

Ref: 25000-80

June 5, 2007

To: Provincial Approving Officers
Ministry of Transportation
Association of BC Land Surveyors
BC Association of Professional Archaeologists

**Re: Development of Restrictive Covenants for the Protection of
Archaeological Sites**

Restrictive covenants are often used in the property subdivision approval process as the mechanism to safeguard archaeological sites protected under the Heritage Conservation Act. Although the covenant registration process is led by the Ministry of Transportation, the covenants are with the Minister of Tourism, Sport and the Arts. Under this arrangement, the Archaeology Branch (TSA) is a partner in developing, tracking and modifying these documents.

Archaeological restrictive covenants may be requested as a condition of subdivision approval to protect recorded archaeological sites identified using the RAAD system. The following points and process are required for the implementation of restrictive covenants to ensure they are effective and noted on the archaeological site record:

- Archaeological restrictive covenants must use the attached [template](#).
- The covenant is prepared by the land owner for review by the Province
- The area containing the archaeological site must be defined by a qualified professional consulting archaeologist and surveyed by a British Columbia Land Surveyor.
 - o In cases where there is an existing description of the archaeological site boundary (e.g. the site is recorded and mapped in RAAD), the accuracy and currency of the site boundary information must be confirmed by a qualified professional consulting archaeologist before the boundary is surveyed.
 - o The archaeologist may also determine the need for a buffer around the site for adequate protection.

- o A letter from the archaeologist confirming site boundary accuracy and currency and other comments pertinent to site protection, such as the recommendation for additional restricted activities, must accompany the draft restrictive covenant
- The [restricted activities list in Part 2](#), Section 2 of the covenant template is adequate in most situations to protect the site. Occasionally, additional terms may be required (e.g. a site with preserved organic remains will have to be protected from drying out). Therefore, the Archaeology Branch is available to review these restrictions and conditions to determine if they will achieve the goal of site protection. The draft of the restrictive covenant and letter from the archaeologist may be sent to the:

Archaeological Site Inventory Section
Archaeology Branch
PO Box 9816
Stn Prov Govt
Victoria BC, V8W 9W3
Re: MOT Restrictive Covenant (Non-permit)

Or emailed to: [Doris Lundy](#)

- A signed copy of the accepted restrictive covenant must be sent to the Archaeology Branch to form part of the archaeological site record
- Modifications and release of the restrictive covenant are the responsibility of the Archaeology Branch.

Restrictive covenants may also be developed as a site management strategy following an archaeological impact assessment. The covenant development process differs slightly as the Archaeology Branch identifies the need for a covenant and reviews covenant restrictions before the proponent passes the document to MOT for final approval. However, in these cases the Archaeology Branch still requires a copy of the signed restrictive covenant for inclusion in the archaeological site record. An MOT cover letter should identify the heritage permit number of the archaeological impact assessment to assist record keeping.

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

----- (Signature of Authorized Agent)

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND: *
(PID) (LEGAL DESCRIPTION)

[to be inserted]

3. NATURE OF INTEREST:

Description	Document Reference (Page and paragraph)	Person Entitled to Interest
Section 219 Covenant	Entire Document	Transferee

4. TERMS: Part 2 of this instrument consists of (select one only)

- | | | |
|---------------------------------|-------------------------------------|---------------------------------------|
| (a) Filed Standard Charge Terms | ☐ | D.F. No. |
| (b) Express Charge Terms | ☒ | Annexed as Part 2 |
| (c) Release | ☐ | There is no Part 2 of this instrument |

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):

[to be inserted]

6. TRANSFeree(S): (Including postal address(es) and postal code(s))

HER MAJESTY THE QUEEN in Right of the Province of British Columbia as represented by the Minister of _____ Parliament Buildings, Victoria, British Columbia V8V 1X4

7. ADDITIONAL OR MODIFIED TERMS:

N/A

8. EXECUTION(S): ** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

SECTION 219 COVENANT

TERMS OF INSTRUMENT – Part 2

WHEREAS:

- A. The land contains archaeological site _____ protected under the provisions of the *Heritage Conservation Act*.

NOW THEREFORE in consideration of the premises and the sum of \$1.00 now paid by the Transferee to the Transferor (the receipt and sufficiency of which is acknowledged by the Transferor), the parties agree as follows:

1. In this Part

“Land” means the land described in item 2 of Part 1 of this General Instrument [or an area indicated clearly on an attached plan]

2. The Transferor covenants with the Transferee that it will not:

- (a) deposit on the Land, or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Land;
- (b) remove, destroy, damage or disturb any Heritage Conservation Act protected archaeological object;
- (c) remove or displace any soil [or beach material] from the Land; or
- (d) construct, erect or place any building, modular home, mobile home or unit, improvement or structure on the Land;

or permit any of the foregoing to be done without the prior written consent of the Transferee, which consent may be withheld at the absolute discretion of the Transferee.

3. The Transferor acknowledges and agrees with the Transferee that in order for the Transferee to provide its consent to the Transferor to undertake any of the activities set out in section 2, it may, among other things, require the Transferor to carry out appraisals, inspections, inventories, surveys, studies, analyses and other investigations of the Land and the potential archaeological impact of any such activity on the Land and the Transferor will carry out all such appraisals, inspections, inventories, surveys, studies, analyses and other investigations at its expense.

4. The Transferor will indemnify and save the Transferee harmless from all actions, causes of actions, claims, demands, suits, losses, damages, debts, accounts, liabilities, costs, expenses and compensation of any kind, including fees of solicitors and other professional advisors, arising out of any breach, violation or non-performance by the Transferor of the covenants set out in sections 2 and 3.
5. No term, condition, covenant or other provision or breach of this Agreement will be considered to have been waived by the Transferee unless such waiver is expressed in writing by the Transferee and any such waiver is not a waiver of any other term, condition, covenant, or other provision or any other breach of this Agreement.
6. This Agreement extends to, is binding upon and enures to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.
7. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
8. This Agreement will be interpreted according to the laws of the Province of British Columbia.
9. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect and, unless the context otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.
10. If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.
11. This Agreement will be registered as a charge against the Land pursuant to section 219 of the *Land Title Act*.

END OF DOCUMENT