definition of "designate", and

(c) in the definition of "Provincial heritage site" by striking out "established under section 23" and substituting "designated under section 11.1".

2 Section 3 (1) (d) is amended by striking out "section 13" and substituting "section 12.1".

3 Section 4 is amended

(a) in subsection (4) (a) by striking out "section 13 (2) (h)" and substituting "section 12.1 (2) (h)",

(b) in subsection (4) (c) by striking out "sections 13 (1) and (2) and 14 (1)" and substituting "sections 12.1 (1) and (2) and 12.2 (1)",

(c) in subsection (4) (d) by striking out "section 12 or 14" and substituting "section 12.2 or 12.4",

(d) in subsection (4) (e) by striking out "sections 12 and 14 (4)" and substituting "section 20.1", and

(e) in subsection (5) by striking out "section 13 (2)" and substituting "section 12.1 (2)".

4 Section 6 is amended by striking out "section 13 (2)" and substituting "section 12.1 (2)".

5 Section 8.1 is amended by striking out "sections 9, 12, 13, 14, 16, 18 and 20 (1) (a)" and substituting "sections 9, 12.1 to 12.8, 16.1, 18 and 20 (1) (a)".

6 Section 8.1 is amended by striking out "sections 9," and substituting "sections 8.2, 9,".

7 The following section is added to Part 1:

Duty to report discovery

8 . 2 (1) A person who discovers a prescribed site or object that may have heritage value must report the discovery to the minister within a prescribed time period.

(2) If, for the purposes of subsection (1), the minister authorizes the form and manner for the reporting of a discovery, a person who reports a discovery under that subsection must do so in the form and manner authorized by the minister and the report must include the information specified by the minister.

(3) The Lieutenant Governor in Council or the minister, as applicable, may make regulations exempting a person or class of persons from the application of subsection (1).

8 Part 2 is amended by adding the following heading before section 9:

Division 1 – Designation .

9 Section 9 is amended

(a) in subsection (2) (b) by striking out "section 13 (2)" and substituting "section 12.1 (2)",

(b) in subsection (2) (d) by striking out "established under section 23" and substituting "designated under section 11.1", and

(c) in subsection (3) (d) and (e) by striking out "section 12" and substituting "section 12.4".

10 Section 11 (9) is repealed and the following substituted:

(9) Compensation under this section only applies to property that is designated as a Provincial heritage site or a Provincial heritage object under

section 9 and does not apply in the case of property that, immediately before a designation under section 9, is

(a) already designated as a Provincial heritage site under section 9 or a Provincial heritage property under section 11.1,

(b) already designated as a Provincial heritage object under section 9,

(c) protected under section 12.1 (2), or

(d) designated under section 611 of the *Local Government Act* or section 593 of the *Vancouver Charter*.

11 The following section is added:

Provincial heritage properties

11.1 (1) The Lieutenant Governor in Council may, by order, designate a heritage site on Crown land as a Provincial heritage property and the Provincial heritage property includes the collection of accessioned artifacts associated with that heritage site.

(2) The Lieutenant Governor in Council may, by regulation, provide that any provision of the *Park Act* applies to a Provincial heritage property designated under subsection (1), and all authorities, rights, duties and other matters under those provisions apply in relation to the following:

(a) the minister as though the minister was the minister under the *Park Act*;

(b) directors or officers assigned by the minister to administer a Provincial heritage property as though they were directors or officers under the *Park Act*;

(c) the Provincial heritage property as though it were a Class A park under the *Park Act*.

(3) If a park use permit applies in respect of land when that land is designated as a Provincial heritage property under subsection (1), the permit is deemed to have been issued under this section by the minister and subsection (2) applies for the purposes of interpretation of that permit.

12 The following heading is added after section 11.1:

Division 2 – Permits .

13 Section 12 is repealed.

14 The following sections are added:

Heritage protection

12 . 1 (1) Except as authorized by a permit issued under section 12.2 or 12.4, a person must not remove, or attempt to remove, from British Columbia a heritage object that

(a) is protected under subsection (2), or

(b) has been removed from a site protected under subsection (2).

