

**ARCHAEOLOGICAL BACKGROUND
FOR THE
SPIRIT ISLAND
SERVICING PROJECT
AT THE FORKS (SOUTH POINT)**

Submitted to

EARTH TECH (CANADA) INC.

**QUATERNARY
CONSULTANTS
LIMITED**

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1.0 INTRODUCTION

As part of a site development study for the Spirit Island (South Point) area of The Forks, Earth Tech (Canada) Inc. contracted Quaternary Consultants Ltd. to provide an overview of known and potential heritage resources. Where possible, exact locations are denoted and consideration is given to potential impact which would occur through site development and site servicing. The data is derived from existing archival resources and the large number of reports detailing archaeological investigations that have occurred to date.

2.0 ARCHIVAL DATA

A considerable body of literature exists, which details events and occurrences at The Forks. All known historical events, which may have occurred at South Point, are compiled in chronological order in Table 1. This table summarizes the known data, including the location of the event and the time span. Many of the early events are not specifically recorded as to the exact location—only that they occurred in the general area of The Forks. As they may have occurred on South Point, they are included in the listings. However, several events can be expected or are known to have occurred in the area. These are highlighted in boldface. Further details of historic events in the general vicinity can be found in FRC (1988) and Guinn (1980a, 1980b).

The first recorded event of Euro-Canadian history was the visit of La Vérendrye. In 1737, he reported two villages of Assiniboine at The Forks and in 1738 he noted that ten cabins of Cree were at the site (FRC 1988:41). The exact locations of these habitations is not known and may occur anywhere within the general vicinity of the junction of the rivers. In 1738, Fort Rouge was established by M. de Louviere, a compatriot of La Vérendrye (Guinn 1980a:33). No descriptions of this fort, which was in operation until abandonment in 1749, occur in the literature. Even the location of the structure is disputed: Bell (1927) suggests that it was located on the north side of the Assiniboine River but Guinn (1980b:6-11) vigorously argues that it had been built on South Point.

Winter camps were established at The Forks by St. Pierre (1752) and Bruce and Boyer (1781) (FRC 1988:41). In 1793, McKay recorded a camp of Nor'Westers on the south side of the Assiniboine River (Guinn 1980a:37), while McDonnell noted two Indian lodges at The Forks (FRC 1988:41). Other Native encampments at The Forks included Ojibwa and Ottawa (prior to 1800) (Tanner 1956), and Saulteaux (1800) (Tanner 1956; Coues 1965). Between 1800 and 1808, Alexander Henry of the Hudson's Bay Company passed The Forks 20 times, frequently meeting with groups of Nor'Westers (Coues 1965). In 1803, Louis Dorion wintered at The Forks (Guinn 1980b:11). The locations of these events are unknown and some could have occurred on South Point.

In 1845, four homesteads are recorded on South Point (Guinn 1980a:245; Warkentin & Ruggles 1970:Fig. 77). One structure, owned by a Mr. McDougall, occurred near the present location of the CNR Main Line on the south bank of the Assiniboine. Various maps indicate that this building may have existed until 1880 (FRC 1988:Appendix A). A second farmhouse is mapped near the present

location of the Norwood Bridge, on the west bank of the Red River. This building is depicted on maps of 1845 and 1848 (Guinn 1980a:245; Warkentin & Ruggles 1970:Fig. 77).

EVENT	LOCATION	TIME SPAN
Two Assiniboine Villages	Unknown	1737
Ten Cree Cabins	Unknown	1738
Fort Rouge	South Point?	1738-1749
St. Pierre Winter Camp	Unknown	1752
Bruce & Boyer Winter Camp	Unknown	1781
Nor' Wester Camp	South Point	1793
Two Indian Lodges	Unknown	1793
Ojibwa & Ottawa Camp	Unknown	?1799
Saulteaux Camp	Unknown	1800
Alexander Henry Visits	Unknown	1800-1808
Dorion Winter Camp	Unknown	1803
McDougall Farmstead	South Point	?1845-1880?
South Farmstead	South Point	?1845-1848?
Native Campsite/Burial Site?	South Point	pre-1873
Main Street Bridge	South Point	1880-2002
Dwelling House	South Point	1884-1905
Northern Pacific R.R. Bridge	South Point	1888-2002
Winnipeg Rowing Club	South Point	1889-1911
Arctic Ice Company	South Point	1891-1905

Table 1: Recorded Historic Events and Structures

In 1873, George McPhillips conducted a survey of the locality for the City of Winnipeg. His field notes record that "Lot 39 was an old Indian camp and burial ground" (McPhillips 1874:5). The majority of this parish lot underlies the former Fort Garry Curling Club and the embankment for the CNR Main Line. It must be noted that McPhillips tended to assume that any place where First Nation campsites had occurred also had an adjacent burial ground. None of his areas denoted as burial grounds have ever shown any evidence of interment. Archaeological monitoring of the construction of the south abutment of the northbound Main Street Bridge found no evidence of pre-European occupation. If it had existed, it may have been previously obliterated by the 1848 homestead or by the curling club.

