

Penelakut Tribe



August 26th, 2014

Honourable Minister Steve Thomson
Ministry of Forests, Lands and Natural Resource Operations
PO BOX 9049 STN PROV GOVT
VICTORIA BC V8W 9E2

RE: Grace Islet – Request for Cancellation of Permit [HCA 2011-343]

Dear Minister Thomson:

On July 28th, our Penelakut Tribe wrote to the Archaeology Branch expressing our concerns for alleged permit violations at Grace Islet based on recent aerial photographs of the construction site. These reported violations of permit conditions involved burial cairns being built into and underneath the house foundations; modifications of the proposed development site plan and house design outside the scope of the issued permit conditions; graves being spray painted with graffiti; and tools, equipment, scrap wood and other construction materials thrown on top of burial features, supposed to be treated as no-work zones.

On August 6th, Ms. Justine Batten, Director, described the results of the Archaeology Branch's field inspection at Grace Islet undertaken on July 29th, 2014. In this letter, Ms. Batten confirmed all our reported observations of 'discrepancies' between the Site Alteration Permit and the development site at Grace Islet, as outlined in our July 28th letter. The letter confirmed tools, equipment and scrap lumber piled atop of burial cairn features, and the presence of graffiti spray-painted on one of the burial cairns. Most egregiously, the Archaeology Branch's field inspection confirmed that a major "modification of the development footprint" had occurred at Grace Islet, which resulted in unexpected discrepancies between the described burial cairn locations in relation to the built house foundations:

- "two of the cairns (RF#3 & 10) are now straddled by the foundation wall and lie partially within the interior of the house footprint. Previously the plan seemed to indicate these cairns were adjacent to but not touching the building foundation."; and,
- Rock Feature #14, as noted in your letter, is situated within the house foundation and presently enclosed in a protective plywood octagonal box. Contrary to our previous understanding, this feature will no longer be directly accessible from outside of the house."

For comparison, the amended HCA 2011-343 site alteration permit, dated May 6th, 2013, provided the following description of the burial cairn locations in relation to the proposed house footprint, as delivered by the Ministry for First Nations to comment:

- A. Rock Features 3, 11 and 12 will be in an open area that will be minimally landscaped without any impact to the cultural features
- B. Rock Features 9 and 14 will be spanned by floating decks and remain untouched.
- C. Rock Features 10 and 13 will be on undisturbed grades with deck areas built around them, but leaving the features undisturbed.

It is apparent that the Ministry was also not given prior notice of these modifications to the development footprint that have directly impacted the location of these three burial cairn features at Grace Islet.

From our review of the submitted plans attached to the Alteration Permit in May 2013, the modifications of the development footprint are substantial, including the enclosing of the entire house footprint in perimeter foundation walls, not raising sections of the house on post and pier blocks. Given we understand that the CRD Building Inspector has recently approved the foundation work at Grace Islet, we suspect that the property owner submitted a different house design and site plan for the CRD building permit in 2014 than previously submitted to the Archaeology Branch to receive an Alteration Permit.

The letter from the Archaeology Branch suggests that the property owner and permit holder has spent considerable effort in protecting these features “consistent with the intent of the Alteration Permit”. However, the issued Alteration Permit conditions clearly did not approve the placement of any burial cairn features encased in the foundation walls, or fully enclosed within the interior of the house footprint. This understanding is communicated to you as Minister in a briefing note, dated July 11th, 2013, where Ministry staff advised your office that “the current design avoids all rock features, but five features are extremely close to the proposed building” (CLIFF/tracking # 198918).

It appears the permit holder Mr. Slawsky has unilaterally changed the Alteration Permit conditions to alter and impact the burial cairns without prior notice or application for amendment to the Archaeology Branch and without consultation with our First Nations. While the issued Alteration Permit makes a brief reference to potential modifications of the house design, this statement does not grant permission to the permit holder to unilaterally alter and impact the burial cairn features, such as encasing burial features in the cement foundation walls or interior of the house footprint. These actions, we assert, detract from the heritage value of these burial features, or graves.

