## MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS INFORMATION NOTE

Date: December 6, 2012 CLIFF/tracking #: 193322

PREPARED FOR: Deputy Minister Doug Konkin

**ISSUE:** Conflict involving a residential development within a First Nation burial area on Grace Islet, Ganges Harbour, Gulf Islands

#### **BACKGROUND:**

In October 2011, the Archaeology Branch (Branch) issued a site alteration permit allowing the construction of a residence on Grace Islet. A previous archaeological impact assessment had shown that the island contained s.18

In June 2012, unauthorised activity on the islet was reported to the Branch. Investigation by a Branch staff member and the RCMP in early July showed that preconstruction activities had moved much of the loose rock and soil on the island into a pile. This work did not follow the conditions of the permit that called for rock features to be buffered from construction activity, for construction crews to be briefed on avoiding the archaeological features, and for all work to be monitored by an archaeologist approved by the Province. Construction site preparation work has been halted since the field visit. The Branch archaeologist, who attended at the site, was unable to determine if known or unidentified archaeological features had been damaged.

The Branch has received a request to amend the permit to allow the inspection of the pile of soil and rocks to determine if it also contains human remains, and then allow the construction of the residence. The Branch has informed the proponent's agent that the Branch will consider amending the permit to inspect the disturbed material but will also require that no construction related activity take place without a subsequent permit amendment after the results of inspection are known.

### **DISCUSSION:**

s.13,s.14,s.16

**Contact:** 

Gary Townsend, ADM Integrated Resource Operations 250 356-1874 Alternate Contact:
Justine Batten, Director
Archaeology
250 953-3355

**Prepared by:**Doug Glaum, Manager
Archaeology
(250 953-3357

Reviewed by	Initials	Date
DM	DK	Dec19/12
DMO	JG	Dec11/12
ADM	GT	Dec 6/12
Ex Dir	FW	Dec 6/12
Dir	JB	Dec 6/12

# MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS INFORMATION NOTE

Date: July 11, 2013

CLIFF/tracking #: 198918

PREPARED FOR: Minister Thomson

**ISSUE:** Application to Develop a Protected Archaeological Site Containing Burials Within Grace Islet – briefing Minister Thomson on July 22, 2013

### BACKGROUND:

In October 2011, the Archaeology Branch (Branch) issued a site alteration permit allowing the construction of a residence on Grace Islet. A previous archaeological impact assessment had shown that the island contained \$.18 s.18

Unauthorised activity on the islet in June 2012 was investigated by the Branch and RCMP. A subsequent permitted archaeological study showed that no substantial damage to the cairns or disturbance of human remains resulted from the unauthorised activity.

The Branch is currently considering proposed amendments to the site alteration permit that, if granted, would allow construction to proceed. However, there is substantial First Nation resistance to any development on Grace Islet that arose after the original permit was issued, as the area is considered a cemetery.

#### DISCUSSION:

s.13,s.14,s.16

Contact:

Gary Townsend, ADM Integrated Resource Operations 356-1874

**Alternate Contact:** Justine Batten, Director

Archaeology Branch 250 953-3355

Prepared by: Doug Glaum, Manager Archaeology Branch 250 953-3357

Reviewed by	Initials	Date
DM		
DMO		
ADM		
Ex Dir		
Dir./Mgr.	JB	July 3, 2013

Page 06 to/à Page 07

Withheld pursuant to/removed as

s.16;s.18;s.13

# MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS INFORMATION NOTE

Date: September 13, 2013

Date of previous note: July 11, 2013

[xref CLIFF: 198918] File: 280-20/BR1-2013 CLIFF/tracking #: 200763

PREPARED FOR: Minister Thomson

**ISSUE:** Application to develop on a protected archaeological site containing burials within Grace Islet.

### BACKGROUND:

In October 2011, the Archaeology Branch (Branch) issued a site alteration permit allowing the construction of a residence on Grace Islet. A previous archaeological impact assessment had shown that the island contained s.18 s.18

Unauthorised activity on the islet in June 2012 was investigated by the Branch and RCMP. A subsequent permitted archaeological study showed that no substantial damage to the cairns or disturbance of human remains resulted from the unauthorised activity.