The first Main Street Bridge was constructed in 1880 and has since undergone several rebuildings. A house is recorded on South Point on the east side of Main Street, located between the embankments for the CNR Main Line and the previous Low Line tracks (FRC 1988:49, Fig. 3). This building appears to have existed from 1884 to 1905. The Northern Pacific and Manitoba Railroad built a temporary bridge across the Assiniboine River in 1888 followed by the still-existing structure known

as the Low Line Bridge in 1890 (FRC 1988:54-55). The tip of South Point was occupied by the Winnipeg Rowing Club Boathouse from 1889 to 1911, when access was terminated and the facility moved to Lyndale Drive (FRC 1988:54). Remnants of the structure are still present. The warehouse of the Arctic Ice Company was built adjacent to this location in 1891 (Guinn 1980a:353). The company moved in 1905 (FRC 1988:54). The construction of the CNR Main Line Bridge and associated embankments and trestles, in 1910, effectively closed South Point to general access and the entire locality was considered as part of the CNR East Yard.

3.0 ARCHAEOLOGICAL DATA

3.1 *Current Knowledge*

The majority of the archaeological data has derived from heritage resources management procedures implemented during three major interlinked construction projects: twinning of the Norwood Bridge; twinning of the Bridge of the Old Forts; and the upgrade to the Canadian National Railway Overpass. The only archaeological data pre-dating the major construction activity in the 1990s derived from the Winnipeg Archaeological Survey of 1968/1969. A Late Woodland occupation site containing ceramics—dating between 500 and 1500 years ago—was located on the east side of South Point, midway between the foot of the Norwood Bridge and the tip of the point (Dickson 1979; HRB).

During the construction projects, numerous components required archaeological assessment, monitoring, and/or mitigation:

- ◆ 1989 Preliminary Investigations for Norwood/Main Street Bridge Project (Quaternary 1989a)
- ◆ 1990 Archaeological Assessment on South Point (Quaternary 1990a)
- ◆ 1994 Geo-technical Monitoring on South Point (Quaternary 1994a)
- ◆ 1994 Archaeological Assessment for Grade Separation Relocation (Quaternary 1994b:Part I)
- ◆ 1994 Archaeological Assessment for Curling Club Location (Quaternary 1994b:Part II)
- ◆ 1995 Monitoring and Mitigation of C.N. Rail Overpass Reconstruction (Quaternary 1995a)
- ◆ 1995 Monitoring of Pumphouse Relocation (Quaternary 1995b)
- ◆ 1996 Monitoring and Mitigation of Northbound Norwood Bridge (Quaternary 1996a)
- ◆ 1996 Monitoring of Northbound Main Street Bridge (Quaternary 1996b)
- ◆ 1996 Monitoring of Main Street Retaining Wall (Quaternary 1996c)
- ◆ 1996 Monitoring of Primary Pipes and Sewer Control (Quaternary 1996d)
- ◆ 1998 Monitoring of Reconstruction of Norwood and Main Bridges (Quaternary 1998a)

The focus of all of these projects was on the transportation corridor immediately adjacent to Main Street. The bridges and roadway were twinned, encroaching eastward into the area known as South Point. Two major entailments of this enlarged right-of-way were the necessity of reconfiguring the C.N.R. Overpass and the demolition of the Fort Garry Curling Club. The archaeological data recovered during these projects is detailed in the reports deriving from each of the components listed above.

Three pre-European temporal periods are represented in the archaeological recoveries. The earliest is the burial site that was located at the north end of the northbound Norwood Bridge (Quaternary 1996a:47-55). Radiocarbon dates on charcoal associated with the burial yielded a date of A.D. 620 ± 70 . The burial was that of an adult woman and was a secondary cremation-style burial where a fire is maintained over a shallow interment. Under the guidance of Aboriginal Elders, the burial was removed and non-intrusive forensic analysis was undertaken. The remains were returned to the care of the Elders with ultimate reburial at the tip of South Point along with the remains of two other individuals.

