

Amy



WDFW CASE # WA-11-001018

RUNSTAD HYDRAULIC (HPA) VIOLATION
TABLE OF CONTENTS

<u>ATTACHMENT</u>	<u>PAGE NUMBERS</u>
Officer Downes Incident Report	2 - 33
Officer Rosenberger Supplemental Report	34 - 48
Officer Rosenberger Photos	49 - 61
Tax Parcels	62 -66
WDFW RUNSTAD Affidavit	67 - 72
WDFW RUNSTAD Warrant	73 - 76
Warrant Inventory and Return	77 - 78
NEEDHAM Photos Taken on 01-26-2011	79 - 82
NEEDHAM Photos Taken on 01-27-2011	83 - 89
NEEDHAM Photos Taken on 02-01-2011	90 - 97
NEEDHAM Photos Taken on 02-03-2011	98 - 105
WDFW Biological Report	106 - 111
RUNSTAD Site Diagram	112 - 115
WDFW Biological Photographs	116 - 129
Sgt. Mullins Supplemental Report	130 - 131
WISCOMB Statement	132
Sgt. Mullins Telephone Conversation Supplemental	133
Officer Rosenberger NEEDHAM Interview Supplemental	134 - 136
Sgt. Mullins RUNSTAD Interview Supplemental	137 - 139
RUNSTAD Photographs	140 - 145
NEEDHAM Statement	146



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)

P.O. Box 1100

LaConner, WA 98257

WSP# (360) 757-1175, Cell# (360) 202-7562

April 20, 2011

Incident #: WA-11-001018

WITNESSES:

Laura Arber
16018 Mill Creek Blvd.
Mill Creek, WA 98012
(425) 379-2306

WDFW Area Habitat Biologist

Brian Williams
111 Sherman Street
LaConner, WA 98257
(360) 466-4345 ext. 250

WDFW Area Habitat Biologist

OFFICERS INVOLVED:

Officer Ralph Downes (360) 202-7562
Sgt. Russ Mullins (360) 201-0638
Officer Chris Rosenberger (360) 708-7254

Relevant Regulations:

RCW 77.15.300 (See complete RCW 77.15.300 included)

RCW 77.55.011(8) defines a Hydraulic Project as “the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.” (See complete RCW 77.55.011 included)

WAC 220-110-030(3) defines where the work would require an HPA, “waterward of the mean higher high water line in salt water”, which is defined by WAC 220-110-020(49). (See complete WAC 220-110-030 included)

RCW 77.55.011(12) defines a Permit or HPA as “a hydraulic project approval permit issued under this chapter.” (See complete RCW 77.55.011 included)

RCW 77.55.021(1) requires that “in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.” (See complete RCW 77.55.021 included)



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Narrative:

On February 4, 2011, I was on marine patrol in San Juan County with Washington Department of Fish and Wildlife (WDFW) Officers Chris Rosenberger and Hwa Kim. While on the southern end of Blakely Island we observed a large landing craft on the shoreline of a small bay northwest of Armitage Island. Equipment was being offloaded from the vessel and moved upland to what appeared to be a construction site. We could clearly see that the portion of the beach utilized as a ramp by the vessel had been fortified with gravel and rock. We could also see what appeared to be construction of a new rock wall along the shoreline to the north and east of the ramp. Since both of these projects appeared to be occurring well below the mean higher high water (MHHW) line Officer Rosenberger and I agreed to follow up to ensure that a Hydraulic Project Approval (HPA) had been issued by WDFW for the construction activity.
(See Attached Officer Rosenberger Supplemental Report)

Photographs of the projects were taken by Officer Rosenberger.
(See Attached OFFICER ROSENBERGER Photographs)

After our observations on February 4, 2011, I made contact the WDFW Area Habitat Biologist (AHB) Brian Williams to see if he was aware of an HPA being issued for the projects we had observed on Blakely Island. AHB Williams advised that he was not aware of any permits being issued for projects in that area and recommended a check with WDFW AHB Laura Arber who was currently overseeing HPA issues in the marine areas of San Juan County.

On February 10, 2011, I was on marine patrol of San Juan County with WDFW officers Rosenberger and Capelli. While near the southern end of Blakely Island we again observed construction activity along the shoreline in the same location as we had on February 4, 2011.

As we entered the bay we could see that a large excavator was on the beach actively working below the MHHW line. The excavator had what looked to be a driftwood log in the bucket and the operator appeared to be using the log to smooth a portion of the beach below where a rock wall had been constructed.

