



Cabinet Submission

Request for Decision

Ministers: Honourable Steve Thomson and Honourable John Rustad

Ministries: Forests, Lands and Natural Resource Operations and
Aboriginal Relations and Reconciliation

Date: 23/09/2014 Ministry Document # 27/14

Title: Grace Islet

Issue:

Construction of a private residence on Grace Islet near Saltspring Island has triggered protests from First Nations and other Saltspring Island residents. The residence is being built on a First Nations burial ground. The property owner has attempted to accommodate First Nations concerns by redesigning the house to avoid damaging rock features, but the First Nations' position is that the islet, in Ganges Harbour, is a sacred burial area and no land altering activity should take place.

Time is of the essence as tensions continue to rise between the property owner, local residents and First Nations, and increased levels of activism and civil disobedience is anticipated. The property owner filed an injunction against the protesters, which was heard in court on September 23, 2014. The court has deferred a decision for four weeks to allow the defendants time to develop their response, including Douglas Treaty considerations.

Request:

Cabinet direction is requested as to what actions to take regarding this issue. s.12,s.13
s.12,s.13,s.17



Implications and considerations:

- Without intervention from the Province, construction will continue, and protests will accelerate.
- The islet is privately owned, and the construction of the residence has been in substantial compliance with the permit. It is important to note that First Nations and some local residents do not agree with a staff assessment that activities are in substantial compliance, and have been pressuring the Minister to cancel the site alteration permit on the basis of changes to construction from what was stated in the owner's plan.

- s.12,s.14,s.16

s.12,s.16

Background/Context:

The property owner is legally operating under a site alteration permit. The *Heritage Conservation Act* (HCA) is intended to achieve a balance between the protection of heritage sites and the rights of private landowners. s.12,s.16

s.12,s.16



s.12,s.14

s.12,s.16

s.12,s.17

Options:

Five possible options have been examined to resolve the First Nations concerns regarding Grace Islet:

Option 1 -

s.12,s.13

Result:

s.12

Option 2 -

s.12,s.13



s.12,s.13

Option 2 (a)

s.12,s.13

Pros/cons:

s.12,s.13,s.16

Option 3 -

s.12,s.13

Option 4 -

s.12,s.13



s.12,s.13,s.14,s.16

Option 5 -

s.12,s.13,s.16

Fiscal Impacts:

s.12,s.13



s.12,s.13,s.17

Policy:

s.12,s.14,s.16,s.17



s.12,s.14,s.16,s.17

Legislation:

s.12

Stakeholder and citizens:

This submission is coming to Cabinet in response to First Nations and local resident issues. This submission has been reviewed and approved by MARR. s.12,s.13

s.12,s.13

Contact: Gary Townsend, ADM
(250) 217-2320

Honourable Steve Thomson

September 24, 2014

Date Signed

Peter Walters, ADM
(250) 812-9077

Honourable John Rustad

September 24, 2014

Date signed

TREASURY BOARD STAFF BRIEFING NOTE

REQUEST NO.: FLNR 12/15

T.B. MEETING DATE: NOVEMBER 3, 2014

TITLE: GRACE ISLET PURCHASE MANDATE

ISSUE SUMMARY:

- The Ministry of Forests, Lands and Natural Resource Operations (FLNR) is requesting a financial mandate of s.12,s.17 to be funded under the Contingencies Vote to support the purchase and rehabilitation of Grace Islet by a third party in order to protect the integrity of the islet as a First Nations burial ground.
- s.12,s.17
- s.12

Previous reviews of the proposal

- s.12

Timelines

- A decision is required so that negotiations can proceed and construction on the islet halts. FLNR advises that the owner will not stop construction until he has certainty that the property will be purchased from him.