The next temporal period represented derives from a small-scale occupation site also at the north end of the northbound Norwood Bridge (Quaternary 1996a:21-46). The site contained ceramics which have characteristics of Blackduck ware (A.D. 1100 - 1400), as well as non-diagnostic lithic and bone tools. The campsite, focused around a central hearth, covered approximately 15 square metres and represents a single occupation.

The most recent archaeological site (DILg-68) was recorded on the west side of Main Street adjacent to the C.N.R. High Line berm (Quaternary 1995a). The ceramic recoveries appear to be late in the Late Woodland cultural continuum. Small amounts of a red pigment (vermillion) and a copper needle were recovered leading to the interpretation of the site as Proto-Contact, i.e., just before or after the arrival of Europeans. The European items could have been traded into the area prior to the arrival of La Vérendrye in 1737. The time of the two occupations was projected to be between A.D. 1650 and A.D. 1740. Subsequent analysis of the vermillion proved it to be a brilliant variety of locally obtainable ochre (Quaternary 1996a:80) thereby diminishing the link to European goods. The copper needle was to be spectroscopically tested to determine if the metal derived from European sources (Quaternary 1996a:80). If the needle had been made by cold-hammering North American raw copper, the date of the horizons would be between A.D. 1100 and A.D. 1600.

Homestead and Industrial period artifacts were curated during the projects. During the initial impact assessment (Quaternary 1990a), artifacts probably representing a dwelling were recovered to the south of the then existing curling club. These probably derived from the inhabitants of the house that is depicted on the City of Winnipeg Fire Atlas of 1905 at the northeast corner of the intersection of Main Street and River Avenue (Quaternary 1990a:37). Contemporaneous with this dwelling, Arctic Ice had their ice house and warehouse activities on the southern side of River Avenue. Artifacts and structural debris from this establishment were encountered during the impact assessment (Quaternary 1990a) as well as monitoring of the reconstruction of the C.N. Rail overpass (Quaternary 1995a) and the construction of the northbound Norwood Bridge (Quaternary 1996a).

3.2 Potential Archaeological Resources

There are three locations which could have archaeological resources—two of which have suffered minimal disruption. The two areas which have been protected by development of above grade features are the west bank of the Red River under the Low Line berm and the north-central area under the roadway linking the two elevated berms. The third area, the south bank of the Assiniboine

River, appears to have experienced minimal disruption since the construction of the Main Line berm in 1911. Pre-railroad impact across South Point appears to have been localized around dwellings with some 19th century agricultural impact.

The archaeological site discovered in 1968 on the west bank of the Red River probably extends inland under the Low Line berm and may link with extensions of the archaeological sites that were in the Norwood Bridge impact zone. Given the development of the berm through construction above original grade, any heritage resources within the Low Line right-of-way should be intact.

No archaeological testing of the south bank of the Assiniboine River has occurred. Thus, no resources are known in this vicinity. However, given the plethora of occupation sites on the north side of the junction of the two rivers (Kroker 1989; Kroker and Goundry 1990, 1993a, 1993b, 1994; Quaternary 1988, 1989b, 1989c, 1989d, 1990b, 1990c, 1990d, 1990e, 1990f, 1991, 1992, 1993a, 1993b, 1994c, 1994d, 1995c, 1995d, 1995e, 1996e, 1996f, 1996g, 1998b, 1998c, 1999a, 1999b, 1999c, 2000a, 2000b, 2000c, 2000d, 2001a, 2001b, 2002, n.d.), it would be likely that more than just the west bank and Norwood locations contain pre-European occupation sites. In addition, evidence of the Fur Trade and Homestead periods could occur in this area.

4.0 RELATIVE LEGISLATION

Any projected development at the South Point portion of The Forks will be governed by several legislated regulations; federal, provincial, and municipal. In terms of heritage resource management two Provincial Acts are most pertinent: the Manitoba Heritage Resources Act and the Manitoba Fatalities Inquiry Act. Other relevant legislation falls under other domains such as environment, fisheries, etc., and would be applicable only wherein archaeological activities impinge upon their jurisdiction, i.e., the City of Winnipeg Rivers and Streams Authority.

4.1 Manitoba Heritage Resources Act

This act was assented to on July 11, 1985 and was proclaimed in May, 1986. The act is concerned with the preservation and protection of heritage sites resources within the jurisdiction of the Province of Manitoba. A heritage resource is defined as including:

1. "a heritage site (i.e., a site designated as a heritage site under Section 2),
2. a heritage object, and
3. any work or assembly of works of nature or of human endeavour that is of value for its archaeological, palaeontological, prehistoric, historic, cultural, natural, scientific or aesthetic features, and may be in the form of sites or objects or a combination thereof" (Section 1).