(2) Except as authorized by a permit issued under section 12.2 or 12.4 or an order issued under section 12.3, a person must not do any of the following:

(a) damage, desecrate or alter a Provincial heritage site or a Provincial heritage object or remove from a Provincial heritage site or Provincial heritage object any heritage object or material that constitutes part of the site or object;

(b) damage, desecrate or alter a burial place that has historical or archaeological value or remove human remains or any heritage object from a burial place that has historical or archaeological value;

(c) damage, alter, cover or move an aboriginal rock painting or aboriginal rock carving that has historical or archaeological value;

(d) damage, excavate, dig in or alter, or remove any heritage object from, a site that contains artifacts, features, materials or other physical evidence of human habitation or use before 1846;

(e) damage or alter a heritage wreck or remove any heritage object from a heritage wreck;

(f) damage, excavate, dig in or alter, or remove any heritage object from, an archaeological site not otherwise protected under

this section for which identification standards have been established by regulation;

(g) damage, excavate, dig in or alter, or remove any heritage object from, a site that contains artifacts, features, materials or other physical evidence of unknown origin if the site may be protected under paragraphs (b) to (f);

(h) damage, desecrate or alter a site or object that is identified in a schedule under section 4 (4) (a);

(i) damage, excavate or alter, or remove any heritage object from, a property that is subject to an order under section 12.3 (1) or 16.1.

(3) The Lieutenant Governor in Council may make regulations respecting the following:

(a) defining the extent of types of sites protected under subsection (2), except heritage sites or objects protected under subsection (2) (h);

(b) identifying types of features, material or evidence for which the requirements of subsection (2) (d) and (g) do not apply, which may be different for different types of sites;

(c) establishing identification standards for archaeological sites to be protected under subsection (2) (f);

(d) identifying actions that are deemed to derogate from the heritage value of a site or object, or classes of sites or objects, protected under subsection (2), except with respect to sites protected under subsection (2) (h).

(4) The minister may, after providing an opportunity for consultation with the first nation whose heritage site or object would be affected,

(a) define the extent of a site protected under subsection (2), or

(b) exempt a site or object from subsection (2) on any terms and conditions the minister considers appropriate if the minister considers that the site or object lacks sufficient heritage value to justify its conservation.

(5) Subsection (4) does not apply to a site or object protected under subsection (2) (h).

(6) Except as authorized by a permit issued under section 12.4, a person must not damage, alter or remove

(a) a notice erected under section 17, or

(b) a plaque or marker installed under section 18.

Heritage inspection and heritage investigation by permit

12 . 2 (1) A person must not excavate or otherwise alter land for the purposes of archaeological research or searching for artifacts of aboriginal origin except under a permit issued under this section or an order issued under section 12.3.

(2) The minister may, by permit, authorize a heritage inspection or heritage investigation of any property.

(3) The person named as a proponent in an application for a permit under subsection (2) is liable to pay for a heritage inspection or heritage investigation authorized by the permit.

(4) A permit issued under subsection (2) does not authorize entry onto land or into a building without the permission of the owner or occupier.

(5) Sections 12.4 to 12.8, except sections 12.4 (3) (c), 12.5 (2) and (3) and 12.6 (3), apply to permits authorized under this section.

Heritage inspection and heritage investigation by ministerial order

12 . 3 (1) The minister may order that a heritage inspection or heritage investigation be conducted if the minister considers that one or more of the following apply:

(a) land may contain a heritage site or heritage object protected under section 12.1;

(b) land that may have heritage value, or that may include a heritage site or heritage object, may be subject to subdivision;

(c) property may be subject to alienation from government ownership;

(d) property that may have heritage value, or land that may include heritage property, may be subject to alteration by natural or human causes;

(e) an object that may have heritage value may be subject to removal from British Columbia.