(See Attached Officer Rosenberger PHOTO 1 and 2)



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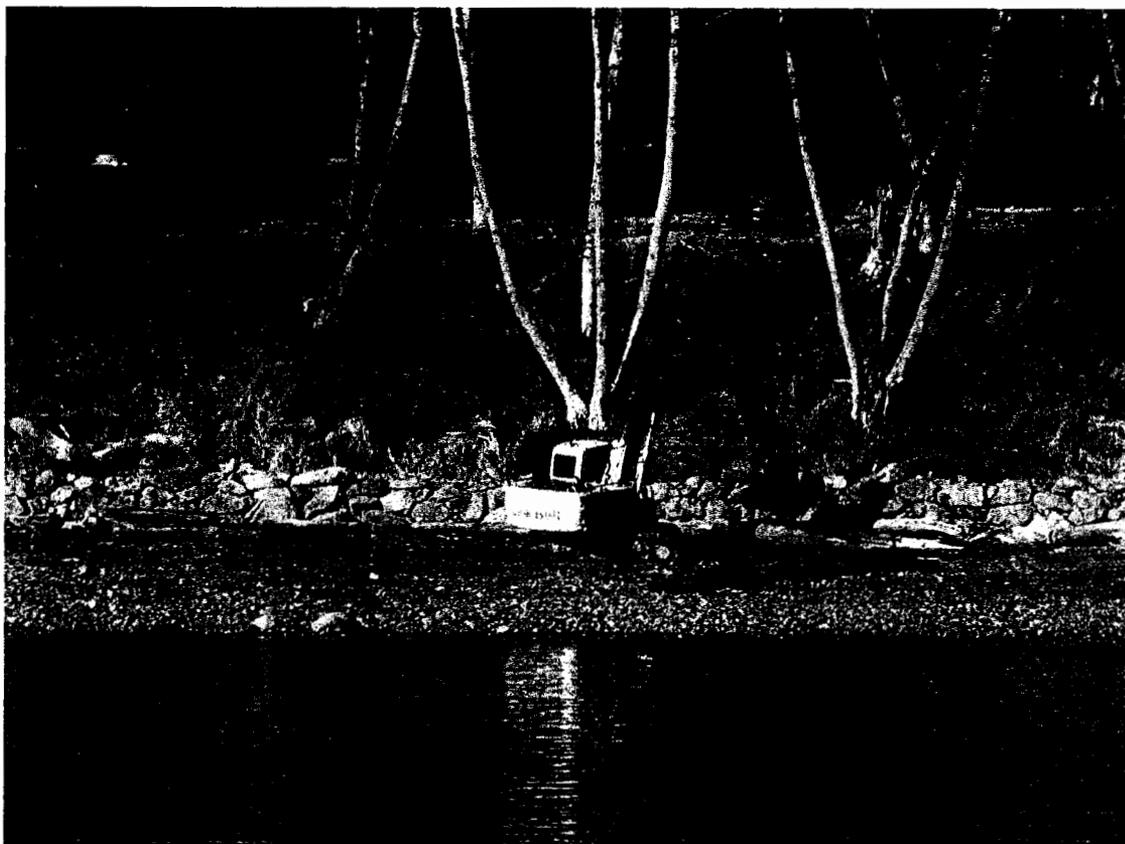
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Incident #: WA-11-001018



(Photograph of Excavator Working on Beach taken by Officer Rosenberger)

Since we could clearly see that work was being conducted at the upland construction site as well as on the beach we decide to land our vessel and attempt contact with someone in charge of the projects. After docking the vessel we were greeted by an individual who identified himself as Hans. After we identified ourselves, Hans stated that he wasn't associated to any new construction on the property, but that he would be happy to go and get the person in charge.



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After a short wait we were met by an individual who identified himself as (S3) - David W. NEEDHAM. NEEDHAM stated that he was the owner of Needham Construction based from Orcas Island and that he was in charge of the new construction projects that were ongoing on the property. NEEDHAM stated that he was in the process of building two new houses for the owner of the property and that he was also in charge of the wall construction on the beach.

NEEDHAM stated that the owner of the property or estate, which is comprised of several parcels of land, was a (S1) - Jon RUNSTAD.

When asked if he had obtained an HPA from WDFW for the work on the beach NEEDHAM replied that he had not. NEEDHAM stated that he had permits that had been obtained from the county, but said that he wasn't sure what type of State permit I was referring to and asked me to explain further. When asked how long he had been completing construction projects in the islands NEEDHAM replied that he had been doing so for over twenty-five years. After explaining the HPA process and requirements to NEEDHAM, I went on to comment that I found it hard to believe that someone with his experience hadn't dealt with HPA related projects previously. NEEDHAM made no reply to my statement.

