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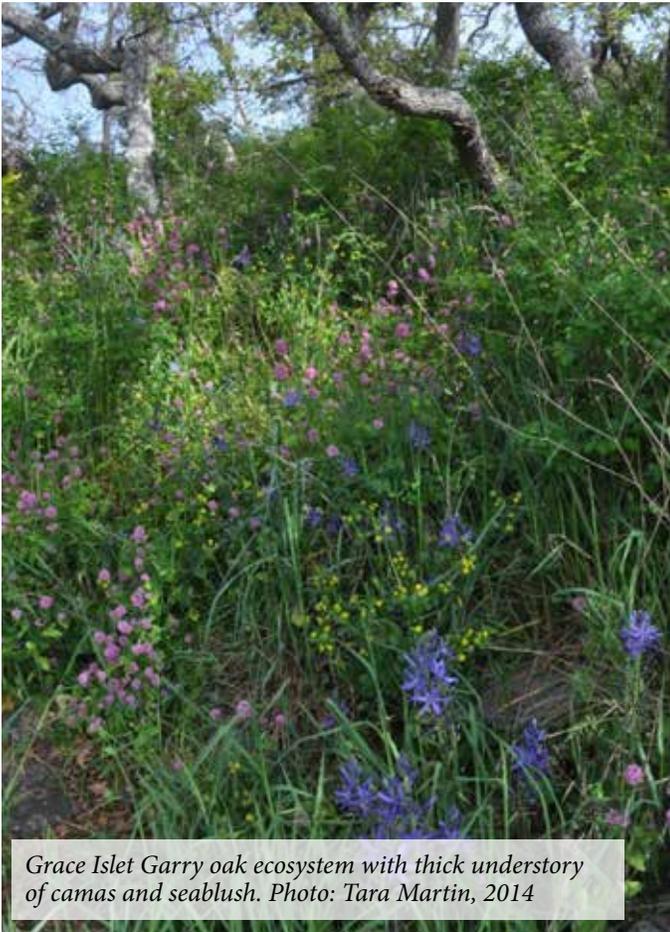
Langscape

The People's Issue Part I
Flows and Bridges

Irony as Inspiration

*From Academic Research to Community Action
in Protecting Biocultural Landscapes*

KELLY BANNISTER AND GEORGE NICHOLAS



Grace Islet Garry oak ecosystem with thick understory of camas and seablush. Photo: Tara Martin, 2014

It is Fall 2014. At the Musqueam Cultural Centre near Vancouver in coastal British Columbia (BC), a meeting is taking place of an international team of cultural heritage scholars, professionals, and Indigenous community experts. The group is holding its final gathering to conclude a seven-year, multi-million dollar university-based research initiative that explores rights, values, and responsibilities in cultural heritage research. The *Intellectual Property Issues in Cultural Heritage* (IPinCH) project, as the group is known, is made up of archaeologists, lawyers, anthropologists, ethnobiologists, ethicists, policy makers, and members of partnering

Indigenous organizations and communities. The team has committed years to understanding how knowledge and rights based on culture and “the past” are defined and used, who has (or ought to have) control and access, and how fair and appropriate use and access can be achieved to the benefit of all those who have a stake in “the past”.

Less than 100 km away, within the Gulf Islands off the mainland of BC, lies tiny (0.75 hectare) Grace Islet, cradled in Salt Spring Island’s Ganges Harbor. Amid years of controversy and months of intensive protest by local First Nations, concerned residents, and conservation groups, a rare and endangered Garry Oak meadow and seventeen Coast Salish burial cairns are knowingly and “legally” being destroyed by a private landowner building a luxury home—which he is entitled to do, having satisfied the requirements of provincial heritage legislation.

Irony as Inspiration

There is irony in these two situations occurring simultaneously in such close proximity—a world-class team of experts forging collaborative ways to protect Indigenous cultural heritage only a stone’s throw from one of many real places in BC where such cultural heritage is literally being lost before our eyes. A couple of years earlier, the Musqueam First Nation themselves faced a similar situation. A development threat to the ancient Musqueam village of *čəsnaʔəm* which includes a burial site (also known as the Marpole site), was eventually resolved when the Musqueam purchased the property from the developer with their own funds. Similar issues are unfolding elsewhere in the province, such as Sumas Mountain in Chilliwack.