(2) A heritage inspection or heritage investigation order made under subsection (1)

(a) must state the purpose of the heritage inspection or heritage investigation,

(b) must specify how long the order is to remain in effect,

(c) must require that the heritage inspection or heritage investigation be carried out expeditiously,

(d) may provide that property covered by the order is subject to protection under section 12.1 while the order remains in effect, and

(e) may require that the owner take actions to preserve the integrity and condition of property covered by the order while the order remains in effect.

(3) If an order for a heritage inspection or heritage investigation made under subsection (1) relates to

(a) alienation of government-owned property,

(b) a public work authorized to be undertaken under an Act,

(c) the extraction or harvesting of resources from land,

(d) the subdivision of land, or

(e) changes in use or development of land,

the minister may require the person purchasing, subdividing, developing or using the property to undertake or pay for the heritage inspection or heritage investigation.

(4) A person must not interfere with a heritage inspection or heritage investigation ordered under subsection (1).

(5) A person whose property is damaged during the course of a heritage inspection or heritage investigation ordered under subsection (1) is entitled to have the damage repaired at the expense of the government or, if the damage cannot be repaired, to compensation from the government.

(6) Section 12.5 (1) applies to orders made under this section.

Power to issue or amend permits

12.4 (1) To carry out an action referred to in section 12.1, a person must apply for a permit or for a permit to be amended, as applicable, and the minister may

- (a) issue the permit,
- (b) amend the permit, or
- (c) refuse to issue or amend the permit.

(2) An application submitted to the minister under this section must be

- (a) in the form and manner required by the minister, and
- (b) accompanied by any information and content specified by the minister.

(3) The minister may refuse to issue or amend a permit under this section if the minister considers that

- (a) the action to be authorized under the permit would unreasonably compromise the heritage protection of the property,
- (b) the information provided in the application is insufficient to determine if the action to be authorized under the permit would unreasonably compromise the heritage protection of the property,
- (c) a heritage inspection or heritage investigation would be required to remedy the insufficiency of information provided in the application to determine if the action to be authorized under the permit would unreasonably compromise the heritage protection of the property, or
- (d) any other prescribed consideration applies.

(4) Considerations that may be prescribed under subsection (3) (d) include considerations relating to any of the following:

- (a) the application for the permit;
- (b) the permit;
- (c) the applicant for the permit;
- (d) the permit holder.

Permit requirements, specifications and conditions

12 . 5 (1) A permit issued under section 12.4 (1) may include requirements, specifications and conditions that the minister considers appropriate, including

- (a) being limited to a period of time or location,
- (b) requiring the permit holder to consult with or obtain the consent of one or more parties whose heritage the property represents or may represent,
- (c) requiring the permit holder to provide the minister with reports satisfactory to the minister, and
- (d) specifying a repository for heritage objects that are removed from the heritage property.

(2) Despite any other enactment, a permit issued under section 12.4 (1) may specify the siting, dimensions, form, exterior design and finish of new construction or renovations to a building or structure.

(3) A permit does not authorize the permit holder to enter property, or to make any alteration to property, without the permission of the owner or occupier.

Amending, suspending or cancelling permits – new information available to minister

12 . 6 (1) The minister may, in accordance with subsection (2), do the following in respect of a permit issued under section 12.4 (1):

- (a) amend the requirements, specifications and conditions of the permit;

(b) suspend the permit;

(c) cancel the permit.

(2) The minister may take any action under subsection (1) if the minister

(a) has new information respecting the heritage value of a property that was not considered when the permit was issued or amended, and

(b) considers that

(i) the action authorized under the permit would unreasonably compromise the heritage protection of the property,

(ii) the information submitted when the permit was issued or amended is no longer sufficient to determine if the action to be authorized under the permit would unreasonably compromise the heritage protection of the property, or

(iii) any other prescribed consideration applies.

(3) The minister may suspend a permit under subsection (1) (b) if the minister

(a) has new information respecting the heritage value of a property that was not considered when the permit was issued or amended, and

(b) considers that a heritage inspection or heritage investigation is required to determine if the action authorized under the permit would unreasonably compromise the heritage protection of the property.