RECOMMENDATION:

- s.12,s.13,s.17
 -
-

CONTEXT:*Ministry proposal*

- The proposed purchase and settlement would address local community and First Nations objections to the construction of a private residence on the site of First Nations burial cairns on Grace Islet. Notwithstanding those concerns, construction is occurring in compliance with a site alteration permit under the *Heritage Conservation Act* and applicable local government building permits.
- Under this proposal, the Province is seeking a third party to take ownership of the property in order to avoid ongoing management costs and to ensure the Province is not viewed as the sole lead in managing the issue. FLNR staff advise that the Nature Conservancy of Canada has now indicated a willingness to take interim ownership of the land while eventual disposition is sorted (e.g. land trust or First Nations ownership).

- s.12,s.17

- s.12,s.17

-

DISCUSSION:

s.12,s.17

s.12,s.17

s.12,s.16

s.12,s.17

Implications for other decisions/initiatives

s.12,s.16,s.17

OPTIONS:

1. s.12,s.13,s.17

Pros:

s.12,s.13

Cons:

s.12,s.13,s.17

2. s.12,s.13,s.17

s.12,s.13,s.17

Pros:

s.12,s.13

Cons:

s.12,s.13

3. s.12,s.13

Pros:

s.12,s.13

Cons:

s.12,s.13,s.17

4. s.12,s.13

Pros:

s.12,s.13

Cons:

s.12,s.13,s.17

RECOMMENDATION AND RATIONALE:

s.12,s.13

TBS Contact: Holly Cairns

October 29, 2014

Draft sub. 1st received: Oct 07-14 **Final draft received:** Oct 24-14 **Signed sub. received:** Oct 26-14

TB briefing note provided to the Ministry:

Draft sent: Oct 28-14 **Final sent:** "No" or Date **Min. DM fact sign-off:** Oct 29-14



CLIFF: 339449
Date Received: Oct 27, 2014
Submission: FLNR / 12-15
Analyst: Holly Cairns

Treasury Board Submission – Request for Decision

Minister: Honourable Steve Thomson

Ministry: Forests, Lands and Natural Resource Operations

Date: 26/10/2014

Ministry Document #: FLNR 12/15

Title: Grace Islet, Saltspring Island Purchase

Issue:

Construction of a private residence on Grace Islet near Ganges Harbour, Saltspring Island has triggered civil disobedience from First Nations and members of the public due to its location on a First Nations burial ground.^{s.12}

s.12

Request:

A financial mandate of^{s.12,s.17} to be managed under the Contingencies Vote, to support the purchase and rehabilitation of Grace Islet by a third party in order to respect and maintain the integrity of the islet as a First Nations burial ground.

Implications and Considerations:

s.12,s.13

● s.12,s.14



s.12,s.14

s.12

- The ministry is seeking a third party to take on ownership of the property. Ultimate disposition of the property is still to be determined. ^{s.12}

s.12,s.13

- The land owner's agent was contacted on October 23, 2014 and notified that the province will be looking to negotiate purchase of the islet. It was made clear during this conversation that any construction costs incurred after October 23 would not be considered during negotiations.

Background / Context:

The property owner is legally operating under a site alteration permit, issued under the *Heritage Conservation Act* (HCA), as well as under other required municipal permits (including building, water, and sewer). However, First Nations consider the islet a sacred site, and have been protesting the construction since its inception. They have indicated they will expand civil disobedience if construction does not cease.

s.12,s.16



s.12,s.16

s.12,s.17

s.12,s.17



s.12,s.17

Options:

Option 1:

s.12,s.13,s.17

Pros:

s.12,s.13

Cons:

s.12,s.13



s.12,s.13,s.17

Option 2:

s.12,s.13



s.12,s.13,s.17

Pros:

s.12,s.13

Cons:

s.12,s.13

Option 3:

s.12,s.13,s.16



s.12,s.13

Fiscal Impacts:

s.12,s.17

Cost Summary	Option 1 Costs	Option 2 Costs	Option 3 Costs
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s.12,s.13,s.17



s.12,s.13,s.17

Neither the ministry or the Natural Resource Sector has the ability to manage, within base budgets, the funding required for purchase of the islet and is seeking access to contingencies. s.12

s.12,s.17



s.12,s.17

Policy:

s.12,s.14

Legislation:

s.12

Stakeholder and Citizens:

This submission is coming to Treasury Board at the direction of Cabinet. This submission has been reviewed by MARR. s.12

s.12

Attachment 1: First Nations with Traditional Territory Claims to Grace Islet

Attachment 2: Acquisition/Conservation Strategy Timeline

Attachment 3: Provincial Purchases of Lands Containing Archaeological Sites



Contact: Gary Townsend, ADM
250-217-2320

Honourable Steve Thomson

October 26, 2014

Date Signed



Attachment 1: First Nations with Traditional Territory Claims to Grace Islet

First Nation	Chief
Penelakut Tribe	Chief Earl Jack
Cowichan Tribes	Chief William Seymour
Lyakson First Nation	Chief Richard Thomas
Tseycum First Nation	Chief Vern Jacks
Tsartlip First Nation	Chief Don Tom
Stz'uminus First Nation	Chief John Elliott
Lake Cowichan First Nation	Chief Cyril Livingstone
Halat First Nation	Chief James Thomas
Tsawout First Nation	Chief Harvey Underwood
Pauquachin Nation	Chief Bruce Underwood
Tsawwassen First Nation	Chief Bryce Williams
Semiahmoo First Nation	Chief Willard Cook



Appendix 2: Acquisition/Conservation Strategy Timeline

Planning and Strategy Development

s.12

Acquisition

s.12



s.12

Final Disposition

s.12



Attachment 3: Provincial Purchases of Lands Containing Archaeological Sites

Site	Name	Location	Size	Cost	Year Purchased
Midden with burials	Pender Canal	Pender Island	1 ha.	\$57,000	1976
Pit House	Monte Creek	Near Kamloops	4 ha.	\$80,000	1978
Midden with burials	Beach Grove	Tsawwassen	0.16 ha.	\$110,000	1980
Pit houses with burials	Vallican	South Slokan	8 ha.	\$81,000	1983 & 1985
Ancient house with spiritual rock	Hatzic Rock	Mission	7.25 ha.	\$1.2 million	1993
Midden with burials	Little Beach	Ucluelet	0.78 ha	\$400,000	1994
Midden with burials	Craig Bay	Parksville	5.7 ha.	\$7.8 million	1995
Ancient village site	McCallum	Near Agassiz	5.4 ha.	\$425,000	2001
Midden with Burial Area	Departure Bay	Nanaimo	City lot	\$2.307 million	2008
Midden with Burials	Marpole	Vancouver	Six city lots	\$5.5 million	2012

Total: Ten cases with a combined cost of \$17,960,000.

Influencing Factors:

s.12

Page 27 to/à Page 28

Withheld pursuant to/removed as

s.12;s.13



TB Meeting Date: November 3, 2014
339449

Confidential

Honourable Steve Thomson
Minister of Forests, Lands and Natural Resource Operations
Room 248 Parliament Buildings
Victoria BC V8V 1X4

Dear Colleague: 

Re: Grace Islet Purchase Mandate

I am writing to inform you that Treasury Board has approved a time-limited financial mandate of s.12,s.17 to February 15, 2015, to be funded from the Contingencies Vote, to support the purchase and rehabilitation of Grace Islet by a third party. Implementation costs are to be managed within the ministry's base budget. The ministry is directed to undertake a market valuation of the property and an assessment and determination of reasonable sunk costs before submitting a firm offer to the property owner.

Your ministry is directed to report on third party fundraising efforts and funding contributions, consultations with First Nations and other stakeholders on future land management, and the basis for the final cost estimates, including components of purchase offer and remediation costs, when seeking access to contingencies.