From where we were talking with NEEDHAM, at the boathouse, Officer Rosenberger took a photograph of the wall project to the southwest. This photograph displays the distance of shoreline obstructed by the wall.

(See Attached Officer Rosenberger PHOTO 3)

NEEDHAM was advised that an HPA was required for the construction and use of the ramp area and for the rock wall that was being constructed along the shoreline.

NEEDHAM stated that he had been told that the landing area or ramp had been in use for years. When asked regarding the obvious addition of materials to the area, he said that rock had been added to help with the landing of the vessel and movement of equipment up and down the beach. (See Attached Officer Rosenberger PHOTO 13)

NEEDHAM said that the wall project had originally been in response to excessive water runoff caused by heavy rains and melting snow a few weeks prior. When asked if the new road work and construction projects had added to the issue, NEEDHAM replied that they had.



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NEEDHAM stated that they had originally constructed a short section of wall on the beach incorporating an upland drain where a portion of bank had washed out. He went on to say that once the owner of the property saw the project "he liked the way it looked and told us to continue the wall down the beach". When asked if he was referring to Jon RUNSTAD, NEEDHAM stated that he was.

NEEDHAM said that he had hired Orcas Excavators Inc. for the wall project and provided us with contact information for the company's owner (S4) - Bruce WISCOMB.

When asked regarding the materials that were used to construct the beach wall or the ramp area, NEEDHAM stated that the majority of materials were brought in from off-island. He added that some materials had been acquired from the foundation area dig of one of the new homes under construction, but stated that no materials were taken off the beach for any of the projects.

We requested to inspect the ramp area and wall project and NEEDHAM advised that we could. He offered to provide us with a ride and when we said that we'd walk he directed us to the best path to the beach.

Once on the beach we could clearly see where mechanized activity had occurred below the MHHW line across hundreds of feet of shoreline. NEEDHAM accompanied us as we inspected the project areas.



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(Photograph of Beach Scaring taken by Officer Rosenberger)

There were areas where the natural substrate appeared to have been scrapped from the shore and others where it was evident that the natural material had been scooped away leaving large depressions on the beach.

(See Attached Officer Rosenberger PHOTO 4, 5, 6, 8 and 10)

We observed other areas of the beach where it was clear that natural substrate and woody debris had been removed and deposited at the base of the wall.

(See Attached Officer Rosenberger PHOTO 9 and 11)

Our inspection also found that, contrary to NEEDHAM's claims, beach materials had been used during the construction of the face of the wall as well as backfill behind the wall. This fact was evident by the presence of attached barnacles and visible marine algae.

(See Attached Officer Rosenberger PHOTO 7 and 12)



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NEEDHAM was asked again regarding the origins of materials used and stated that no material had been taken from the beach and used for any of the projects. When he was shown the numerous barnacle and algae covered rocks, NEEDHAM agreed that it appeared that beach materials had been used for portions of the wall construction.

Prior to departing Blakely Island we advised NEEDHAM that we would be forwarding information to WDFW habitat personnel and that someone from the department would be in contact with him in the near future. NEEDHAM was again advised that an HPA was required for the wall and ramp construction projects and that continued work to either could result in additional violations. NEEDHAM stated that he understood and we exchanged contact information.

A records check with the San Juan County Assessor's Office showed that the activity we had observed had occurred on three different tax parcels of Blakely Island. These three parcels (15105001800, 151024003000 and 151024002000) were all found to be owned by Harold Jon RUNSTAD.

(See TAX PARCEL ATTACHMENT)

On February 12, 2011, information gathered from our contact with NEEDHAM and the photographs taken by Officer Rosenberger were forwarded to WDFW AHB Arber. On February 14, 2011, AHB Arber confirmed that she had received the information and that a HPA had not been issued by WDFW for the work conducted on the RUNSTAD Blakely Island properties.

On February 16, 2011, I shared information with Allen Shayo with the San Juan County Planning Department regarding our inspection of the RUNSTAD projects. After reviewing county issued permits Mr. Shayo advised that no mention had been made by the RUNSTADs or any of their agents regarding any shoreline activity other than a small water outflow on the beach to control erosion. Mr. Shayo went on to say that the activity we had observed would not have been permitted by the county without requiring WDFW review.

Based on the fact that WDFW had probable cause to believe that the RUNSTAD hydraulic projects had and were being conducted without the required HPA, on March 18, 2011 Officer Rosenberger applied for and received a warrant for the search of the project sites as well as the work areas of the RUNSTAD properties.

(See Attached WDFW RUNSTAD AFFIDAVIT)

(See Attached WDFW RUNSTAD WARRANT)



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The service of the warrant by WDFW enforcement staff was combined with a survey of the RUNSTAD project areas and was conducted on March 22, 2011.