The Branch is currently considering proposed amendments to the site alteration permit that, if granted, would allow construction to proceed. However, there is substantial First Nation resistance to any development on Grace Islet that arose after the original permit was issued, as the area is considered a cemetery.

### DISCUSSION:

s.13.s.16

CONCLUSION:

s.13,s.14,s.16

## Contact:

Gary Townsend, ADM Integrated Resource Operations 250 356-1874

### Alternate Contact:

Justine Batten, Director Archaeology Branch 250 953-3355

## Prepared by:

Doug Glaum, Manager Archaeology Branch 250 953-3357

Reviewed by	Initials	Date
DM		
DMO		
ADM	GT	Sept 13/13
ED	FW	Sept 13/13
A/Dir	DG	Sept 12/13

# MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS INFORMATION NOTE

Date: August 11, 2014

Date of previous note: July 11, 2013

File: 280-20/BR1-2014 CLIFF/tracking #: 198918

PREPARED FOR: Minister Thomson

**ISSUE:** Private property development on Grace Islet which is a protected archaeological site containing burials.

### BACKGROUND:

In October 2011, the Archaeology Branch (Branch) issued a site alteration permit allowing the construction of a residence on Grace Islet. A 2006 archaeological impact assessment had shown that the island contained s.18 s.18

Unauthorised activity on the islet in June 2012 was investigated by the Branch and RCMP. A subsequent permitted archaeological study showed that no damage to the cairns or disturbance of human remains resulted from the unauthorised activity.

In July 2013 the site alteration permit was amended such that the development of the private dwelling could continue subject to ongoing archaeological monitoring of all land altering activities, placement of barriers around the cairns and, ultimately, the registration of a restrictive covenant against title for long term protection.

However, there is substantial First Nation and Salt Spring residents' resistance to any development on Grace Islet as the area is considered a cemetery.

### DISCUSSION:

s.13,s.16

Contact:

Gary Townsend, ADM Integrated Resource Operations 250 356-1874 Alternate Contact:

Kevin Edquist, Exec Dir Integrated Resource Ops 250 387-3745 Prepared by:

Justine Batten, Director Archaeology Branch 250 953-3355

Reviewed by	Initials	Date
DM		
DMO		
ADM	GT	August 11/14

# MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS DECISION NOTE

Updated: September 5, 2014 Previous Note: August 25, 2014

File: 2011-0343

CLIFF/tracking #: 208844

**PREPARED FOR:** Honourable Steve Thomson, Minister of Forests, Lands and Natural Resource Operations

**ISSUE:** Grace Islet – Development of Private Property Conflicts with First Nations' Sacred Site

### BACKGROUND:

The islet was Crown granted in 1913 at a time when consultation with First Nations was not part of land transactions in the Province. The current owner, Barry Slawsky, bought the islet in December 1990 for \$270,000 according to the current land title. At that time the Archaeology Branch inventory recorded only midden not burials on the islet. The property remained untouched from that time until 2006.

The first remains found on the islet were partial remains found on the beach by kayakers in early 2006. Later in 2006, a local archaeologist came across a disturbed cairn containing multiple bones. As the property owner was planning to build his house on the islet the finding of the remains initiated the permitting process of the *Heritage Conservation Act* (Act).

The following permits were issued in accordance with the Act:

- 2007: Archaeological Impact Assessment that found 15 cairns on the islet.
- 2011: Site Alteration Permit issued to begin process of building the house
- 2012: Site Alteration Permit amended to require the owner to screen all disturbed soils that were disturbed contrary to the conditions of the permit. No damage was done to the cairns and, other than two projectiles, no artifacts were found.
- April 2013: Permit amendment issued just extending expiry date.
- July 2013: Permit amendment issued increasing the protective measures for the burial cairns including archaeological monitoring of all land altering activities, placement of barriers around the cairns during construction, none of the house features were to touch or damage the cairns and a restrictive covenant depicting the surveyed location of the cairns would be registered against title.
- September 2013: Permit amendment issued extending expiry date to November 2016.

