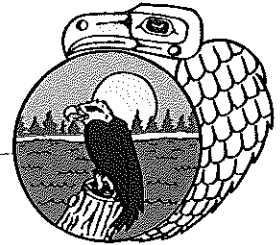


# Penelakut Tribe

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July 31, 2012

Sergeant George Jenkins  
Royal Canadian Mounted Police  
Salt Spring Island Detachment  
401 Lower Ganges Rd, Salt Spring Island V8K 2V4  
TEL: (250) 537-5555  
FAX: (250) 537-1631

**RE: Request for RCMP Investigation against Mr. Barry Slawsky and contractors responsible for unauthorized excavations at recorded archaeological site, DfRu-009, Grace Islet, Ganges Harbour, in contravention of British Columbia *Heritage Conservation Act, R.S.B.C. 1996, Chapter 187.***

Dear Sergeant,

The Penelakut Tribe would like to file an official complaint against Mr. Barry Slawsky, property owner at Grace Islet, Ganges Harbour, and his associated contractors responsible for contravening Sections 13 (2) of the B.C. *Heritage Conservation Act, R.S.B.C 1996, Chapter 187*. This complaint is filed as a result of unauthorized physical ground disturbance at this First Nation historical burial islet and recorded archaeological site, DfRu-009, during recent residential land development in breach of the written conditions of their received provincial heritage site alteration permit (HCA Permit 2012-343) from the Archaeology Branch, Ministry of Forests, Lands and Natural Resource Operations.

The matter of complaint is as follows:

## **BACKGROUND**

Grace Islet is a small First Nations' historical burial islet in downtown Ganges, Salt Spring Island (Lot A, District Lot 47, Cowichan District, Plan 4587). In the 1960s, the burial islet was first recorded in British Columbia's provincial heritage site registry as a part of the larger archaeological village settlement, DfRu-009, Ganges Harbour.

On April 20<sup>th</sup> 2006, kayakers reported found human remains at Grace Islet to the Salt Spring Island RCMP (File 2006-887). On June 2nd, 2006, Mr. Eric McLay, archaeologist for the Hul'qumi'num Treaty Group, confirmed that the reported location of the ancient human remains originated from an exposed rock burial cairn feature at Grace Islet, which represented the final resting place of a minimum of two individuals. Several other unrecorded rock burial cairn features were observed at that time at Grace Islet, which were communicated in a letter report to the provincial Archaeology

Branch. On June 7<sup>th</sup>, 2006, Mr. Jim Spafford of the Archaeology Branch wrote a letter to the property owner, Mr. Barry Slawsky, informing him of the discovery of archaeological found human remains and unrecorded burial cairn features and cautioned the property owner that “the entire islet, is protected by the *Heritage Conservation Act*”. The June 7<sup>th</sup> letter stated that prior to any proposed private land development at Grace Islet a professional archaeological impact assessment study (AIA) would be required to be completed under a provincial heritage inspection permit, as regulated by the Archaeology Branch.

In March 2007, Mr. Bjorn Simonsen, consulting archaeologist with Madrone Environmental Ltd., Duncan, B.C. directed an AIA study on behalf of Mr. Slawsky to assess a proposed residential house development at Grace Islet (HCA 2007-041). The AIA study confirmed the presence of ancient human remains at Grace Islet at two separate locations, including the burial cairn feature associated with the 2006 found human remains (Burial Feature 1), and a human femur discovered in a shovel test in an otherwise unmarked grave (Burial Feature 2). In addition, the 2007 AIA study identified the presence of at least 15 other rock features (RF 1 to 15), which were interpreted to represent archaeological burial features typical of pre-contact aboriginal practices on southeastern Vancouver Island and the Gulf Islands over the last 1500 to 1000 years. In total, 17 archaeological burial features were recorded at Grace Islet. The found human remains previously collected by the Salt Spring Island RCMP were reinterred at their original location on Grace Islet during the AIA study in cooperation with local Coast Salish First Nations. The 2010 permit report recommendations for the AIA study advised Mr. Slawsky to avoid the disturbance of any ancient human remains or recorded archaeological features by proposed residential construction, and suggested that archaeological monitoring of any land development would be required as a precaution against the disturbance of any known burial locations or potential unmarked graves, ancient human remains or artifacts.