Two WDFW patrol vessels were utilized to transport the personnel involved in the warrant service / biological survey to Blakely Island. The vessels were both secured to the RUNSTAD dock at approximately 1145 hours on March 22, 2011.

WDFW enforcement personnel present were Sgt. Mullins, Officer Rosenberger, Officer Gaston and I.

Also in attendance were WDFW AHB's Arber and Williams, Bob Fritzen with the Department of Ecology (DOE) and Allen Shayo and Chris Laws with the San Juan County Planning Department.

Once on Blakely Island, we were contacted by an individual who identified himself as Richard COOK. COOK stated that he was an employee of the estate and advised us that a member of the RUNSTAD family was not present and that only minimal construction activity was occurring that day. When asked, he stated that he did not believe that David NEEDHAM was present on the island either.

COOK was advised that WDFW had a warrant to search certain locations on the property as well as gather biological data from the project sites. COOK stated that he understood and I presented him with a copy of the warrant. COOK advised us that he would notify the individual in charge of the estate security, a Mr. Cosmo, of our presence on the property.

While conducting the search of the construction areas, Officer Rosenberger met with an individual who identified himself as Chris NEEDHAM of Needham Construction. NEEDHAM advised Officer Rosenberger that he was familiar with the ongoing beach rock wall construction project on the RUNSTAD properties. NEEDHAM stated that the project had originally been started after a slope washout above the beach. When asked, NEEDHAM stated that photographs of the project had been taken. NEEDHAM agreed to show the photographs to Officer Rosenberger.



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After a viewing session of the construction photographs, Chris NEEDHAM provided Officer Rosenberger with electronic copies of twenty-seven photographs. These photographs were of the beach and shoreline construction activities that occurred on the RUNSTAD properties between January 26 and February 3 of 2011.

Prior to the completion of the warrant service Officer Rosenberger presented Chris NEEDHAM with a return of service itemizing the photographs he had received.
(See Attached WARRANT INVENTORY AND RETURN)

Several of the photographs clearly show construction activity occurring below the MHHW line and the construction of the new rock wall along the RUNSTAD shoreline.
(See Attached NEEDHAM PHOTOGRAPHS)

The biological survey of the RUNSTAD properties was completed by WDFW AHB Arber and AHB Williams. I received a finalized copy of this report on April 11, 2011.
(See Attached WDFW BIOLOGICAL REPORT)

The biological survey concluded that the RUNSTAD properties occupy 951 feet of beach shoreline and that 416 feet of this shoreline had new rock walls or bulkheads in place that had not been permitted by WDFW. The survey determined that the 416 feet of beach below the MHHW line had been "significantly impacted by the operation of equipment on the beach and the removal of native rocks from the beach to construct the new rock bulkhead". The survey also concluded that the construction of the rock bulkheads "eliminates future recruitment of native substrate materials to the beach".

The survey also found that the creation or modification of the ramp area, the landing of the barges, operation of trucks and equipment on the beach and the offloading and stockpiling of materials onto the beach were all conducted without the required WDFW HPA.

The biological survey also noted that an additional 422 feet of the RUNSTAD's shoreline had been armored by a rock wall at some point within recent past. Though it is unknown exactly when this construction occurred, a records check going back over twenty years was unable to find any permitted hydraulic activities for this site.



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Incident #: WA-11-001018

During the survey AHB Arber and AHB Williams took 58 photographs of the project areas.
(See Attached WDFW BIOLOGICAL PHOTOGRAPHS)

AHB's Arber and Williams produced a site diagram of the area surveyed during the RUNSTAD site visit.
(See Attached RUNSTAD SITE DIAGRAM)

At approximately 1405 hours on March 22, 2011, all personnel departed the RUNSTAD property.

On April 21, 2011, Sgt. Mullins and Officer Rosenberger interviewed Bruce WISCOMB who is the owner of Orcas Excavators Inc. During the interview, WISCOMB stated that he had been hired by David NEEDHAM to work on the RUNSTAD projects.

WISCOMB admitted that he and NEEDHAM had discussed the requirement for additional permits for the completion of the rock wall on the RUNSTAD property. WISCOMB went on to say that he and NEEDHAM had decided to complete the project without the required permits.

WISCOMB stated that NEEDHAM had advised him that RUNSTAD was aware of the requirement for additional permits for the rock wall or bulkhead and that he had no intention of obtaining them.