(4) Considerations that may be prescribed under subsection (2) (b) (iii) include considerations relating to either of the following:

(a) the permit;

(b) the permit holder.

Amending, suspending or cancelling permits – enforcement

12.7 (1) The minister may, in accordance with subsection (2), do the following in respect of a permit issued under section 12.4 (1):

- (a) amend the requirements, specifications and conditions of the permit;
- (b) suspend the permit;
- (c) cancel the permit.

(2) The minister may take any action under subsection (1) if the minister has reasonable and probable grounds to believe any of the following:

- (a) the application for the permit included false or misleading information with respect to a material fact;
- (b) the application for the permit omitted to state a material fact, the omission of which makes information in the application false or misleading;
- (c) the permit holder has contravened or is in default of a requirement, specification or condition of the permit, whether or not the permit holder is charged with an offence under this Act;
- (d) the permit holder has contravened a provision of this Act or the regulations, whether or not the permit holder is charged with an offence under this Act;
- (e) a prescribed circumstance has occurred in respect of the permit, the application for the permit or the permit holder.

Subsequent amendment, suspension or cancellation of permit

12.8 For certainty, if the minister amends or suspends a permit under section 12.6 (2) or (3) or 12.7, the minister may subsequently amend, suspend or cancel the permit in accordance with section 12.6 (2) or (3) or 12.7, as applicable.

15 Sections 13 and 14 are repealed.

16 The following heading is added before section 15:

Division 3 – Administration and Enforcement .

17 Section 15 is amended

(a) in subsections (1), (3), (4) and (7) by striking out "section 14 (4)" and substituting "section 12.3", and

(b) in subsection (4) (iv) by striking out "object" and substituting "purpose".

18 The following sections are added:

Entry and inspection

15.1 (1) In subsections (2) and (4), "**dwelling**" means

- (a) a structure occupied as a private residence, and
- (b) if only part of a structure is occupied as a private residence, that part of the structure.

(2) For any purposes related to the administration or enforcement of the Act, the regulations, a permit, an order, an agreement or an application for a permit, an authorized official may enter, at any reasonable time, on land or premises, other than a dwelling, if the authorized official has reasonable grounds to believe that

- (a) the land or premises contains a site or object that has or may have heritage value,
- (b) activities are being, have been or will be carried out by a person who, under this Act, is required to hold a permit, an order or an agreement to carry out that activity, or
- (c) records concerning the activities referred to in paragraph (b) are being kept on the land or premises.

(3) An authorized official who enters land or premises under this section may do any of the following:

- (a) inspect anything or any activity that is reasonably related to the purpose of the inspection;
- (b) take samples and carry out tests and examinations;
- (c) require, for the purposes of inspection or copying, production of
 - (i) a permit, order or agreement that is required for the activity, and

(ii) a record required to be kept under the Act, regulations or requirements, specifications and conditions of a permit, order or agreement;

(d) require, for the purposes of inspection, production of proof of identity by any of the following persons:

(i) a person who is in possession or apparent possession of the land or premises;

(ii) a person who has custody or control, or apparent custody or control, of the records being inspected;

(iii) a person who has custody or control, or apparent custody or control, of the property being inspected;

(iv) a person who is in charge of or conducting the activity being inspected;

(e) make inquiries the authorized official considers necessary.

(4) Nothing in this section authorizes entry into a dwelling without the permission of the owner or occupier.

(5) An authorized official may be accompanied by a peace officer.

(6) An authorized official must provide proof of identity if requested by a person described in subsection (3) (d).

Warrant to search and seize evidence

15.2 (1) A justice of the peace may issue a warrant under section 21 or 22 of the *Offence Act* to an authorized official to enter premises and search for and seize evidence of a contravention of this Act or the regulations.

(2) Sections 23 to 24.2 of the *Offence Act* apply to the search and seizure of evidence described in subsection (1) of this section.