Sincerely,



Michael de Jong, Q.C.
Chair

cc: Tim Sheldan
Deputy Minister
Ministry of Forests, Lands and Natural Resource Operations

Trish Dohan
Assistant Deputy Minister and Executive Financial Officer
Ministry of Forests, Lands and Natural Resource Operations

Ministry of
Finance

Treasury Board

Mailing Address
PO Box 9469 Stn Prov Govt
Victoria BC V8V 9V8

Location Address:
1st Floor - 617 Government St
Victoria BC

Graham, Mark FIN:EX

From: Goad, Jennifer FLNR:EX
Sent: Friday, January 30, 2015 1:08 PM
To: Graham, Mark FIN:EX; Myers, Mary E CSNR:EX
Subject: RE: Grace
Attachments: TB Sub _FLNR Grace Purchase Jan 30 Version DM Approved.docx

Hi Mark – working on the sunk costs now. Attached is the DM approved sub that is hoping going to be sent to you signed by the Minister today.

In terms of your question around legal review –

s.14

Let me know if you need any further background..

Jennifer Goad | Strategic Initiatives Manager | Tenures, Competitiveness and Innovation Division | Ministry of Forests, Lands and Natural Resource Operations | tel: 250.356.5411 | cell **s.17** | Jennifer.Goad@gov.bc.ca

From: Graham, Mark FIN:EX
Sent: Friday, January 30, 2015 11:43 AM
To: Myers, Mary E CSNR:EX
Cc: Goad, Jennifer FLNR:EX
Subject: RE: Grace

Hi Mary

I just chatted with Jennifer and got confirmation on “other costs” point – you can ignore this e-mail

Cheers

Mark

From: Graham, Mark FIN:EX
Sent: Friday, January 30, 2015 11:03 AM
To: Myers, Mary E CSNR:EX
Subject: RE: Grace

Thanks Mary – s.13,s.17
s.13,s.17

Cheers

Mark

From: Myers, Mary E CSNR:EX
Sent: Friday, January 30, 2015 10:52 AM
To: Graham, Mark FIN:EX
Subject: RE: Grace

We are hoping to get DM and minister sign off today.

From: Graham, Mark FIN:EX
Sent: Friday, January 30, 2015 10:42 AM
To: Myers, Mary E CSNR:EX
Subject: RE: Grace

Excellent Mary thanks –

The TB Sub with this new table and corrected values should now be ready for signoff by FLNR – please send to me as soon as possible.

As timing is tight – I will need sunk costs and legal confirmation by Monday.

Cheers

Mark

From: Myers, Mary E CSNR:EX
Sent: Friday, January 30, 2015 10:36 AM
To: Graham, Mark FIN:EX
Subject: RE: Grace

Mark, here is the draft table. We have run it by our deputy and he is good with it.

Funding Category	Cost
Acquisition and Settlement Costs	
<ul style="list-style-type: none">Purchase and Sale Agreement for land (paid to NCC)	\$0.85M
s.12,s.17	s.12,s.17
s.12,s.17	
s.12,s.17	\$4.6M
	s.12,s.17

From: Graham, Mark FIN:EX
Sent: Friday, January 30, 2015 10:30 AM
To: Myers, Mary E CSNR:EX
Subject: Grace

Hi Mary,

Left you a phone message. We really do need to have a signed BN by today/early Monday, to get it ready for decision next week. As discussed, all I need is a revised costing request showing how much is requested for contingencies and how much FLNR will manage as implementation costs s.13,s.17
s.13,s.17

s.13,s.14,s.17

Thanks

Mark

Graham, Mark FIN:EX

From: Myers, Mary E CSNR:EX
Sent: Friday, January 23, 2015 4:56 PM
To: Graham, Mark FIN:EX
Cc: Jacobs, Murray CSNR:EX
Subject: FW: TB Sub
Attachments: TB Sub _FLNR Grace Purchase Jan 2015 Jan 23 version.docx

Here is a revised sub and answers to your questions. Please let me know if the sub looks okay for me to start to move it through the signature phase. Thanks. Have a good weekend.

From: Graham, Mark FIN:EX
Sent: Wednesday, January 21, 2015 11:38 AM
To: Myers, Mary E CSNR:EX
Cc: Ty, Marie FIN:EX
Subject: Introduction and Grace Islet TBS

Hi Mary,

Just to follow up on my voicemail yesterday and a quick note to introduce myself. Hi! Looking forward to working with you.