(See attached SGT. MULLINS SUPPLEMENTAL REPORT)

I later received by mail a signed copy of a typed statement from WISCOMB. The envelope had been post marked on April 27, 2011. In his statement, WISCOMB acknowledged knowing that additional permits were required for the construction of the rock wall on the RUNSTAD property. WISCOMB also stated that NEEDHAM was aware of the permit requirements.

WISCOMB stated that NEEDHAM had advised him to build the wall and that "the Runstad's would be responsible".

(See Attached WISCOMB STATEMENT)



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On February 22, 2012, Sgt. Mullins had a telephone conversation with Judy RUNSTAD. Sgt. Mullins was attempting to make contact with Jon RUNSTAD, but was advised that he was unavailable. During his conversation with Judy RUNSTAD he advised her that he wanted to be sure that she and her husband had an opportunity to provide their account of what had occurred with the shoreline projects on Blakely Island. After discussing the matter with her husband, Judy RUNSTAD re contacted Sgt. Mullins and they agreed to meet at the RUNSTAD's Seattle office on March 6th at 1300 hours.

(See Attached Sgt. Mullins Telephone Conversation Supplemental)

On March 2, 2012, Officer Rosenberger and I arrived on Blakely Island to meet with David W. NEEDHAM, owner of Needham Construction. Our meeting had been agreed upon by NEEDHAM and Officer Rosenberger. NEEDHAM had requested that we meet at the RUNSTAD construction site.

(See Officer Rosenberger NEEDHAM Interview Supplemental Report)

We secured our patrol vessel at the RUNSTAD dock at approximately 1330 hours. Quickly after arriving on the island we were met by an individual who advised us that David NEEDHAM could be found at the "Cliff House" construction site. As we approached the site we observed an individual who we recognized to be NEEDHAM standing in the parking lot. We introduced ourselves to NEEDHAM and he indicated that he recognized us from our visit in February of 2011.

After thanking NEEDHAM for his willingness to meet with us, I asked if he had a location where he preferred to talk. NEEDHAM said that he had a mobile office on the other side of the property and asked if that would be acceptable. We said that it would and NEEDHAM transported us there with one of the construction vehicles.

Once in the mobile office, I again thanked NEEDHAM for meeting with us. I then made a point to advise NEEDHAM that our meeting was totally voluntary, that he did not have to answer any questions that he did not want to and that he could also stop the meeting at any time and we would be more than happy to depart the area.

NEEDHAM said that he understood my statements and in a jesting tone commented that maybe he should have a lawyer present. I advised him that his decision was totally up to him and that if he was uncomfortable we did not have to continue. NEEDHAM replied that he wished to continue and then said that he had been expecting our visit.



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I began by reminding NEEDHAM that during our original visit of the construction site on February 10th of last year he had stated to officers that he wasn't familiar with the HPA requirements associated to the projects he was completing on the beach. NEEDHAM nodded his head and acknowledged that he had told me that. I went on to say that I still find it very hard to believe that an individual with his building experience would not be familiar with the proper permitting for such projects. NEEDHAM stated that when we met last year he was aware of the HPA permitting requirements, but chose not to admit that fact at the time.

NEEDHAM went on to say that the beach work had begun in December of 2010 and had only been focused on the ramp area. These initial activities were intended to fortify the ramp for the landing of the barge vessel which was to be used for the movement of machinery and building materials onto the island and to the construction sites.

NEEDHAM said that he had been advised by the RUNSTAD's that the ramp area was historically used for this purpose and that no additional permitting would be required for the activity.

NEEDHAM said that he had hired Russell B. WISCOMB, the owner of Orcas Excavators, for earth work at the beginning of the RUNSTAD projects. He said that WISCOMB was originally hired to complete projects such as the building up of the ramp area, dig-outs for the building sites as well as road and utility projects.

When asked regarding the work on the beach associated to the bulkhead construction, NEEDHAM advised that work had begun in January of 2011. NEEDHAM said that originally the work had been focused towards controlling erosion and repairing areas where erosion had occurred. NEEDHAM again agreed with my assessment that construction activity that included road widening and the placement of underground utilities probably worsened the water runoff and erosion issues.

NEEDHAM said that two main areas upland of the beach had suffered from erosion issues and were the first project sites to be addressed. He said that the work had originally been focused to prevent portions of the road from washing out and then the work had continued to the beach where a new bulkhead had been constructed



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NEEDHAM said that once the bulkheads had been constructed water ward of the erosion areas the RUNSTAD's had instructed him that they wanted the bulkhead to be continued along the shoreline. He said that when he approached WISCOMB with this plan he was advised by WISCOMB that additional permitting would be required for the project.