In June 2012, there was unauthorised construction activity on the islet that was investigated by the Archaeology Branch and RCMP. A subsequent permitted archaeological study showed that no damage to the cairns or disturbance of human remains resulted from the unauthorised activity.

In July 2013, the site alteration permit was amended such that the development of the private dwelling could continue subject to ongoing archaeological monitoring of all land

altering activities, placement of barriers around the cairns, requirement that none of the house features were to touch or damage the cairns and, ultimately, the registration of a restrictive covenant against title for long-term protection.

However, there is substantial resistance, particularly among First Nations, to any development on Grace Islet as the area is considered a cemetery.

## DISCUSSION:

s.13

### **OPTIONS:**

Option 1: Taking next steps toward purchasing the islet and retaining as a protected heritage property.

s.13

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s.13

### **RECOMMENDATION:**

Option 1: Taking next steps toward purchasing the islet and retaining as a protected heritage property.

DECISION & SIGNATURE

Stave Thomson

Steve Thomson Minister

Contact: Craig Sutherland, ADM

Regional Operations, Coast 250 387-9773

**Alternate Contact:** 

Kevin Edquist, A/ADM Integrated Resource Operations

250 387-3745

Prepared by:

Justine Batten, Director

Archaeology 250 953-3355

Reviewed by	Initials	Date
A/DM	TJ	September 5/14
DMO		
ADM COAST	CS	September 5/14
A/ADM, IROD	KE	September 5/14

Page 18 to/à Page 19

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s.16;s.18

PC via fax to:			
s.22	s.22		
s.22 (by email only)	_		
Semiahmoo First Nation, Attn: Don Welsh	(604) 536-6116	161	
Tsawwassen First Nation	(604) 943-9226	210	
Stz'uminus First Nation, Attn: Referrals Coordinator	(250) 245-3012	Gp 1	
Lake Cowichan First Nation,	(250) 749-4286	Gp 1	
Attn: Alice Baal, Band Administrator			
Lyackson First Nation, Chief and Council, Attn: Referrals	(250) 246-5049	Gp 1	
Hul'qumi'num Treaty Group,	(250) 245-4668	Gp 1	
Attn: M.J. Churchill, GIS Specialist			
Pauquachin First Nation	9 (250) 656-6134	Gp 7	
Tsawout First Nation,	9 (250) 652-9114	Gp 7	
Attn: Eric Pelkey & Gwen Underwood			
Tseycum Indian Band	9 (250) 656-0868	Gp 7	

# MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS INFORMATION NOTE

Date: August 25, 2014 File: 2011 -0343

CLIFF/tracking #: 208844

**PREPARED FOR:** Minister Steve Thomson, Ministry of Forests, Lands and Natural Resource Operations

ISSUE: Status of First Nations' position as to the resolution of the Grace Islet situation

### **BACKGROUND:**

On August 22, 2014, Craig Sutherland, as acting Deputy Minister and Justine Batten, Director of Archaeology branch, met with five chiefs of the First Nations who claim an interest in the archaeological site of Grace Islet. Thirteen First Nations chiefs were invited to the meeting and the five who attended were:

Chief Vern Jacks, Tseycum First Nation; Chief Don Tom, Tsartlip First Nation; Chief William Seymour, Cowichan Tribes; Chief Earl Jack, Penelakut Tribe; and Chief Richard Thomas, Lyackson First Nation

A formal strength of claim is being done with respect to this matter but at this point is largely irrelevant in that all the bands are unanimous in their concerns and proposed resolution.