A heritage object is defined to include:

1. "an archaeological object,
2. a palaeontological object,
3. a natural heritage object, and

4. an object designated as a heritage object by the Lieutenant Governor in Council under subsection [2]" (Section 43[1]).

These definitions are further amplified in Section 43[1].

An archaeological object refers to an object "that is the product of human art, workmanship or use, including plant and animal remains that have been modified by or deposited due to human activities."

Human remains means "the remains of human bodies that in the opinion of the minister have heritage significance and that are situated or discovered outside a recognized cemetery or burial ground in respect of which there is some manner of identifying the persons buried therein."

A palaeontological object means "the remains or fossil or other object indicating the existence of extinct or prehistoric animals."

A natural heritage object means "a work of nature consisting of or containing evidence of flora or fauna or geological processes."

Many of the clauses of the act pertain to proposed development. These relevant clauses can be classed within seven categories: Regulatory Provisions, Heritage Permits, Heritage Resource Impact Assessments, Applicability of the Act, Custody of Artifacts, Burials, and Funding.

4.1.1 Regulatory Aspects of the Act

A number of the sections of the Act pertain to its regulatory parameters. The most extensive of these are Sections 16 and 17 which outline the steps which may be taken by the minister

"where the minister believes on reasonable and probable grounds that a person is in breach of a provision of section 12 or an order made thereunder, or a provision of section 14 or the terms and condition of a heritage permit, or a provision of a requirement of the minister imposed or an agreement entered into under section 15..."(Subsection 17[1]).

These steps include examination of the premises (Subsection 16[1]), entry into the premises with the owner's or lessee's permission (Subsection 16[2]), issue of a warrant with respect to the premises (Subsection 16[4]), imposition of remedial action (Subsection 17[1]), judicial authorization of a stop work order (Subsection 17[2], clause [a]) or mitigative action (Subsection 17[2], clause [b]) or ministerial declaration of a stop work order (Subsection 17[3]). If action is taken by the minister or designates under Section 17, recompense to the Crown can be accrued under Subsection 17[4] which states:

"Where the minister takes steps under this section to remedy a breach committed by any person, the minister may recover from the person, by action in any court of competent jurisdiction but subject always to any order of a judge or justice made under this section in respect thereof,

- [a] the costs and expenses necessarily incurred by the minister in taking those steps; and
- [b] the amount of any grant made to the person under this Act by way of assistance."

Judgements and/or ministerial actions under Section 17 may be appealed to Court of Queen's Bench as set forth in Section 18.

With reference to the protection and preservation of individual artifacts, Section 51 states that:

"No person shall destroy, damage or alter any heritage object, whether or not the person is the owner thereof, or any human remains."

Section 46, which would apply to all persons operating within the development area and not covered by a specific heritage permit for a specific operation, requires reporting of any discoveries. This section states that:

"Every person who finds an object that is or that the person believes to be a heritage object, or remains that are or the person believes to be human remains, shall forthwith report the find to the minister and shall not handle, disturb or do anything to the object or the remains except in accordance with such requirements as the minister may prescribe."

The provision for reporting the discovery to the minister or representatives of the minister at Historic Resources Branch can be alleviated by having sub-surface impact activities monitored by an archaeologist holding a heritage permit.

Penalties applicable for contravention of the provisions of the Act are delineated in Section 69 which contains the following two subsections:

"Any person who contravenes or fails to observe a provision of this Act or a regulation, order, by-law, direction or requirement made or imposed thereunder is guilty of an offence and liable, on summary conviction, where the person is an individual, to a fine of not more than \$5,000.00 for each day that the offence continues and, where the person is a corporation, to a fine of not more than \$50,000.00 for each day that the offence continues."

"A judge or justice convicting a person of an offence under subsection [1] may, where the offence committed resulted in damage to or the demolition of or destruction of a heritage resource, order the person to pay, in addition to any penalty that may be imposed, the cost of the repair, restoration or reconstruction of the heritage resource."

4.1.2 Heritage Permits

Basically, a heritage permit recognizes ministerial approval and permission for the implementation of an activity at a site containing heritage resources. Several sections in the Heritage Resources Act are applicable.