#### **HERITAGE SITE ALTERATION PERMIT 2011-343**

In May 2011, we have been recently informed by the Archaeology Branch that Mr. Barry Slawsky and consulting archaeologist, Mr. Kevin Twohig of Terra Archaeology Ltd., Vancouver, jointly applied for a s.12 provincial heritage site alteration permit to allow “alterations to archaeological site DfRu-9 from construction of a new residence and associated infrastructure on Grace Islet, Ganges Harbour, Salt Spring Island”. Heritage site alteration permit, HCA 2011-343, dated October 24, 2011, issued to Mr. Slawsky and Mr. Twohig by the Archaeology Branch, established that “All work is to conform with the “Application for Permit” dated May 2, 2011”.

The May 2<sup>nd</sup>, 2011, permit application clearly stated the methodology of residential land development would ensure against the physical disturbance to any cultural features at this recorded burial islet. The building design was proposed to take into consideration the location of all 17 recorded archaeological burial features to leave these cultural features undisturbed within the house footprint and associated infrastructure. As stated: “The nature of construction activity carried out under the Alteration Permit is to ensure that no impact to known or possible previously unrecorded cultural features will occur. This will be achieved through archaeological monitoring of development activity, along with continued due diligence in the ongoing project planning and design process” (pp.1).

The Application for Permit’s Section 4.0 outlined a list of conditions that were approved by the Archaeology Branch for proposed land development to proceed at Grace Islet that spanned the beginning to end of the project (pp.3):

- “1) A pre-development orientation meeting with project construction-crew members to make them aware of the presence of cultural heritage features and the presence of human remains. This will include information about local First Nations burial practices and the importance of such places in the spiritual life of local First Nations.

- 2) All identified rock features and the location of human remains will be flagged and otherwise identified in the field by means of temporary fencing and other means, and all such locations will be treated as no-work zones. Any excavation or other ground preparation work that might be required in the immediate vicinity of a rock feature will be closely monitored by the Archaeological Monitoring Team on site to ensure no damage to cultural features.”
- 4) All ground-disturbing activities on the subject property will be monitored by a qualified archaeologist.
- 5) Any formed tools, diagnostic artifacts or otherwise archaeologically significant material observed during the monitoring program will be collected.
- 6) Access paths and walkways (such as access between the house construction site and the wharf area) will be routed around rock features and a non-disturbance buffer of 2 m will be imposed.
- 7) Any construction equipment, tools or construction material that might require storage on the island during the project development, will be placed in areas having no rock features or identified human remains. These areas will be determined prior to the start-up of construction work and their location and extent marked out by the Archaeological Monitoring Team.
- 8) At the conclusion of the construction work, site cleanup and other project wind-up activity on the island, will also be monitored by the Archaeological Monitor crew.
- 9) Lastly, the Archaeological Monitor will work closely with the Landscape Design Consultant to insure that any future landscaping work on the island does not impact on any of the rock features or areas that contain human remains. If necessary, archaeological monitoring will extend into the landscaping stage of development if any potential threat to cultural features is identified”.

Further, the issued permit HCA 2011-343 by the Archaeology Branch specifically reaffirmed the following legal provision under “Other Conditions”:

“11. All ground-disturbing activities on the property will be monitored by a qualified archaeologist.”

#### **UNAUTHORIZED ALTERATIONS TO DfRu-009 GRACE ISLET IN CONTRAVENTION OF THE *HERITAGE CONSERVATION ACT***

On July 3rd, 2012, Penelakut Tribe wrote the Archaeology Branch to request an investigation into reported recent unauthorized land development activity at Grace Islet. On July 10<sup>th</sup>, 2012, Mr. Ewan Anderson, Project Officer at the Archaeology Branch, replied that he had conducted an on-site field inspection with the property owner and the proponent’s archaeological consultants, Mr. Kevin Twohig and Mr. Bjorn Simonsen, who confirmed that recent unauthorized land development had taken place without any archaeological monitoring. The letter notified all local First Nations that disturbed soils may contain disturbed ancient human remains and artifacts. As briefly described in the July 10<sup>th</sup> letter from Ewan Anderson at the Archaeology Branch:

“During our site visit, we observed that trees had been cleared and soils excavated, likely by a machine excavator. No soils appear to have been moved from Grace Islet and all previously recorded archaeological features (petroforms) have been avoided (although not by the prescribed 2 m buffer). There is the potential for the recently disturbed soils to contain human remains, but none were observed on the ground surface.

Based on this on-site field inspection, the Archaeology Branch stated it had “notified the property owner and his agent that no development activities on the Islet are to continue until the Branch has determined how to address the breach of Permit”.