This juxtaposition (literally and figuratively) of “being so close and yet so far” to scholarly work making a real difference on the ground was the inspiration for a new “Declaration on

the Safeguarding of Indigenous Ancestral Burial Grounds as Sacred Sites and Cultural Landscapes”, which was initiated at the meeting of experts referred to above and made public on December 10, 2014 (see Box 1). The Declaration was created as an educational and political tool for informing situations such as Grace Islet and Marpole. As two of the primary co-authors of the Declaration, here we briefly highlight some key issues that the Declaration responds to, and offer thoughts on moving forward.

At the Core

Grace Islet and Marpole are but two examples of many disputed sites—in BC, across Canada, and in other countries—that illustrate disconnections between heritage laws and the protection of Indigenous cultural heritage sites in accordance with the values and legal traditions of the affected communities. The core of the problem lies both in the inequities that exist in the western legal system in relation to identifying, evaluating, and protecting significant Indigenous heritage sites, and in a lack of understanding of non-western worldviews and values relating to ancestral sites and burials. These inequities lead to costly and divisive disputes between those

wishing to develop private or public lands, and those who seek to protect ancestral sites and burial grounds essential to Indigenous people’s collective wellbeing.

For example, in Canada, Aboriginal people’s burial sites are largely treated as archaeological sites and not given the same respect or protection as Euro-Canadian cemeteries. In BC, burial sites dating to before 1846 are treated differently in law than those dating after 1846. The differences are defined

Collaborative, community-based approaches to decision-making provide a more comprehensive & balanced means of viewing values, interests, & perspectives.

by an arbitrary line set when the British asserted sovereignty. A site dating to post-1846 is a cemetery, while a pre-1846 site is an artifact, an archeological site. This is a significant point of inequity, as it implies culture- and race-based distinctions between Aboriginal and non-Aboriginal Canadians, and raises the question: Shouldn’t all Canadians be able to expect that the burial grounds of their ancestors and loved ones remain protected?

*Gathering of Grace Islet protesters in Ganges Harbor, summer 2014.
Photo: Brian Smallshaw, 2014*



Declaration on the Safeguarding of Indigenous Ancestral Burial Grounds as Sacred Sites and Cultural Landscapes

December 10, 2014
Vancouver, B.C.

We are archaeologists, lawyers, anthropologists, ethnobiologists, ethicists, indigenous community members, students, educators, writers, human rights specialists and scholars of cultural heritage who came together in a focus session on indigenous ancestral burial grounds that was organized as part of an international gathering convened by the *Intellectual Property Issues in Cultural Heritage Project* that took place November 7-9, 2014 on the unceded traditional territory of the Musqueam Nation, Vancouver, British Columbia, Canada.

Sharing a common concern about the safeguarding of indigenous ancestral burial grounds,

Convinced that there are reasons for particular concern over the fate of indigenous ancestral burial grounds in British Columbia, Canada,

Emphasizing that ancestral burial grounds are both the tangible and intangible cultural heritage of indigenous communities as sites of historical and religious importance integral to their traditions and spiritual beliefs as unique cultural landscapes,

Affirming that cemeteries are unique repositories of human history, the resting places of human remains, and witness to the continuity of human life, and that the cultural heritage to which burial sites bear witness must be maintained to ensure the historical record for future generations, such that prohibiting the relocation of inactive cemeteries is an emerging norm,

Confirming protection of cultural heritage as of crucial value for communities and their identities such that its destruction may have adverse consequences on human dignity, human rights and human wellbeing,

Applauding the increasing affirmation by the world community of indigenous rights, the recognition of cultural rights as fundamental human rights, and the specific rights of indigenous communities that are based upon their fundamental rights to control their cultural heritage,

Recalling that international human rights instruments stress the importance of indigenous

communities both defining and stewarding their cultural heritage as practices essential to their cultural survival and identity as peoples with living traditions,

Upholding the human rights principle that States must respect the rights of Indigenous Peoples to their cultural heritage and to maintain and strengthen their spiritual relationships with their ancestral lands,

Affirming ethical guidelines developed by the World Archaeological Congress, the International Society for Ethnobiology, the Canadian Archaeological Association, the American Anthropological Association, and the Society for American Archaeology for guiding interactions with Indigenous Peoples and cultural heritage, including principles of respect, stewardship, consent, partnership, mutuality and do no harm, while recognizing the interconnections between the spiritual, physical, emotional and cognitive dimensions of heritage in diverse cultural traditions,

Avowing that States have a duty not to destroy, damage or alter cultural heritage without the free, prior and informed consent of concerned communities, and are obliged to take measures to safeguard cultural heritage from destruction or damage by third parties,

Reminding the federal government of Canada and the provincial government of British Columbia that Indigenous Peoples possess collective rights recognized and affirmed by the Canadian Constitution and in international human rights law that are indispensable for indigenous existence, well-being and integral development as peoples, and that both governments are obligated to respect these rights,

But, recognizing that the heritage-based rights of First Nations communities in British Columbia have for too long gone unrecognized, been neglected, violated, or ignored.