Obligation of person inspected

15.3 A person who is required by an authorized official to produce

(a) a permit, order or agreement under section 15.1 (3) (c) (i),

(b) a record under section 15.1 (3) (c) (ii), or

(c) proof of identity under section 15.1 (3) (d)

must produce, if and as required by the authorized official, the requested permit, order, agreement, record or identification.

19 Section 16 is repealed.

20 The following section is added:

Stop work orders

16.1 (1) If the minister considers that a property

(a) has or may have heritage value, and

(b) for any reason, is likely to be altered, is being altered or has been altered,

the minister may issue, to a person or class of persons, a stop work order that prohibits any alteration of the property for a period of up to 120 days.

(2) The minister may include in the stop work order any requirements, specifications or conditions the minister considers appropriate.

(3) In prescribed circumstances, if any, the minister may extend, for a prescribed period of time, the following stop work orders:

(a) a stop work order issued for a period of 120 days;

(b) consecutive stop work orders that total a period of 120 days;

(c) a stop work order that has been extended under this subsection.

21 The following heading is added after section 17:

Division 4 – General .

22 Section 20 (1) is amended by striking out "objects of this Act" and substituting "purposes of this Act".

23 The following section is added:

Ministerial delegation and subdelegation

- 20 . 1** (1) Subject to subsection (3), the minister may delegate the minister's powers and duties under this Act to a person or class of persons employed in any ministry of the government.
- (2) A delegation in respect of an authority under section 17, 18, or 20 (1) (c) and (f) may be subdelegated to a person or class of persons employed in any ministry of the government.
- (3) The minister may not delegate the authority in section 22.
- (4) A delegation under subsection (1) or subdelegation under subsection (2)
- (a) must be in writing, and
 - (b) may contain any conditions or restrictions the minister, or the person performing the subdelegation, considers appropriate.
- (5) If a power or duty has been delegated under subsection (1) or subdelegated under subsection (2), a reference to the minister in relation to that power or duty includes the delegate or subdelegate, as applicable.
- (6) This section does not restrict or limit the authority in section 23 of the *Interpretation Act*.

24 Section 21 is repealed and the following substituted:

Preservation intervention

- 21** (1) If the minister considers that property protected under section 12.1 (2) is subject to damage or deterioration, the minister may order the owner, subject to requirements, specifications and conditions that the minister considers appropriate, to preserve the property at the expense of the government.
- (2) If the minister considers that property protected under section 12.1 (2) is subject to damage or deterioration and is being unreasonably neglected by the owner, the minister may order the owner, subject to requirements, specifications and conditions that the minister considers appropriate, to preserve the property
- (a) at the expense of the owner, or

(b) at the expense of the owner and the government on a cost-sharing basis.

25 Section 23 is repealed.

26 Section 32 (2) is amended

(a) in paragraph (b) by striking out "section 13 (2)" and substituting "section 12.1 (2)",

(b) in paragraph (c) by striking out "section 14, 16 or 21" and substituting "section 12.3, 16.1 or 21", and

(c) in paragraph (d) by striking out "section 13 (2)" and substituting "section 12.1 (2)".

27 Section 34 is amended

(a) in subsection (2) (a) by striking out "the requirements or conditions of a permit issued under section 12 or 14" and substituting "the requirements, specifications or conditions of a permit issued under section 12.2 or 12.4",

(b) in subsection (2) (b) by striking out "section 14 or 21" and substituting "section 12.3 or 21",

(c) in subsection (2) (c) by striking out "section 13 (1)" and substituting "section 12.1 (1)",

(d) in subsection (2) (d) by striking out "section 13 (2)" and substituting "section 12.1 (2)",

(e) in subsection (2) (e) by striking out "section 23 (2)" and substituting "section 11.1 (2)", and

(f) in subsection (3) (a) by striking out "terms and conditions" and substituting "requirements, specifications and conditions".