I'm currently assigned to the FLNR portfolio and will be working through the most recent Grace Islet submission. Marie and I spoke about this and we need a few clarifications to complete the analysis:

1) Timelines: What is FLNR's timing around having the agreement and release of claims completed?

All the costs due to NCC (summarized below and includes the Purchase and Sale Agreement) are due Jan 30.

Acquisition and Settlement Costs	
• Purchase and Sale Agreement for land (paid to NCC)	\$0.85M

s.12,s.17

2

- These fees are all due to NCC Jan 30.

Release of Claims:

Final payment of Release of Claims to property owner to occur before Feb 12.

All other costs paid on an as invoiced basis (remediation, FN consultation management, closure and site management costs, etc).

Here's a summary:

Funding Categories		
Item	Cost	Payment Dates/Recipients
Acquisition and Settlement Costs		
Purchase Price for land at appraised value	\$0.85M	Payment due to NCC - Jan 30
Release of Claims	\$4.6M	Payment due to Property Owner – Feb 13

s.12,s.17

Partnership Agreement Costs

s.12,s.17

Site Stabilization and Restoration Costs*
s.12,s.17
Consultation, First Nations Facilitation*
s.12,s.17
Other Associated Costs*
s.12,s.17

*Estimated

3) **Appraisal:** Could you provide the most recent appraisal amount from the Jan 15th NCC appraisal please – if available?

s.12,s.14,s.17

s.12,s.17

5) **Remediation work:** If the property is owned by NCC, under what authority will FLNR do remediation?

The Province will maintain the ownership of the improvements that are on the property so that any salvaged materials shall be to the Province's account.

The Province will also be responsible for obtaining the permits necessary (and the cost of the permits if those costs cannot be waived – which the ministry is working with CRD to do). The required permits include a demolition permit from the Capital Regional District, and all necessary permits and authorizations under the *Heritage Conservation Act* (no cost as issued by FLNR). The Province must bear the costs of retaining an archaeological consultant, in order to fulfil the requirements of any permit or approval under the *Heritage Conservation Act*.

The province will also bear the costs of the disposal of all demolition waste and materials and negotiating, entering into on its own behalf, and managing and overseeing all contracts necessary for the completion of the Remediation Work. The province is seeking opportunities to partner with CRD who have the expertise in building construction and deconstruction.

s.12,s.14

Thanks and please feel free to call me on my cell or landline

Regards

Mark

Graham, Mark FIN:EX

From: Goad, Jennifer FLNR:EX
Sent: Monday, February 16, 2015 11:21 AM
To: Myers, Mary E CSNR:EX; Graham, Mark FIN:EX
Subject: RE: a - FLNR Grace Islet - TBS BN.docx

Hi Mark –

Just as an update - since the submission was finalized - **s.12,s.17**
s.12,s.17 **s.13,s.16**
s.13,s.16

You asked specifically about the details of the Release of Claims. Please let me know if you need more information.

The Province, in conjunction with the Nature Conservancy of Canada (NCC), has negotiated a settlement with the property owner of Grace Islet. **s.13,s.14**
s.13,s.14

Let me know if you need more details.

Thanks Mark,
Jenn

From: Myers, Mary E CSNR:EX
Sent: Monday, February 16, 2015 10:10 AM
To: Graham, Mark FIN:EX
Cc: Goad, Jennifer FLNR:EX
Subject: a - FLNR Grace Islet - TBS BN.docx

Mark, here are our proposed changes.

TREASURY BOARD STAFF BRIEFING NOTE

REQUEST NO.: FLNR 19-15

T.B. MEETING DATE: FEBRUARY 24, 2015

TITLE: SETTLEMENT AGREEMENT AND PURCHASE OF GRACE ISLET

ISSUE SUMMARY:

- The Ministry of Forests, Lands and Natural Resource Operations (FLNR) have settled the purchase of Grace Islet within the financial mandate approved by Treasury Board and is seeking access to contingencies funding for s.12,s.17 in 2014/15.
- The total settlement s.12,s.17 includes purchase of the land through the Nature Conservancy of Canada (NCC) for \$0.85M, a Release of Assets Agreement with the owner for \$4.60M for compensation towards sunk costs s.12,s.17
- s.12,s.17
- FLNR will cover implementation costs estimated at s.12,s.17 from their 2014/15 base budget, as directed by Treasury Board.