When asked if WISCOMB had advised that permits from WDFW would be required, NEEDHAM stated that he did. He went on to say that it was at that point when he first became aware of the additional permit requirements for construction activities on or along the shoreline.

When asked if he had provided this information to the RUNSTAD's, NEEDHAM stated that he had. He went on to say that he had been told by the RUNSTAD's to continue the bulkhead project along the shoreline and that they would take care of any permitting issues after the fact.

When asked if he or the RUNSTAD's had notified anyone from San Juan County of the additional work along the beach, NEEDHAM replied that he did not do so and he believed that no one else had either.

NEEDHAM was asked if he would be willing to provide us with a written statement and he said that he would. He said that he would prefer to do so within a day or two and that he would email or fax it once it was complete. After exchanging contact information we thanked NEEDHAM for his cooperation and we departed the island.

On March 6, 2012, Sgt. Mullins and I arrived at the RUNSTAD's Seattle office at approximately 1230 hours. We were advised that the RUNSTAD's hadn't arrived as yet and that we could wait in the conference room. At approximately 1300 hours, we began the meeting and were introduced to Jon and Judy RUNSTAD and their attorney Joe Brogan. (See Attached Sgt. Mullins RUNSTAD Interview Supplemental)

Sgt. Mullins began by thanking the RUNSTAD's for taking the time to meet with us and allowing us to get their side of the story. Both of the RUNSTAD's acknowledged that they were aware of the shoreline projects that had been completed on their Blakely Island property. Judy RUNSTAD went on to say that they had ordered the work to be completed along the shoreline in order to protect their property and that permits had not been obtained due to the emergency nature of the situation.

After being asked if they notified any agencies that they were conducting an "emergency"



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project, Judy RUNSTAD said that they had not. She advised us that they had not received their final permits for the construction of the two new homes on the property until December of 2010. She also stated that the permit process had taken three months longer than it should have and that this delay had forced them to begin construction during the winter weather season. She said that during the start of the construction they had experienced heavier than normal rains and higher tides which had caused erosion issues that needed to be addressed.

Judy RUNSTAD advised us that over her career she had dealt with the Shoreline Management Act (SMA) and that she was very familiar with the SMA allowing individuals to protect their property in the case of an emergency. She also claimed to be unfamiliar with the State hydraulic code.

I advised Mrs. RUNSTAD that I had some familiarity with the SMA and that it did not change the requirement of individuals to make contact with and get approval from WDFW before completing projects such as theirs. When asked if they had attempted to make contact with WDFW or San Juan County prior to authorizing the work on the shoreline, Judy RUNSTAD stated that they had not. She went on to say that she had been very displeased with the County Planning Departments performance in the past and that she wished not to deal with them again. When asked again why they hadn't attempted contact with WDFW, Judy RUNSTAD again stated that that their activities were an emergency exemption to the SMA.

Jon RUNSTAD began by explaining to us that there were several areas on their property where erosion had began and was threatening to hinder the upland construction activities. He went on to say that they originally had no plans to complete any work on the shore until the erosion became an issue. When asked regarding the ramp or beach landing site, he confirmed that the original plan included using this site to offload equipment and materials.

Jon RUNSTAD said that they had hired David NEEDHAM, owner of Needham Construction, as the general contractor to complete the construction of the two new homes on the property and that NEEDHAM had hired Bruce WISCOMB, owner of Orcas Excavators, as a sub contractor. He went on to say that when the decision was made to address the erosion issues, they had instructed NEEDHAM to do so. Jon RUNSTAD said that he had no direct dealings with WISCOMB.



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Jon RUNSTAD said that he and his wife had observed the erosion areas, but were not present during the majority of the shoreline construction activities. He said that they had been away from January 25th through February 23rd of 2011.

Jon RUNSTAD stated that they believed that the erosion issues needed to be addressed and that he considered it to be an emergency situation. When asked if he had attempted to make contact with WDFW or San Juan County prior to authorizing the beach work, he stated that he had not.

Jon RUNSTAD presented twelve photographs for our inspection. Six were dated to have been taken on January 16th of 2011 and six were dated to have been taken on February 26th of 2011. (See Attached RUNSTAD Photographs)

These photographs, which were offered by Jon RUNSTAD and entered into evidence by Sgt. Mullins, represented the before and after condition of portions of the shoreline on the RUNSTAD's Blakely Island property. Several of the photographs taken on January 16th show the two main areas where upland erosion had occurred. Some of the photographs taken on January 16th also clearly show that work along the shoreline had already begun. The photographs taken on February 26th show the repairs that had been made to the two main erosion areas and that the work had continued onto the beach. The February 26th photographs also show where shoreline bulkhead construction had been completed between and on each side of the areas of erosion.

