



August 2, 2013

File: 11200-30/2011-0343

Chief Earl Jack, Penelakut Tribe  
Diane Hinkley, Cowichan Tribes  
J.E. Smith, Halalt First Nation  
Simon Smith Jr., Tsartlip First Nation

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Attn: Chief Earl Jack, Diane Hinkley, J.E. Smith, and Simon Smith Jr.

**Re Option for the Protection of Cairns within Grace Islet, Permit 2011-0343, *Heritage Conservation Act***

Further to our discussions and correspondence concerning the proposed amendment to an existing permit to allow construction of a single family residence on Grace Islet, I have summarized the options concerning the management of impacts to archaeological site DfRu-0009 and specifically the burial cairns features for your input.

Allow me to preface these options by stating that the Province has met with representatives of your nations and understands that:

- the Grace Islet portion of village site DfRu-0009 is regarded as a cemetery;
- generally the Coast Salish, and specifically the Hul'qui'num peoples, have cultural laws surrounding care of the ancestors and assert this care as an unalienable aboriginal right;
- cultural laws regarding the re-interment of ancestral remains do not apply to the accommodation of development;
- the Penelakut Tribe, Cowichan Tribes, Halalt First Nation and Tsartlip First Nation are opposed to the moving of burial cairn features and development of any kind on Grace Islet.

As Grace Islet is fee simple land, the Province is also required to consider the rights of the property owner (that is, the right to enjoy and develop the property) in any decision to amend the permit. Therefore, the management of impacts to DfRu-0009 is one of balance between First Nations, the private property owner and site conservation under the *Heritage Conservation Act*.

Three management options are being considered for this permit amendment request: not allowing construction to proceed; allowing construction as proposed; or moving cairns that are in close

**Ministry of Forests,  
Lands and Natural  
Resource Operations**

Archaeology Branch

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proximity to the proposed home and allowing construction to proceed. Each option is discussed below:

Not Allowing Construction to Proceed – Refusing the Requested Permit Amendment

Refusing authorization to build the residence allows the site to be preserved in its current condition. This option aligns with the First Nations' position and is the best outcome from a site conservation perspective. However this option also denies the rights of the property owner to most uses of the land. As the Province does not have a program or funds to purchase the property, this option is the most unbalanced of the three.

Allowing Construction – Granting the Requested Permit Amendment

The property owner has conducted an archaeological impact assessment that identified the cairns. Based on the results of this work, and to accommodate the concerns over movement of the cairns and site conservation, the house plans were redesigned to avoid disturbing the cairn features. Three cairns are in very close proximity to the planned structure; therefore, building plans include temporarily enclosing the cairns so that no accidental damage can occur during construction. This option balances concerns for site conservation and the property owners ability to develop, but has been rejected by First Nations as desecration under cultural laws regarding care of the ancestors.

Moving the Cairns – Modifying the Requested Permit Amendment

Unauthorized land disturbance on Grace Islet was investigated to determine the impact on the protected archaeological site. Although there was considerable movement of soil on the islet, no disturbance of human remains or damage to the cairns was found. Nevertheless, this incident demonstrates the vulnerability of these cairn features. Therefore, the Archaeology Branch has developed a third option of moving 3 to 5 cairns close to the proposed house location to a more distant location and protecting all the cairns by a restrictive covenant. This option focuses on protection of the structural and sacred nature of the site while allowing the property owner's right to use the land. However, it would be beneficial to have First Nations' support for this option.

Please consider these options and notify the branch by August 20, 2013 of your concerns or any suggestions you might have to resolve this matter.

Sincerely,



Dr. Steve Acheson,  
Supervisor

pc via fax: See Distribution List on Page 3



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