### **DISCUSSION:**

At this meeting the Chiefs were presented with two options to deal with the issues relating to Grace Islet and the possible desecration and alteration of the burial cairns: s.13,s.16

**Contact:** 

Gary Townsend, ADM IROD

250 953-3473

**Alternate Contact:** 

Kevin Edquist, Exec Dir **IROD** 

250 387-3745

**Prepared by:**Justine Batten, Director Archaeology Branch

250 953-3355

Reviewed by	Initials	Date
DM	CS	Aug 26/14
DMO	CP	Aug 26/14
A/ADM	KE	August 25, 2014

Page 23 to/à Page 24

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s.12;s.13;s.17

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s.12;s.14;s.13

Page 28 to/à Page 29

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s.12;s.13;s.17

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s.12;s.13;s.17

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Page 34 to/à Page 37

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s.12;s.13;s.17

Page 38 to/à Page 42

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s.12;s.13;s.17

Page 51 to/à Page 52

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s.12;s.13

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s.12;s.14;s.13

Page 54 to/à Page 55

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s.12;s.13

Page 56 to/à Page 60

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s.12;s.13;s.17

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s.12;s.14;s.13;s.17

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s.12;s.13;s.17

Page 64 to/à Page 71

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s.12;s.13;s.17

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s.12;s.13

#### 2015/16 Estimates Debate

Ministry of Forests, Lands and Natural Resource Operations

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#### Issue: Conservation of Grace Islet

## Key Facts Regarding Issue:

- Construction of a 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.
- The owner had owned the site since 1991 and initiated construction in accordance to local zoning and bylaws and in accordance with the *Heritage Conservation Act*, which requires an archaeological impact assessment and a site alteration permit under the Act.
- The Heritage Conservation Act is designed to balance the Province's obligation to protect archaeological sites, while respecting the rights of private property owners.
- s.16,s.18
  - Garry oak plant communities, intertidal habitat and as a small component of the rare Coastal Douglas-fir ecosystem. Totally only 256,800 hectares, the majority of this ecosystem, is on private land.
- Due to those values, the Province is partnering with local First Nations and the Nature Conservancy of Canada (NCC) on long-term conservation for Grace Islet.
- Negotiations for property purchase with the Nature Conservancy of Canada, an
  organization dedicated to acquiring lands with strong ecological values, occurred
  over the fall and winter and building construction on the islet ceased on Dec. 18,
  2014. The home was approximately 30% complete when construction ceased.
- Significant public interest and acts of civil disobedience in the summer and early fall 2014 did make it challenging to engage with the landowner but involved parties were committed to finding a resolution.
- Negotiations have now concluded for purchase and as of mid-February, the land is owned by the NCC and that organization will work with local First Nations, other interested parties and the Province on a remediation and a future management plan for the islet.
- The total price of the settlement agreement with the property owner was \$5.45M.
   This includes the purchase price for the property (\$850,000) and compensation for the owner's past incurred costs from construction.
- This cost represents the work and investment of the property owner over two
  decades and his lost opportunity. This includes costs incurred for utility
  installation, architectural and professional fees, building contract and material
  costs for a high end construction for the home and islet's developments.

## 2015/16 Estimates Debate

	Ministry	of	Forests,	Lands	and	Natural	Resource	Operations
Ad	Advice and Recommended Response:							
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	•							
	e Prepared/Re			), 2015				
Min	ictry Executive	a Sna	neor:					

Phone: 250 356-1874

Phone: 250-356-5411

Name: Gary Townsend

Alternate Contact for Issue:

Name: Jennifer Goad, Justine Batten

# MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS DECISION NOTE

Date: March 31, 2015

File: 280-20 CLIFF: 212307

PREPARED FOR: Minister Steve Thomson

**ISSUE:** Burial Areas Policy under the *Heritage Conservation Act* 

#### **BACKGROUND:**

As highlighted by the recent situation of Grace Islet, Salt Spring Island, there is an inherent conflict between land development and First Nations' (FNs) burial areas. This conflict becomes particularly apparent when dealing with burials on private lands.

The Grace Islet situation is being resolved by the formation of a partnership between the Province, the Nature Conservancy of Canada and the relevant FNs. The Nature Conservancy of Canada will receive title to the lands and the property owner will be compensated for the sale. \$.13,s.17

In those cases seven purchases were initiated due to the presence of human remains that essentially rendered the land unusable. However, there is no guidance or criteria for decision makers to deal with these situations more proactively. As a result, government ends up in a reactive position once an issue has erupted and then a specific mandate is sought.