Previous reviews of the proposal

- On October 1, 2014, Cabinet directed that FLNR explore options to purchase the property with third parties on the recommendation of the Cabinet Working Group on First Nations.
- On November 3, 2014, Treasury Board approved a financial mandate for FLNR to access s.12,s.17 of contingency funds in 2014/15 to purchase and remediate Grace Islet through a third party, while managing implementation costs from their base budget. Treasury Board directed FLNR to report back on third party fundraising efforts and funding contributions, consultations with First Nations and other stakeholders on future land management, and the basis for the final cost estimates, including components of the purchase offer and remediation costs, when seeking access to contingencies.

Timelines

- The costs and fees associated with the NCC (purchase and endowment) were paid on January 30, 2015, and the Release of Assets to the property owner was paid on February 13, 2015.

RECOMMENDATION:

Approve access to contingencies funding for s.12,s.17 in 2014/15 for the purchase and remediation of Grace Islet.

CONTEXT:

Ministry proposal

- FLNR estimates the full cost for the purchase, settlement and rehabilitation of Grace Islet to be approximately s.12,s.17. They are requesting s.12,s.17 in contingencies funding in 2014/15 to complete the settlement and to rehabilitate Grace Islet. FLNR will manage implementation costs estimated s.12,s.17 within their base budget.
- The arrangement provides for the NCC to purchase the land directly from the owner and hold title to Grace Islet. Due to the NCC's mandate, only the land value can be included in the purchase agreement between NCC and the owner. The NCC also requires payment of several key conservation funds with any land acquisition. The Province will provide the NCC with those funds which include s.12,s.17.
- The owner has also settled with the Province a Release of Assets for compensation of sunk costs¹ and loss of enjoyment of the property. The Province will work with the NCC, local stakeholders and First Nations to remediate and manage the property into the future.
- The settlement consists of three legal agreements: a Sales and Purchase agreement between the NCC and the property owner for \$0.85M², a Release of Assets Agreement between the owner and the Province for \$4.60M and a Contribution and Indemnification Agreement between the Province and NCC. See the table below for a cost and settlement breakdown.
- The Province will remediate the islet to its native Garry Oak/Coastal Douglas fir ecosystem for an estimated s.12,s.17. Remediation will require further permitting and FLNR will obtain necessary permits from the Capital Regional District and those required under the *Heritage Conservation Act* in partnership with the NCC.

¹ The house is approximately 30% complete and the best estimate is that sunk costs are s.12,s.17. These costs include construction costs, property taxes, engineering and architect services, land improvements such as dock, water, electricity and sewage, and other contract and transportation costs.

² The most recent appraisal by the NCC on January 15, 2015 puts the land value at \$0.850M.

Funding Estimates Category	Costs requested from Contingencies	Implementation Costs Managed by FLNR
Acquisition and Settlement Costs (Flow of Costs) <ul style="list-style-type: none"> • Purchase and Sale Agreement for land (Province to NCC to Owner) • s.12,s.17 • • • Release of Claims (Province to Owner) • s.12,s.17 	<ul style="list-style-type: none"> • \$0.850M • s.12,s.17 • • • \$4.600M 	

s.12,s.17

DISCUSSION:

- The settlement reached by the Province with the NCC and the property owner is consistent with the direction provided by Treasury Board in November 2014 to 1) settle through a third party, 2) manage implementation costs, 3) undertake a market valuation of the property, and 4) assess reasonable sunk costs.
- Settlement costs were partly based on values estimated during the negotiation process. A raw land value was assessed by the NCC on January 15, 2015, at \$0.85M. The owner's sunk costs were estimated by the owner's agent and a certified appraiser at s.12,s.17. The balance of the settlement is s.12,s.17. However, it is important to recognize that this negotiation was a settlement and not a typical real estate transaction. The property no longer has a true real estate value, due to it being considered a "sterilized" asset with inherent First Nations values.
- As directed by the Treasury Board, FLNR is reporting back on the following:
 - *Fundraising efforts and funding contributions:* s.12,s.16,s.17

- *Consultations with First Nations and stakeholders on future management of the land:* Consultations with First Nations and local stakeholders were ongoing throughout the process s.12,s.16,s.17
s.12,s.16,s.17

First Nations are preparing to host a reconciliation opportunity in March with all involved parties.