Subsection 13[1], the most comprehensive, states:

"The minister, after considering any heritage resource impact assessment, development plan and other documents, material and information received under Section 12 in respect of any work, activity, development or project upon a site,

- [a] may approve the work, activity, development or project in the form in which it was proposed, or with such variations as the minister deems necessary for the protection of the site or any heritage resources or human remains upon or within or beneath the site;
- [b] may require the allocation of such amount as the minister deems necessary for the purpose of mitigating any damage to and for any subsequent restoration or maintenance of the site or the heritage resources or human remains, and may further require that the allocation and the use thereof for those purposes be secured by a bond in an amount and in a form to be approved by the minister;
- [c] subject to subsection [2] and where the owner or lessee of the site complies with clause [b], ... may issue a heritage permit authorizing the proposed work, activity, development or project, in the form in which it was proposed or as varied under clause [a], and may make the heritage permit so issued subject to such terms and conditions as the minister deems necessary."

This section follows naturally from Section 12[2] as part of the regulatory aspect of the Act. Often, projects are approved without variance, particularly when the heritage resource impact assessment has adequately addressed the problems of mitigative action. The import of clause [b] could be the imposition of an arbitrary value to be allocated for mitigative action. However, this can be alleviated by requiring costing of potential mitigative activity on a component-by-component basis. This will entail that the heritage resource impact assessments for each component provide estimated mitigative costs, or that a percentage of the development cost of a component be allocated for mitigative action.

The Subsection 13[2] referred to in the above section allows for the issuance of a heritage permit without having conducted a heritage resource impact assessment. This subsection states that:

"Where the minister deems it advisable to do so, the minister may issue a heritage permit under subsection [1] without requiring the submission of a heritage resource impact assessment or any or all of the additional things that may be required under section 12."

In addition, Subsection 14[1] states that:

"No person shall carry out any work, activity, development or project ... upon or within a site ... that is a site with respect to which the minister has made and served an order under subsection 12[2], unless and until the minister has issued a heritage permit under section 13 authorizing the work, activity, development or project, and unless the work, activity, development or project is carried out in accordance with such terms and conditions as the minister may impose and as may be set out in or attached to the heritage permit."

Further sections which refer to the necessity for a heritage permit are Sections 53 and 54. These sections state that:

"No person shall search or excavate for heritage objects or human remains except pursuant to a heritage permit and in accordance with such terms and conditions as may be prescribed by the minister and set out in or attached to the heritage permit."

"The minister may issue any heritage permit required for the purposes of this Part, upon the receipt of an application therefor in a form approved by the minister, accompanied by such fee as the Lieutenant Governor in Council may by regulation prescribe and such information, particulars and documents as the minister may require."

To summarize, the Manitoba Heritage Resources Act is explicit about the necessity for a heritage permit which authorizes the implementation of any activity which may impact upon a known or probable archaeological site. The relevant sections approach this regulatory provision from the aspect of entire sites (Sections 13 and 14) and the aspect of specific artifacts (Sections 50, 53, and 54).

4.1.3 Heritage Resource Impact Assessment

This phrase is defined as "a written assessment showing the impact that proposed work, activity or development or a proposed project is likely to have upon heritage resources or human remains" (Section 1). Two sections directly pertain to this aspect, while others, which are examined under different categories, make reference to this provision. The primary clause is Subsection 12[2], which states, in part:

"Where the minister has reason to believe that heritage resources or human remains upon or within or beneath a site, ... are likely to be damaged or destroyed by reason of any work, activity, development or project ... that is being or is proposed to be carried out upon the site, the minister may ... require the owner or lessee to ... submit to the minister an application for a heritage permit authorizing the work, activity, development or project, and thereafter, if the minister ... so requires, to submit ... a heritage resource impact assessment or development plan or both, ... prepared at the cost of the owner or lessee."

While this clause strongly suggests that a heritage resource impact assessment and/or development plan is required, it does not make the provision for either mandatory. However, within the regulatory sections, penalties can be assessed for disregarding this provision.

The format of documents referred to in Section 12[2] is covered by Section 12[3], which states that "Any application for a heritage permit, and any heritage resource impact assessment or development plan required under this section shall be in such form and shall contain such information as the minister, may, by regulations, prescribe."

Pertinent forms are available from Historic Resources Branch, Manitoba Culture, Heritage and Tourism. Also, information regarding the type and detail of required information can be obtained from Historic Resources Branch.