After we had concluded discussing the photographs with the RUNSTAD's, I asked if I may describe what I believed to have occurred in relation to the bulkhead construction. I advised the group that I was aware of the rains that we had experienced during December of 2010 and January of 2011 and that I was also familiar with how soils react when freshly disturbed and then exposed to the elements. I advised the RUNSTAD's that I believed that they hadn't originally intended to complete the bulkhead along the shoreline until the two main areas of erosion became an issue and threatened their upland construction activities. I also reminded the RUNSTAD's that we had interviewed both NEEDHAM and WISCOMB and that both had said that the activity had originally been targeted to repair the areas where erosion had occurred. I went on to say that we were also advised that they (the RUNSTAD's) had authorized the continuation of the shoreline bulkhead between and on both sides of where the erosion repairs had been made. I advised the RUNSTAD's that WISCOMB had stated that he had informed NEEDHAM that additional permitting would be required if they were to continue the bulkhead construction and that NEEDHAM had also confirmed this. I went on to say that NEEDHAM



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)

P.O. Box 1100

LaConner, WA 98257

WSP# (360) 757-1175, Cell# (360) 202-7562

April 20, 2011

Incident #: WA-11-001018

had stated that he had shared this information with them (the RUNSTAD's) and that they had authorized the work and advised NEEDAM that they would take care of any necessary permitting requirements after the fact.

After completing my depiction of the events, Jon RUNSTAD who appeared to have been listening closely nodded his head and said, "That would be an accurate description of what occurred".

Quickly after Mr. RUNSTAD's agreement to my description of what had occurred, Judy RUNSTAD stated that, "that was not what had happened". Judy RUNSTAD went on to say that they had authorized the constructing to protect their property and again reminded us that this activity was an emergency exemption to the SMA.

Near the end of our meeting, Sgt. Mullins asked the RUNSTAD's when they had last replaced the dock at their Blakely Island property. Jon RUNSTAD said that the dock had been replaced approximately five years ago after the old structure had been damaged during a storm. When asked if they had obtained a permit for the dock replacement, the RUNSTAD's advised that they had not.

As we concluded the meeting we again thanked the RUNSTAD's for meeting with us. Mr. RUNSTAD again stated that the twelve photographs were for us to take and we departed the office.

NOTE: A search of the Washington State Department of Ecology (DOE) provided the following definition of an Emergency Construction Exemption related to the SMA:

Emergency construction exemption

State rules define an emergency as "an unanticipated and imminent threat to public health, safety, or the environment which requires immediate actions within a time too short to allow full compliance." The exemption only applies if the construction is necessary to protect property from damage by the elements. [WAC 173-27-040(2)(d)].

*Emergency construction does not include building **new permanent protective structures** where none previously existed. If a local government determines that a new protective structures is the*



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)

P.O. Box 1100

LaConner, WA 98257

WSP# (360) 757-1175, Cell# (360) 202-7562

April 20, 2011

Incident #: WA-11-001018

appropriate means to address the emergency situation, the applicant must obtain a permit after the emergency situation is over.

All emergency construction must be consistent with the policies of the SMA and the local master program.

If a project proponent has not obtained a permit due to lack of proper planning, it does not constitute an emergency. An example of an emergency is a ruptured oil or sewage line that needs to be repaired or removed immediately or emergency repair of a dike during a flood. As a general matter, flooding or other season events that can be anticipated, but are not imminent, are not considered an emergency.

This information combined with the fact that the construction activities occurred over a several month period seems to be clearly outside any emergency exceptions outlined within the SMA.

On March 14, 2012, after being advised that I hadn't received a written statement from NEEDHAM, Sgt. Mullins made contact with David NEEDHAM by phone. NEEDHAM advised Sgt. Mullins that he would complete a statement and forward it by the end of the day.

On March 14, 2012, I received an email from NEEDHAM with his statement attached.
(See Attached NEEDHAM Statement)

In an attempt to clarify how the SMA relates to the State Hydraulic Code I requested that AHB Arber provide a brief summary. She provided the following on March 15, 2012:

"As required in WAC 220-110-030 (see below), WDFW may declare an emergency and give verbal approval to protect property prior to commencing emergency work. WDFW was not contacted by the Runstads or anyone on their behalf, prior to commencing construction work for bank protection on their shoreline in early 2011. It was later reported to WDFW that the upland bank was eroding and needed protection. The erosion of the upland bank was not an immediate threat to life, property, or environmental degradation and therefore not an emergency action under the WDFW emergency definition WAC 220-110-020 and RCW 77.55.011 (see below). The Dept. of Ecology is the state agency responsible for administering the Shoreline Management Act (SMA) RCW 90.58. The Runstad's claim their bank protection is exempt under the SMA and is therefore exempt from the Hydraulic Code WAC 220-110-010 (see below). The WA Dept of Fish and Wildlife is responsible for administering the Hydraulic Code, which states