- *Remediation costs and management plan:* FLNR estimates remediation costs to be s.12,s.17 Remediation costs are calculated based in the property's isolated location, the level of infrastructure put in place and the care and archeological work needed to maintain the integrity of the burial grounds. Under the agreement with the NCC, the NCC will develop an ecological baseline inventory and future land management plan with the Province, First Nations and relevant stakeholders.

- s.12,s.14

OPTIONS:

1. Approve access to contingencies funding for s.12,s.17 in 2014/15 for the purchase and remediation of Grace Islet.

Pros:

- Consistent with Cabinet and Treasury Board direction.

Cons:

- Contingencies funding of s.12,s.17 is not available for other priorities.

2. Do not approve.

Pros:

- No fiscal plan impact.

Cons:

- FLNR does not have the ability to manage the costs within its 2014/15 base budget allocation.

RECOMMENDATION AND RATIONALE:

Option #1: The request is within the financial mandate approved by Treasury Board and the report back requirements have been met.

TBS Contact: Mark Graham

Date: February 10, 2015

Draft sub. 1 st received: Jan 23/15	Final draft received: Jan 29/15	Signed sub. received: Jan 30, 2015
<u>TB briefing note provided to the Ministry:</u>		
Draft sent: Feb 12/15	Final sent: "No" or Date	Min. DM fact sign-off: Feb 17/15



CLIFF: 341582
Date Received: Feb 3, 2015
Submission: FLNR / 19-15
Analyst: Mark Graham

Treasury Board Submission

Request for Decision

Minister: Honourable Steve Thomson
Ministry: Forests, Lands and Natural Resource Operations

Date: January 30, 2015 Ministry Document # FLNR 19-15

Title: Settlement Agreement and Purchase of Private Property at Grace Islet

Issue:

The Province, in conjunction with the Nature Conservancy of Canada (NCC), has negotiated a settlement with the property owner of Grace Islet, after being directed by Cabinet and being provided the Treasury Board mandate to do so. Construction of this private residence on Grace Islet near Ganges Harbour, Salt Spring Island had triggered civil disobedience from First Nations and members of the public due to its location on a First Nations burial ground.

Request:

A report back to Treasury Board is required in order to access contingency funding to cover the costs associated with final agreement on settlement to the property owner. An estimated ^{s.12,s.17} is required for the settlement and remediation of the islet. FLNR is requesting ^{s.12,s.17} in access to contingencies for the current fiscal year (FY 2014/2015) to purchase the islet, enable a release of claims and remediate the property. The Ministry will cover implementation costs of ^{s.12,s.17} (grant agreement, consultation and First Nations engagement) out their 2014/15 base budget.

Implications and Considerations:

- ^{s.12}

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s.12,s.14

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- The Ministry is working in partnership with consultant support and third parties, including the Nature Conservancy of Canada (NCC), to reach an outcome that minimizes financial costs and balances the interests of all involved parties.
- The Ministry and its partners have engaged with First Nations throughout the process to keep them informed and address concerns.
- s.12,s.16
-
-
- Negotiations with the property owner for purchase resulted in cessation of construction on December 18, 2014 and an agreement with the land owner was reached on January 4, 2015 for a settlement cost total of s.12,s.17
- The NCC is purchasing the land and will hold title. Legal agreements were signed on January 14, 2015 and amended on January 23, 2015 once the final appraisal was completed. Final disposition of the site will ultimately be determined through management planning led by the NCC in collaboration with the Province and involved First Nations.