We hereby declare the following:

First, ancestral burial grounds are both the tangible and intangible cultural heritage of indigenous communities as places of historical and religious value and integral to their traditions and spiritual beliefs as unique cultural landscapes,

Second, human remains, regardless of origin, should receive equal treatment under law,

Third, to the extent that British Columbia Heritage legislation demands physical evidence of ancestral burial practices recognized by archaeologists solely on the basis of evidentiary forms and scientific categories that do not accord with or take into account the oral histories and cultural values of the Indigenous Peoples concerned, it violates fundamental principles of both indigenous rights and cultural rights recognized in Canadian constitutional and international law,

Fourth, the oral histories of Indigenous Peoples as provided by cultural experts are essential primary sources of credible evidence of ancestral burial sites that must be considered alongside scientific evidence of burial practices,

Fifth, there is urgent need for federal, provincial and local authorities to recognize and find legal means to protect ancestral burial grounds, skeletal and other physical remains and funerary

belongings as integral parts of indigenous cultural landscapes interconnected with the health and well-being of indigenous societies,

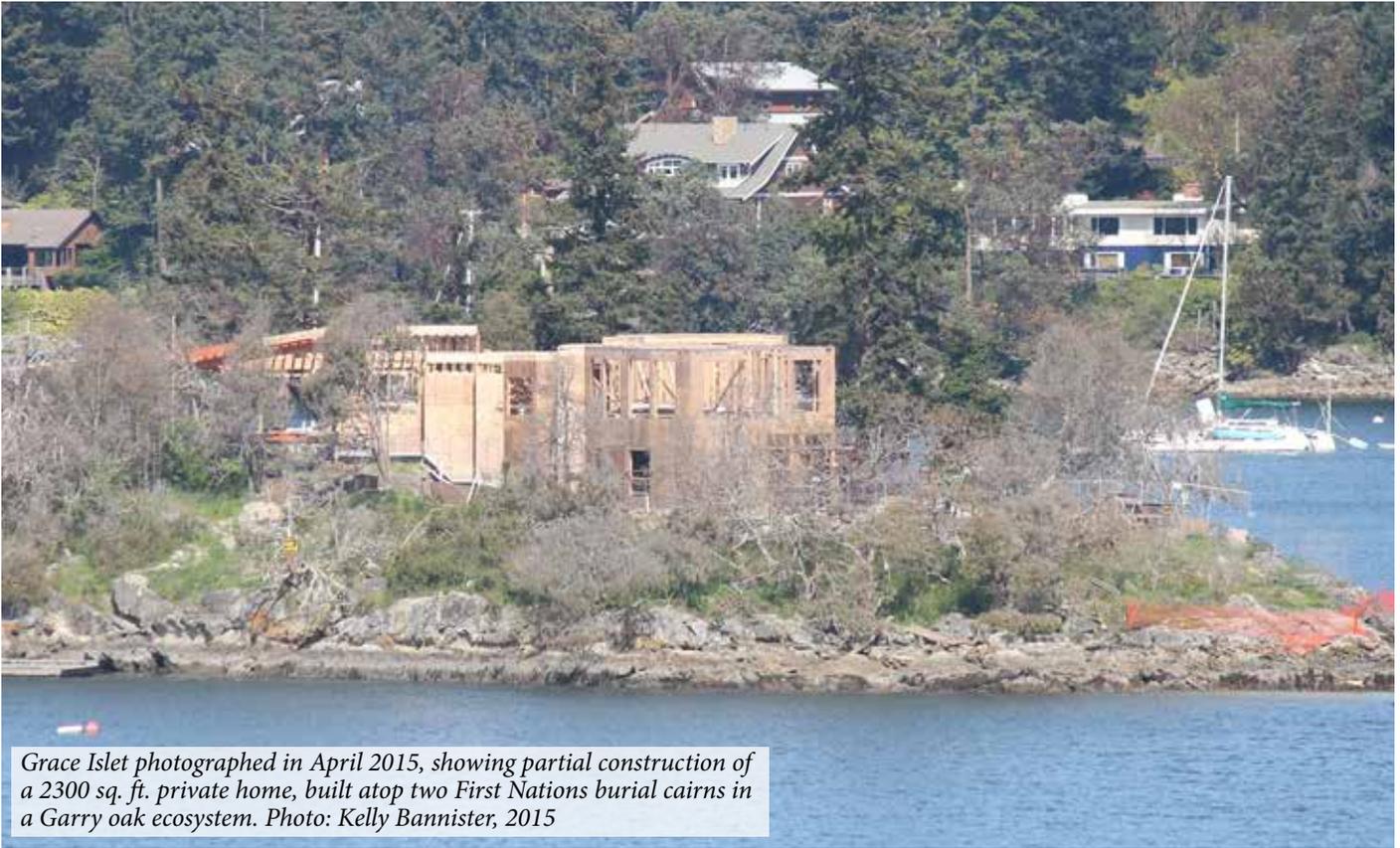
Sixth, indigenous communities who maintain caretaking responsibilities must be directly involved in all aspects of decision-making regarding indigenous tangible and intangible cultural heritage, including the treatment of indigenous ancestral burial grounds, ancestral remains and funerary belongings,