The process on Grace Islet reflected the current process followed under the *Heritage Conservation Act* whereby if human remains of non-forensic concern are found during an archaeological study or development work halts, the proximate FNs communities are contacted and consultation is held as to the disposition of the remains. The Statutory Decision Maker weighs the representations from the FNs against the proposed project by the property owner, which may include modifications to accommodate FNs concerns. Ultimately a decision is made to proceed with the modified development or to preclude any development from occurring in that area. Precluding development on private land will lead to compensation claims which make this option challenging for decision makers especially without clear policy guidance and criteria to determine this equitably, consistently and balanced with provincial interests.

The Cremation, Interment and Funeral Services Act deals with the disposition of human remains and mandates that all remains must be either deposited in a registered cemetery or a research institution. The Heritage Conservation Act is an exception to the requirements of Cremation, Interment and Funeral Services Act. Contrary to statements made in the media the Heritage Conservation Act is not limited to burials pre-dating 1846 but rather covers "burial places of a historical or archaeological value".

## **DISCUSSION:**

s.13,s.16

Page 77 to/à Page 78

Withheld pursuant to/removed as

s.16;s.13

#### **Attachments:**

**Appendix 1:** BN 204032 Heritage Conservation Act - decision for Minister Thomson **Appendix 2:** DRAFT Work Plan for Review of Burial Areas Policies of the *Heritage* 

Conservation Act

#### **Contact:**

Gary Townsend, ADM Integrated Resource Operations 250 356-1874

## Prepared by:

Justine Batten, Director Archaeology Branch 250 953-3355

Reviewed by	Initials	Date
DM	TS	April 9/15
DMO		
ADM	GT	March 31/15
Ex Dir	MSM	March 31/15

From: s.22

To: Executive Division Office, FLNR:EX
Cc: Shin.MLA, Jane LASS:EX

Subject: RE: Question From A Taxpayer Regarding Purchase of Grace Islet (Ref: 216999)

**Date:** Sunday, November 15, 2015 7:12:27 PM

Mr. Turner:

Thank-you for your response.

Alas, after having reviewed your response thrice, I still do not understand why the Province paid "a price [reportedly] estimated to be four times above market-value."

Notwithstanding the purpose of the subject acquisition <u>and</u> its (purported) "cultural, spiritual and ecological values," please explain <u>expressly</u> why the Province spent <u>very-much</u> more of the tax-dollars of British Columbians than it needed to spend according to the dictates of the trade of real property in our free-market economy.

Verily,

s.22

----Original Message-----

From: Executive Division Office, FLNR:EX [mailto:FLNR.ExecutiveDivisionOffice@gov.bc.ca]

Sent: October 29, 2015 4:18 PM

To: s.22

**Cc:** OfficeofthePremier, Office PREM:EX; Minister, FLNR FLNR:EX; Shin.MLA, Jane LASS:EX **Subject:** RE: Question From A Taxpayer Regarding Purchase of Grace Islet (Ref: 216999)

Dear<sup>s.22</sup>

Your email to Honourable Steve Thomson, Minister of Forests, Lands and Natural Resource Operations, regarding the acquisition of Grace Islet, near Ganges Harbour on Salt Spring Island, has been referred to me for a response. I apologize for the delay in responding.

As you may know, construction of a private residence on Grace Islet had triggered civil disobedience from First Nations and members of the public due to its location on a First Nations' burial ground. While the construction was occurring under the necessary permits, it became clear that the site had special cultural and spiritual significance for local First Nations and contains several burial cairns. 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.

Due to the recognition of those cultural, spiritual and ecological values that make this site unique, the province is partnering with the Nature Conservancy of Canada (NCC), the area's First Nations and other parties to enable a long term conservation solution for Grace Islet. The site and its improvements were purchased and remediation and restoration of the site is currently underway. The site is a unique and the land transaction that occurred was not a traditional transfer of assets. The province and the NCC are seeking additional partners to contribute to the long-term care, restoration and management of Grace Islet and have been pleased to see the strong support from the public, partners and all the parties involved.