28 Section 35 is amended by striking out "section 11 or 14 (9)" and substituting "section 11 or 12.3 (5)".

29 Section 36 is amended

(a) by repealing subsection (1) and substituting the following:

(1) A person who does any of the following commits an offence:

(a) contravenes section 12.1 (6), 12.2 (1), 12.3 (4) or 15.3 or a provision of the *Park Act* referred to in section 11.1 (2) of this Act as it applies to a Provincial heritage property;

(b) fails to comply with or contravenes a requirement, specification or condition of an order or permit under section 11.1 (2), 12.2 (2), 12.3 (1), 12.4 (1) (a) or (b), 16.1, 19 (2), 21 or 34 (3);

(c) contravenes a regulation made under section 11.1 (2) or 37 (2) (e);

(d) contravenes section 12.1 (1) or (2);

(e) hinders, obstructs, impedes or otherwise interferes with an authorized official in the performance of the authorized official's duties or the exercise of the authorized official's powers under this Act or the regulations. ,

(b) by adding the following subsections:

(1.1) If a contravention or failure continues for more than one day, the person is guilty of a separate offence for each day on which the contravention or failure continues.

(1.2) A proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability. ,

(c) in subsections (2) and (4) (a) by adding "or (e)" after "subsection (1) (a) to (c)",

(d) in subsection (6) by striking out "2 years" and substituting "3 years",

(e) by repealing subsection (6) (b) and substituting the following:

(b) an authorized official. , **and**

(f) in subsection (7) by striking out "by the official designated under subsection (6)

(b) certifying the day on which he or she became aware" and substituting "by the authorized official referred to in subsection (6) (b) certifying the day on which the authorized official became aware".

30 Section 36 (1) (a) is amended by striking out "section 12.1 (6)" and substituting "section 8.2, 12.1 (6)".

31 Section 37 is amended

(a) in subsection (2) (i) by striking out "section 14" and substituting "sections 12.2 and 12.3",

(b) in subsection (2) by adding the following paragraphs:

(j) prescribing reasons to refuse an application to issue or amend a permit for the purposes of section 12.4 (3) (d);

(k) prescribing circumstances to amend, suspend or cancel a permit for the purposes of section 12.6 (2) (b) (iii);

(l) prescribing circumstances to amend, suspend or cancel a permit for the purposes of section 12.7 (e);

(m) prescribing the circumstances or the period of time for the extension of a stop work order for the purposes of section 16.1 (3). , **and**

(c) by adding the following subsection:

(3) In making a regulation under this Act, the Lieutenant Governor in Council may

(a) define classes of properties, persons, sites, objects, circumstances or areas, including, for the purposes of section 3 (1) (f), classes of heritage properties, and

(b) establish different regulations for different classes of properties, persons, sites, objects, circumstances or areas, including, for the purposes of section 3 (1) (f), different classes of heritage properties.

32 Section 37 is amended

(a) in subsection (2) by adding the following paragraphs:

(f.1) prescribing sites or objects or classes of sites or objects for the purposes of section 8.2 (1);

(f.2) prescribing the time period for the purposes of section 8.2 (1);

(f.3) exempting a person or classes of persons for the purposes of section 8.2 (3); ,

(b) by repealing subsection (3) and substituting the following:

(3) Without limiting subsection (1), the Lieutenant Governor in Council or the minister may make regulations as follows:

(a) prescribing sites or objects or classes of sites or objects for the purposes of section 8.2 (1);

(b) prescribing the time period for the purposes of section 8.2 (1);

(c) exempting a person or classes of persons for the purposes of section 8.2 (3). , ***and***

(c) by adding the following subsection:

(4) In making a regulation under this Act, the Lieutenant Governor in Council or the minister, as applicable, may do one or more of the following:

(a) define classes of properties, persons, sites, objects, circumstances or areas, including, for the purposes of section 3 (1) (f), classes of heritage properties;

(b) establish different regulations for different classes of properties, persons, sites, objects, circumstances or areas, including, for the purposes of section 3 (1) (f), different classes of heritage properties.