While not defined as a heritage resource impact assessment, a similar provision can be found in Section 20, which states:

"Where the minister has reason to believe that there are heritage objects or human remains on or under any land, and that they are likely to be damaged or destroyed by reason of any activity including commercial, industrial, agricultural, residential, construction or other development or

activity, the minister may enter into an agreement with the owner of the land or the person undertaking the activity respecting the searching for, and the excavation, investigation, examination, preservation and removal of, any heritage object or human remains found on or under the land."

This section is very similar to Section 12[2], except that it is oriented toward the protection of individual artifacts, whereas the previous subsection dealt with archaeological sites *in toto*.

4.1.4 Applicability and Constraints of the Act

The Manitoba Heritage Resources Act has jurisdiction on all land that is under jurisdiction of the Province of Manitoba. This is the entire province, excepting those lands which are under jurisdiction of the Government of Canada (e.g., Indian Reserves, National Parks).

The Act is binding upon the Crown (Section 66) and is constrained by Section 64 and Section 65, which read respectively:

"This Act is subject to any subsisting municipal zoning by-laws or other subsisting zoning restrictions enacted or made pursuant to an Act of the Legislature."

"This Act is subject to the provisions of any building code established by or under an Act of the Legislature."

4.1.5 Custody of Artifacts

The Act is quite explicit about ownership and custodianship of artifacts which are recovered. Title to all artifacts found after proclamation of the Act rests in the Crown. Custody rights may be vested with the finder or the owner of the land from which the artifact was recovered. Section 44 contains four relevant subsections which are cited below. A fifth subsection defines continued rights of ownership which were in force prior to proclamation of the Heritage Resources Act and is not cited as it's provisions are not germane. The relevant subsections state:

"Subject to subsections [2], [3], [4] and [5], the property in, and title and right of possession to, any heritage object found by any person on or after the day this Act comes into force is and vests in the Crown, but

- [a] where the heritage object is found on or under Crown land or municipal land, or submerged or partially submerged beneath the surface of any watercourse or permanent body of water on Crown land or municipal land, other than such Crown land or municipal land as the minister may by regulation exclude from the application of this clause, it shall remain in the custody of the finder; and
- [b] where the heritage object is found on or under private land, or submerged or partially submerged beneath the surface of any watercourse or permanent body of water on private land, it shall remain in the custody of the owner of the land;

unless the finder or owner, as the case may be, elects to give custody of the heritage object to the Crown."

"A person who retains custody of a heritage object under subsection [1] is deemed to be holding the heritage object in trust for the Crown, and the minister may on behalf of the Crown enter into an agreement with the person respecting the housing and protection of the heritage object and containing such other terms and conditions to be observed by the person in respect of the heritage object, including the length of the period of time during which the person is to retain custody of the heritage object, as the minister and the person may agree."

"The custody of a heritage object retained under subsection [1]

- [a] is transferable, by the person who has the custody, to any other person at any time; and
- [b] upon the death of a person who has the custody, passes to the heirs, executors or administrators of the person;

and any transferee, heir, executor or administrator so receiving the custody is deemed to be holding the heritage object in trust for the Crown and subject to any agreement entered into under subsection [2] and to the provisions of this Part."

"The minister may at any time, on behalf of the Crown, by order, waive any right of ownership of a heritage object that the Crown has under subsection [1]."

The above Subsection 44[4] is constrained by Section 45 which differentiates between artifacts and human remains in terms of ownership. Section 45 states that

"The property in, and the title and right of possession to, any human remains found by any person after May 3, 1967, is and vests in the Crown."

The implications of Section 44 are that The Forks North Portage Partnership has custody rights to the artifacts found within their jurisdiction on South Point. The import of exercising artifact custody rights and ultimate disposition of artifacts was a matter of discussion of the Board of Directors of The Forks Renewal Corporation in 1987 and 1988. At a meeting of Mr. G. Campbell MacLean and Dr. Jean Friesen of The Forks Renewal Corporation Board of Directors with the then Minister of Culture, Heritage and Recreation, it was agreed that the Crown would accept custody of artifacts recovered within FRC jurisdiction. This policy was published in the Phase I Plan which stated that "the Corporation is proceeding on the premise that it will provide to the Province in trust any artifacts discovered on the site" (FRC 1987:30). The Crown further indicated that it would be placing the artifacts in the care of the Manitoba Museum of Man and Nature which has storage facilities, environmental controls, and a computer data management system (FRC 1988:107). The option of retention of artifacts by FRC was rejected due to the lack of an adequate artifact repository as well as the added cost of maintaining the necessary curatorial standards. Further details concerning artifact disposition, custody, and regulatory aspects are detailed in The Forks Archaeological Impact Assessment and Development Plan (FRC 1988:106-109).