With construction nearing completion, the ministry has appreciated working with the NCC, First Nations and other interested parties, including the Capital Regional District and Islands Trust, in the remediation and management planning of the site. This collaborative work helps ensure the ongoing protection of this important ecological, cultural and spiritual site.

Sincerely,

Robert Turner Assistant Deputy Minister Integrated Resource Operations Division

pc: Honourable Christy Clark, Premier of British Columbia Honourable Steve Thomson, Minister of Forests, Lands and Natural Resource Operations Jane Jae Kyung Shin, MLA, Burnaby-Lougheed

----Original Message----

From: s.22

Sent: Wednesday, August 19, 2015 7:24 PM

To: Minister, FLNR FLNR:EX

**Cc:** OfficeofthePremier, Office PREM:EX; Shin.MLA, Jane LASS:EX **Subject:** Question From A Taxpayer Regarding Purchase of Grace Islet

Mr. Thomson:

Please advise: Why did the **Province** pay a <u>gross</u> premium over the assessed <u>and/or</u> market-based value of **Grace Islet**, as reported on 2015-08-11 by a local media-outlet thusly — <a href="http://globalnews.ca/news/2160424/grace-islet-home-built-on-sacred-first-nations-burial-ground-to-be-torn-down/">http://globalnews.ca/news/2160424/grace-islet-home-built-on-sacred-first-nations-burial-ground-to-be-torn-down/</a> (emphasis supplied):

"It comes at a price. The [G]overnment is covering the majority of the estimated \$300,000 that's needed to decommission and deconstruct the house. Then there's the \$5.45 million paid to the landowner in order to transfer the islet to the **Nature Conservancy of Canada**, a price estimated to be four times above market-value."

Verily, s.22

Taxpayer, Voter, Resident

#### 2016/17 Estimates Debate

Ministry of Forests, Lands and Natural Resource Operations

**Issue:** Conservation of Grace Islet/ Heritage Conservation Act Review **Key Facts Regarding Issue:** 

- Construction of a 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 (containing at least 16 cairns).
- The owner had owned the site since 1991 and initiated construction in accordance to local zoning and bylaws and in accordance with the *Heritage Conservation Act*, which requires an archaeological impact assessment and a site alteration permit under the Act.
- Due to the site's heritage, cultural and ecological values, the Province partnered with local First Nations and the Nature Conservancy of Canada (NCC) on longterm conservation for Grace Islet.
- Negotiations for property purchase with the NCC, an organization dedicated to acquiring lands with strong ecological values, were completed February 2015.
- Deconstruction of the building structures was completed in November 2015 and occurred in a collaborative arrangement among involved First Nations and externals partners including the NCC, the Capital Regional District and Islands Trust.
- Going forward tThe NCC, as title holders for the site, will work with local First Nations and, other interested parties on a remediation and a future management plan for the islet.
- The total price of the settlement agreement with the property owner was \$5.45M. This includes the purchase price for the property (\$850,000) and compensation for the owner's past incurred costs from construction.
- This cost represents the work and investment of the property owner over two
  decades and his lost opportunity. This includes costs incurred for utility
  installation, architectural and professional fees, building contract and material
  costs for a high end construction for the home and islet's developments.
- The Ministry is going forward with a Heritage Conservation Act (HCA) Burial Policy Review in order to look at policy options for to preclude encountering this type of situation in the future future situations.

## Advice and Recommended Response:

• s.13

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## 2016/17 Estimates Debate

	Ministry	of	Forests,	Lands	and	Natural	Resource	Operations
s.	.13							

Date Prepared/Revised: February 12, 2016

Ministry Executive Sponsor:

Name: Bob Turner Phone: 250 356-1874

Alternate Contact for Issue:

Name: Jennifer Goad, Justine Batten Phone: 250-356-5411