On July 25<sup>th</sup>, our hereditary grave workers Penelakut Elders Laura and Auggie Sylvester and other representatives from Cowichan Tribes and Tsartlip First Nation visited Grace Islet to personally inspect the reported damage to this burial islet. They witnessed that the entire centre of this small islet has been logged off, stumps and roots removed, and its soils stripped to bedrock. Only a minimum 10-15m buffer zone of vegetation had been left around the perimeter of the burial islet. It was evident that a heavy machine excavator had been transported to the islet and utilized to clear all soils from the proposed house footprint. A large 1.0m-wide trench had also been excavated over a 7.0m length to a depth of 0.6m below ground surface. Sparse archaeological shell fragments were observed embedded within the remnant soils in several locations within the house footprint area. A conservative estimate of soils excavated within the house footprint area, measuring approximately 32m x 17m where soils averaged 0.18m depth below surface (2007 AIA Shovel Test Log - Appendix 1 – Transects A-D, n=73), indicates the backfill piles may contain upwards of 98 cubic metres of disturbed soils or more at this recorded burial islet. All excavated soils and large boulders were observed to have been physically removed outside of the proposed house footprint and piled in several locations around the islet.

Importantly, at least 10 or more of the 17 recorded archaeological burial features (RF 2, 3, 7, 8, 9, 10, 11, 12, 13, 14), as best could be presently ascertained, were observed to be located directly within the excavated house footprint and surrounding area of recent ground-disturbing development activity at Grace Islet. These recorded burial cairn features had been marked by small wooden sticks with flagging tape, but no other protective measure as outlined in the permit application, such as temporary fencing or clearly flagged no-work zone boundaries.

## **REQUEST FOR RCMP INVESTIGATION UNDER THE *HERITAGE CONSERVATION ACT***

Section 13 (2) of the *Heritage Conservation Act* states:

**S.13 (2)** Except as authorized by a permit issued under section 12 or 14, or an order issued under section 14, a person must not do any of the following:

(b) damage, desecrate or alter a burial place that has historical or archaeological value or remove human remains or any heritage object from a burial place that has historical or archaeological value;

(d) damage, excavate, dig in or alter, or remove any heritage object from, a site that contains artifacts, features, materials or other physical evidence of human habitation or use before 1846;

(g) damage, excavate, dig in or alter, or remove any heritage object from, a site that contains artifacts, features, materials or other physical evidence of unknown origin if the site may be protected under paragraphs (b) to (f);

The Penelakut Tribe requests the Salt Spring Island RCMP conduct an official police investigation into our complaint that the property owner, Mr. Barry Slawsky, and his contractors have committed an offence(s) under the *Heritage Conservation Act, R.S.B.C. 1996, Chapter 187*; specifically, the unauthorized damage, desecration and alteration of a burial place; and, the unauthorized damage and excavation of archaeological soils from within the boundary of recorded archaeological site DfRu-009, which may contain disturbed ancient human remains, funerary artifacts and other archaeological materials.

The recently reported unauthorized land clearance at Grace Islet for residential development as described by the Archaeology Branch and witnessed by Penelakut Tribe representatives clearly breached the defined conditions of the received heritage site alteration permit (HCA 2011-343). A breach of issued permit conditions is a legal breach of s.13 (2) of the *Heritage Conservation Act*. The alleged contravention of the HCA 2011-343 permit conditions by Mr. Slawsky and contractors specifically involve, but are not limited to, the following provisions:

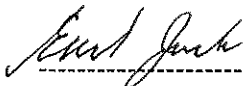
- 1) No pre-development meeting or other notification, to our knowledge, took place between the permit holders prior to land development;
- 2) No archaeological monitoring of any ground disturbing activity by a qualified archaeologist occurred during recent land clearance;
- 3) No temporary fencing or appropriate pre-defined no-work zone boundaries were established around archaeological burial features; and
- 4) No 2m-buffer zone around recorded archaeological burial features within the excavated house footprint or surrounding cleared lands;

The Penelakut Tribe asks that the Salt Spring Island RCMP undertake this complaint seriously and complete an official police investigation of this reported burial site desecration. Based on our observations, we argue the Salt Spring Island RCMP further forward a report to Crown Counsel to lay charges in this clear violation of the *Heritage Conservation Act* to uphold the principles of provincial heritage conservation legislation in Canada.

We appreciate the Salt Spring Island RCMP's consideration and prompt attention to this matter.

Huy ch qu (Thank You).

Respectfully,



Chief Earl Jack  
Penelakut Tribe

cc. Honourable Minister Steve Thompson, Ministry of Forests, Lands, Natural Resource Operations  
Ms. Justine Batten, Director, Archaeology Branch, MFLNRO  
Mr. Robert Morales, Chief Negotiator, Hul'qumi'num Treaty Group