4.1.6 Burials

As there is a potential, albeit minimal, for encountering burials during developments on South Point, it is pertinent to review the provisions of the Act concerning human remains. Section 45, stated

above, indicates that title and right of possession is retained by the Crown. Section 46, referred to in 4.1.1, requires the immediate reporting of the discovery of human remains. Section 51, also referred to in 4.1.1, prohibits the damage or alteration of human remains. Section 50, Section 53, and Subsections 12[2] and 13[1] mention human remains in the context of heritage resource impact assessments (4.1.3) and heritage permits (4.1.2).

The Forks Renewal Corporation developed a practice of consultation with representatives of the Aboriginal community. While the principle of consultation was developed to assist with Pre-Contact skeletal finds, it is applicable in Post-Contact situations where ethnicity can be determined. The practice encompasses the following actions and principles:

1. No skeletal material should be disturbed or removed from its original resting place unless removal is unavoidable and necessary.
2. Anyone who uncovers human skeletal material shall immediately cease work in that area and contact the Project Archaeologist, who will inform the Chief Medical Examiner and Historic Resources Branch.
3. Neither the skeletal material, nor associated artifacts, shall be further disturbed until the arrival of personnel qualified to take further action with respect to the exhumation and removal of human remains and associated artifacts.
4. The Project Archaeologist, or designates, shall carry out the exhumation and removal in accordance with professional archaeological standards.
5. Such work will be conducted as much as possible out of the public eye.
6. As part of the on-going consultative program with Aboriginal groups and other interested parties, briefings and discussions will be undertaken prior to each archaeological project.
7. The discovery of skeletal material will be brought to the attention of appropriate interested parties.
8. The disposition of the discovery will be decided on a case-by-case basis in consultation with appropriate interested parties; actions may include:
 - a. non-destructive identification procedures to determine ethnicity, physical characteristics, age, sex, and cause of death; and
 - b. reburial at a site determined in consultation with the appropriate interested parties.
9. A location at the tip of South Point has already been established as a reburial site for First Nations individuals.

Further considerations regarding the discovery and treatment of human remains are provided by The Manitoba Fatality Inquiries Act.

4.1.7 Provisions for Funding

Provision for assistance for heritage resource management is made by certain sections of the Act. Section 15 and Section 34 provide for financial and/or professional and technical assistance of the maintenance and management of provincial or municipal heritage sites. Neither are applicable as the area has not been designated as a Heritage Site. In lieu of designation, an application for funding may be made under Section 60 which reads:

"For the purposes of this Act, the minister or a municipality may

- [a] cause to be prepared and produced informational material respecting the heritage resources of the province or municipality and make the material available to the public by means of circulars or pamphlets or other printed material, radio, television or newspaper advertising, or public lectures;
- [b] undertake or, by means of grants or other assistance, support and encourage the undertaking of educational programs or courses in the public schools, colleges and universities of the province, or educational programs for the public at large, respecting the heritage resources of the province or municipality;
- [c] undertake or, by means of grants or other assistance, support and encourage the undertaking of programs of research into the heritage resources of the province or municipality;
- [d] provide assistance, in the form of grants or professional and technical services or other wise, to any group, society, organization, agency or institution within the province dedicated to the discovery, maintenance, restoration, preservation, protection and study of the heritage resources of the province or municipality, either for the purposes of their work in general or for the purposes of any specific project relating to the heritage resources of the province or the municipality."

This section is further amplified by Section 61 which states that:

"The minister, or a municipality, may enter into an agreement with any person, group, society, organization, agency, institution, museum, government or other body within the province ... respecting

- [a] the co-ordination of programs;
 - [b] the dissemination of information to the public;
 - [c] public displays;
 - [d] research programs;
 - [e] programs of search and discovery, restoration and preservation;
 - [f] programs of reciprocal professional and technical assistance;
- relating to the heritage resources of the province or the municipality."

4.2 Manitoba Fatalities Inquiry Act

While the Manitoba Fatality Inquiries Act is primarily concerned with recent deaths, sections of the Act pertain to the discovery and investigation of human remains of any temporal period.

4.2.1 Jurisdiction

A medical examiner, appointed under the Act, has jurisdiction throughout the province (Section 5[1]).

Under the terms of reference of the Act, Subsection 6[1] states, in part, that:

"Where a medical examiner is informed of the presence of a dead body of any person within the province, and it appears that

[a] there is reasonable cause to suspect that the person died by violence, undue means, or culpable negligence or in an unexpected, unexplained or sudden manner; or ...