Background / Context:

The property owner was legally operating under a site alteration permit, issued under the *Heritage Conservation Act* (HCA), as well as under other required municipal permits (including building, water, and sewer). However, First Nations consider the islet a sacred site, and have been protesting the construction since it commenced.

As civil disobedience had increased in the late summer and fall 2014, Government provided the ministry direction to seek opportunities to resolve the conflict with third parties. On November 3, 2014, Treasury Board provided the ministry a time limited financial mandate of s.12,s.17 available to February 15, 2015 to be funded from the Contingencies Vote, to support the purchase and rehabilitation of Grace Islet by a third party. See attached Treasury Board approval letter for terms of that approval.

The Ministry partnered with the NCC to facilitate and negotiate a settlement agreement with the property owner. s.12

s.12

First Nations consultation has been ongoing throughout negotiations. s.12,s.14,s.16

s.12,s.14,s.16



s.12,s.14,s.16

There is a need to engage in cultural cleansing ceremony with Chiefs as part of remediation and a longhouse cultural ceremony is being planned for senior elected officials as a signal of respect for the resolution of this matter. In addition, First Nations wish to be involved in the deconstruction of the home. These steps will be important in terms of reconciliation with First Nations within Southern Vancouver Island.

The owner's initial settlement offer to the Province of s.13,s.17 included sunk costs incurred over the 23 years of owning the property. Initially the property owner was not open to negotiation, progress came in late December when the Province offered s.12,s.17 as a settlement and the property owner then agreed to meet and engage with the negotiations team. s.12,s.17

s.12,s.17

s.12,s.17

Final agreement among parties for settlement occurred on January 4 for a total cost of s.12,s.17 s.12,s.17



s.12,s.17

\$0.85M for land value and

\$4.6M for compensation after the final formal appraisal occurred on January 15, 2015.

s.12,s.16,s.17

Options:

The Province has been managing the conflict associated with the property and has assembled a partnership involving third party organizations to facilitate purchase of the property.

Once legal agreements (of which there are three - Sales and Purchase Agreement between the property owner and the NCC, Release of Assets Agreement between the property owner and the Province, and Contribution and Indemnification Agreement between the Province and NCC) are signed and the real estate closing period has passed, title would transfer to the NCC, remediation will occur on the property to restore it to a Garry Oak/Coastal Douglas fir ecosystem and the NCC will be working with First Nations, the surrounding community and the Province to develop a future management plan for the site. The site is also ecologically valuable for its Garry oak plant communities, intertidal habitat and as a small component of the rare Coastal Douglas-fir ecosystem. Once remediated, conservation status designated by NCC will protect the



ecological and heritage values of the land. Final closing for the agreement and title transfer of the property is expected as early as February 5, 2015.

Fiscal Impacts:

- s.12,s.17

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Funding Category	Cost
Acquisition and Settlement Costs	
<ul style="list-style-type: none">• Purchase and Sale Agreement for land (paid to NCC)	\$0.85M
<ul style="list-style-type: none">• s.12,s.17	s.12,s.17
<ul style="list-style-type: none">•	

NCC)*	s.12,s.17
• s.12,s.17	
• Release of Claims (paid to property owner)	\$4.6M
• s.12,s.17	

s.12,s.17

Partnership Agreement Costs (paid to NCC)	s.12,s.17
• s.12,s.17	

s.12,s.17

Contingency Requirements	s.12,s.17
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*Requirements for payment under the Purchase and Sales Agreement

**Denotes estimated costs as final costs have not been confirmed.

*** The ministry will explore cost recovery options for re-sale of assets and recovery of value.

(**) Note the added cost of First Nations involvement in deconstruction and spiritual monitoring through remediation.



s.12,s.16

Legislation:

s.12,s.13

Stakeholder and Citizens:

s.12,s.16



Appendix: November 3, 2014 Treasury Board Decision Letter

Contacts: Gary Townsend
Assistant Deputy Minister
250-356-1874

A handwritten signature in black ink that reads "Steve Thomson".

Honourable Steve Thomson

January 30, 2015

Date Signed