Seventh, legally and ethically, there are professional, corporate, and political obligations and duties to recognize, assist and support indigenous communities in the care-taking, safeguarding, protection and preservation of ancestral burial grounds, ancestral remains and cultural landscapes, and therefore

We respectfully call upon:

The Federal and Provincial governments of Canada, local governments, local authorities, First Nations leaders, public and private sector stakeholders and civil society to: act immediately in protecting First Nation ancestral burial grounds in British Columbia from destruction, damage, and alteration; develop effective mechanisms that go beyond consultation and directly involve First Nations in British Columbia in the stewardship of their ancestral burial grounds and heritage sites; and uphold the requirement for free, prior and informed consent of First Nations communities in approving any project that has a potential to impact their cultural heritage rights and responsibilities.

The full version with signatories is available at www.sfu.ca/ipinch/resources/declarations/ancestral-burial-grounds



Grace Islet photographed in April 2015, showing partial construction of a 2300 sq. ft. private home, built atop two First Nations burial cairns in a Garry oak ecosystem. Photo: Kelly Bannister, 2015

Yet there also is inequity and a disproportionate burden on landowners to underwrite the risk of buying land that may be a burial site. While landowners can contact municipal or provincial offices to determine whether there is a recorded site on a property, this information is not identified on land titles, and there often is no information available without prior archaeological investigation, which occurs at the expense of the landowner.

When it comes to legal and moral rights arguments and whose laws trump whose in heritage protection, there is a fundamental difference in value systems stemming from very different worldviews. First Nations values and legal regimes are strongly influenced by worldviews that maintain ancestors are truly present in burial sites and they exist in meaningful relationships with present-day descendant communities. As such, members of descendant communities have specific responsibilities and duties of care for the physical and spiritual integrity of their deceased.

The disturbance or desecration of ancestral remains is believed to hold very real dangers for the spiritual and physical wellbeing of the living—not only First Nations descendants, but anyone who comes into

contact with such potent cultural sites. Many cultural protocols and rituals are practiced today by Aboriginal people who have been taught of the dangers, and how to respect the ancestors and avoid harm to the living.

These cultural practices are integrally connected with the location of ancestral remains, which in the cases of Grace Islet and Marpole constitute “sacred sites” and “cultural landscapes”, as defined internationally by the UNESCO World Heritage Committee. Yet this status is not adequately recognized in Canadian and BC law and policy.

It is essential for our society and our governments at all levels to understand the larger legal and policy contexts that shape local conflicts—and that the dispute involving development on Grace Islet and resulting impacts on a Coast Salish burial site raise issues of not only local and provincial but also national and international significance.

Raising such awareness was a primary goal of the Declaration, which calls for the protection of Indigenous ancestral burial grounds based on existing norms and obligations of governments according to international law and policy. The Declaration is also a step in moving the long-



Paddlers on a Cowichan First Nation canoe in Ganges Harbor during Grace Islet protest action, summer 2014. Photo: Brian Smallshaw, 2014

spoken goal of reconciliation between settlers and First Nations from words to action, because true reconciliation means not just “saying sorry” but changing fundamentally how things are done—in this case, relative to protecting ancestral sites and burial grounds.