[c] the cause of death is undetermined; ...

he shall forthwith take charge of the body, inform the police, and make diligent inquiry respecting the cause and manner of the death of the person."

This section does not, nor does any other section, provide temporal limits as to the applicability of the Act; it applies equally to human remains, whether one day or 1000 years has passed since the death of the person. However, in standard practice, the Office of the Chief Medical Examiner does not interest itself if the date of death is demonstrably greater than seventy years.

4.2.2 Treatment of Human Remains

Two sections of the Act have implications for archaeological and/or development impact discovery of human remains. Subsection 23[1] states that:

"In case of sudden death from any cause, no person shall remove, or cause to be removed, the body of a deceased person from the place where it is at the time of death until a medical examiner or police constable or police officer has given his order permitting the removal ..."

In addition, Subsection 8[4] allows that:

"The minister may direct a post-mortem examination to be made in any case where he deems it advisable."

In accordance with such post-mortem examination, Subsection 8[5] states that:

"Where under this or any other Act of the Legislature, any person is authorized to perform a post-mortem examination, he may, for the purposes of the post-mortem examination, excise or remove any part of the body for scientific or laboratory examination."

4.2.3 Treatment of Grave Goods

Grave goods is an archaeological phrase referring to heritage objects or artifacts which are associated with human remains. These may be personal items interred with the individual or parts of the grave furniture (coffins, bark shrouds, etc.). Usually, these artifacts can provide a great deal of information concerning the cultural identity, sex, and status of the individual with whom they were interred. Two portions of the Act pertain to these artifacts.

Subsection 6[3] states that:

"A medical examiner may prohibit the removal of any exhibits without his permission, until his inquiry is completed."

Section 28 provides that:

"When a medical examiner makes an investigation under this Act he shall take charge of any money and other personal property found on or near the body of the deceased person and shall deliver it, together with any exhibits that he considers should be retained, together with an inventory of the property to a representative of the police force in charge of that area to be delivered to the person or persons entitled to its custody or possession ..."

This section may be construed to indicate that the 'person or persons' so entitled would be individuals, institutions or corporations holding a valid heritage permit pertaining to the operation during which the discovery of the human remains was made.

4.3 Compliance

The legislation appears complex but compliance can be readily alleviated by retaining an archaeological consultant who is conversant with the wording, the import, and the specific regulations of the Manitoba Heritage Resources Act.

5.0 HERITAGE RESOURCE MANAGEMENT

The South Point locality has had considerable modification in the past 115 years through the activities of the railroads. From a heritage resource management point of view, their activities have been largely beneficial as minimal subsurface activity was undertaken. In 1888, the Northern Pacific and Manitoba Railroad established their right-of-way along the west bank of the Red River and constructed an elevated berm to maintain an uniform grade for the bridge across the Assiniboine River. This rail freight route across the Low Line Bridge was abandoned in the 1980s but, as it had been an active track, had not undergone any major modifications. The construction of the Main Line track and High Line Bridge, in conjunction with the development of Union Station in 1911, by Grand Trunk Pacific Railway and Canadian Northern Railway added a second raised feature above the original elevation of South Point. A linking roadway was constructed between the two berms, at the elevation of the tracks. Thus, a large portion of the present terrain on South Point is considerably above the original pre-1888 ground surface. This will have ramifications for site development and site servicing.

Depending upon the type of development that will occur on South Point and its location, sub-surface impact may be minimal. If the elevation of the existing berms is used as Grade Zero, sub-surface components could be placed in the triangle between the berms and the roadway without any excavating. If excavation were to occur north of the connecting roadway, heritage resource concerns would come into play as the upper bank, middle terrace, and, to some degree, the lower terrace of the south bank of the Assiniboine River could contain archaeological resources.

Site services of any development would, by necessity, have to be connected to existing services along the Main Street corridor. Given that it is not practical, or even possible, to open-cut trenches under

an operating rail track, these would have to be installed by horizontal boring between vertical shafts. It would be necessary to maintain archaeological monitoring during the excavation of these shafts.

As most heritage resource management costs—archaeological impact assessments, construction monitoring, or impact mitigation—are extremely dependent upon the parameters of the development, i.e., size of footprint, depth of impact, type of sub-surface servicing, etc., it is impossible to estimate any costs that would derive from an unknown development. The cost could be minimal for a project with limited or no sub-surface impact into the original ground surface or extremely high for a large development with considerable excavation components.

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