In summary, while we appreciate that all alleged permit violations were confirmed by the Archaeology Branch’s field inspection at Grace Islet as outlined in Ms. Batten’s letter, it is also clear that, to date, the Ministry intends there are no penalties for these clear permit violations. The letter from the Archaeology Branch appears to suggest that, since no physical disturbance of the burial cairns in violation of the *Act* has occurred at Grace Islet, that the permit holder can proceed with the house construction without consequence? We believe this lack of enforcement by the Ministry at Grace Islet normalizes the disrespect and contempt shown by this permit holder toward the law, our First Nations people and the desecration of this ancestral burial site.

Under s.13 (2)(b) of the *Heritage Conservation Act*, we understand that it is unlawful “to damage, desecrate or alter a burial place that has historical or archaeological value”. Penelakut Tribe considers the non-permitted alteration of these three burial cairns enclosed within the house footprint to be an act of *desecration* in violation of the *Heritage Conservation Act* Such desecration is also in violation of our Coast Salish customary laws for the living to avoid the location of burials and cemetery sites.

We request that as the responsible Minister you immediately suspend or cancel the Alteration permit at Grace Islet, as provided for under s.12 (6) of the *Heritage Conservation Act*:

(6) The minister may, by order, without the concurrence of the holder of the permit,

(a) amend or suspend a permit issued under subsection (2) (a) if the minister has information that was not considered when the permit was issued respecting the heritage value of heritage property that would be materially affected by an action authorized by the permit, or

(b) cancel a permit issued under subsection (2) (a) if the minister has reasonable and probable grounds to believe that

(i) the application for the permit included information that was false or misleading with respect to a material fact, or that omitted to state a material fact the omission of which makes information in the application false or misleading,

(ii) the holder has contravened or is in default of a requirement or condition of the permit, whether or not the holder is charged with an offence under this Act, or

(iii) the holder has contravened a provision of this Act, whether or not the holder is charged with an offence under this Act.

It is clear that there is now information in the Minister's possession that was not considered when the permit was issued respecting the heritage value of the Grace Islet that would allow the permit to be immediately suspended, as outlined in s.12(6)(a) – namely, the non-permitted enclosing of three burial cairns in the foundation walls and interior of the house footprint.

It is also clear that the permit holder has omitted to state a material fact, the omission of which makes information in the application false or misleading, as outlined in s.12 (6)(b)(i) –namely, modifications to the house design and site plan without notice or amendment to the Alteration Permit at the Archaeology Branch or consultation with First Nations.


It is clear that there is now information in the Minister's possession that the permit holder has contravened or is in default of a requirement or condition of the permit which allows the cancellation of the permit, as outlined in s.12(6)(b)(ii), specifically, the there was no authorization or consultation with First Nation to enable enclosing the three burial cairns within the house footprint.

It is clear that the permit holder has also contravened a provision of this *Act* to cancel the permit, as outlined in s.12(6)(b)(iii); namely, the non-permitted actions have desecrated a burial place, as protected against under s.13(2)(b) of the *Heritage Conservation Act*.

As of this morning, it is our understanding that house construction continues to progress at Grace Islet. We expect the Minister to exercise your powers to suspend or cancel the Alteration permit, enforce the law, and halt construction at Grace Islet immediately.

Huy ch qa (Thank You)

Respectfully,


Councillor Sharon Cross on behalf
of the Chief in his absence

Chief Earl Jack
Penelakut Tribe

cc. Justine Batten, Director, Archaeology Branch, MFLNRO (250-953-3340)
Robert Morales, Chief Negotiator, Hul'qumi'num Treaty Group (250-245-4668)
Gary Holman, MLA, Saanich North and the Islands (Fax 250 387-4680)
Alistair Bryson, Chair, Capital Regional District (250- 360-3130)