Grace Islet offers an opportunity for BC to reassess its approach to protecting and managing such sites in light of this deeper understanding. The Declaration and the IPinCH project team advocate for inclusive, long-term, and sustainable management policies and practices that explicitly recognize Indigenous rights and responsibilities regarding intellectual and material property, traditional cultural expressions, and ancestral remains. Moreover, we acknowledge more generally the value for all Canadians of understanding and respecting Aboriginal rights, Indigenous laws, and heritage sites.

Grace Islet Resolution & Remaining Challenges

In early 2015, with the support of local First Nations, it was announced that the Province of BC had negotiated an agreement with the owner of Grace Islet

to purchase the land, compensate for losses (\$840,000 for property; \$4.6 million for “losses suffered”), and transfer title to the Nature Conservancy of Canada. The agreement included a commitment to developing a reparation and management plan to restore and protect the islet’s heritage and ecological values and allow the islet to be returned to its natural state.

Interestingly, the legal mechanism for protection through the Conservancy relates to the remarkable ecological or conservation value of Grace Islet, rather than its cultural significance or heritage value. Grace Islet is comprised of an endangered Garry oak ecosystem. A botanical inventory undertaken by ecologist Tara Martin just prior to the housing development in 2014 described it as “amongst the best examples of Garry oak meadow wildflower flora remaining today [in BC],” noting that “within the [Gulf Islands] archipelago only a handful of islands such as these remain.”

The ecology-based legal protection through the Nature Conservancy was a fortuitous, or even clever, approach to a tricky situation, given the paucity of protection mechanisms within existing heritage law. Indeed, a review of BC legislation and policies on

heritage designation and protection was announced in conjunction with the Grace Islet resolution, but no details have yet been released. Thus, despite its apparent (albeit very late-stage) “success”, the Grace Islet agreement simply addresses one case in an ad-hoc manner, and it remains to be determined whether and how the underlying problems that cause such disputes will be tackled in other cases.

Moreover, while the parties involved (including the Nature Conservancy of Canada, local First Nations, the Province, and regional and local government agencies) have clearly committed to working together to restore the site to the extent possible, only time will tell how the burial cairns will be protected over the longer term under a conservation mandate. Some have asked whether First Nations will be permitted to keep the site private for cultural reasons—or will Grace Islet become an ecological reserve, either closed to all, or open to the general public.

In our view, a comprehensive review of existing legislation, policies, and practices is a necessary first step in making the most of the Grace Islet lessons—but one that requires going beyond mere “consultation”. The scholarly and applied work of the IPinCH project suggests that collaborative, community-based approaches to decision-making provide a more comprehensive and balanced means of viewing values, interests, and perspectives. Conflict may be inevitable, but there are alternatives to the current process used to comply with the BC Heritage Conservation Act, which too often results in the clear identification of winners and losers, forcing First Nations to fight for equality in how their ancestors and ancestral sites are treated. A solution will not be found in “trading off” development goals with ecological and heritage values. An approach rooted in genuine partnership committed to sharing decision-making power is needed to facilitate this kind of collaboration, and is critical to achieving greater equity in complex decisions between development goals and the protection of heritage values.

Clearly, the cultural and ecological integrity of Grace Islet requires not a cultural or ecological approach alone but an integrated biocultural approach that recognizes the inextricable relationships between the cultural and the ecological for people in place. The real opportunity and legacy of Grace Islet will be measured by achieving a living commitment to a “biocultural co-governance” partnership in the

months and years to come—that is, First Nations, government, and other parties working through a structured, transparent, and accountable process to arrive at land use and stewardship decisions that respect the needs and values of all involved.



Further Reading

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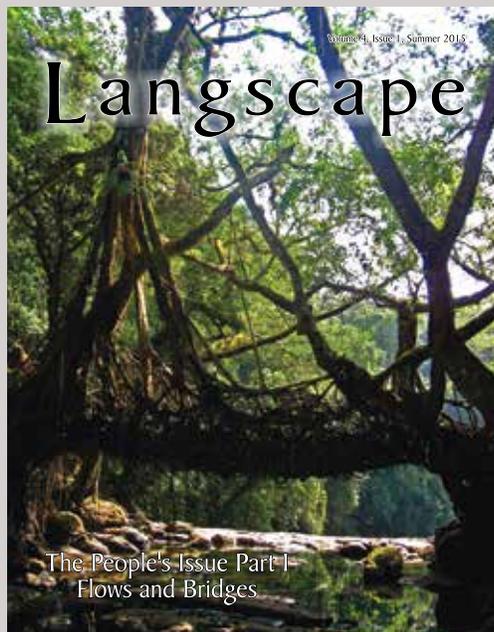
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