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)

P.O. Box 1100

LaConner, WA 98257

WSP# (360) 757-1175, Cell# (360) 202-7562

April 20, 2011

Incident #: WA-11-001018

any person shall obtain a permit for the protection of fish life prior to commencing work on the shoreline. Even if the action is exempt under the SMA, the work is not exempt from a Hydraulic Project Approval (HPA) under the Hydraulic Code. The person is still required to obtain a permit or verbal approval from WDFW, before work begins.

Single family residence bulkheads in saltwater areas, WAC 220-110-285 (see below), states a "Single-family residence bulkheads shall not result in the permanent loss of critical food fish or shellfish habitat." By constructing a bulkhead or bank protection along a shoreline, the upland sediment that would have naturally eroded onto the beach is permanently cut off from the beach. That upland material (sand, dirt, gravel, and cobble, etc) is no longer available to nourish the beach with sediments necessary to provide critical habitat for fish and shellfish.

The WDFW Policy POL-M5002 Requiring or Recommending Mitigation, states "the goal is to achieve no loss of habitat functions and values." Mitigation actions shall be required to avoid or compensate for impacts to fish, wildlife, or habitat from the proposed activity. To compensate for the loss of material to the beach, WDFW would typically require mitigation in the form of beach nourishment to mimic natural processes and replace the lost sediment either short-term or long-term and may be in addition to other forms of mitigation.

If the Runstads had contacted WDFW and received approval prior to commencing work on their shoreline, either for an emergency, expedited, or standard HPA they would have been required to mitigate for the impacts.

Pertinent codes:

WAC 220-110-010 Hydraulic Code

Purpose

It is the intent of the department to provide protection for all fish life through the development of a statewide system of consistent and predictable rules. ... Pursuant to chapter 75.20 RCW, this

chapter establishes regulations for the construction of hydraulic project(s) or performance of other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, and sets forth procedures for obtaining a hydraulic project approval (HPA). In addition, this chapter incorporates criteria generally used by the department for project review and conditioning HPAs.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)

P.O. Box 1100

LaConner, WA 98257

WSP# (360) 757-1175, Cell# (360) 202-7562

April 20, 2011

Incident #: WA-11-001018

WAC 220-110-020

Definitions.

(27) "Emergency" means an immediate threat to life, public or private property, or an immediate threat of serious environmental degradation, arising from weather or stream flow conditions, other natural conditions, or fire

WAC 220-110-030

Hydraulic project approvals — Procedures.

(9) *The county legislative authority or the department may declare an emergency or continue an existing declaration of an emergency where there is an immediate threat to life, the public, property, or of environmental degradation. Upon the declaration of an emergency, the department shall grant verbal approval immediately upon request for a stream crossing, or work to remove any obstructions, repair existing obstructions, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow. The verbal approval shall be obtained prior to commencing emergency work and the department must issue a written HPA reflecting the conditions of the verbal approval within thirty days. The provisions of the State Environmental Policy Act, chapter 43.21C RCW, are not required for emergency HPAs.*

WAC 220-110-285

Single-family residence bulkheads in saltwater areas.

Single-family residence bulkheads shall not result in the permanent loss of critical food fish or shellfish habitat.

Except as expressly provided for in this section, construction of single-family residence bulkheads shall comply with technical provisions and timing restrictions in WAC 220-110-240 through 220-110-271.

(1) *Critical food fish and shellfish habitats pertaining to single-family residence bulkheads as identified in RCW 75.20.160 are those habitats that serve an essential function in the developmental life history of fish or shellfish. These habitats include but are not limited to the following:*

(a) *Pacific herring, surf smelt, Pacific sand lance spawning beds; (Site has potential*



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)
P.O. Box 1100
LaConner, WA 98257

April 20, 2011

WSP# (360) 757-1175, Cell# (360) 202-7562 **Incident #: WA-11-001018**

forage fish spawning habitat)

- (b) Intertidal wetland vascular plants (except noxious weeds);*
- (c) Eelgrass (Zostera spp); Eelgrass present offshore as shown in (Dept of Ecology Coastal Atlas)*
- (d) Kelp (Order laminariales);*
- (e) Lingcod settlement and nursery areas;*
- (f) Rockfish settlement and nursery areas;*
- (g) Juvenile salmonid migration corridors and rearing and feeding areas (juvenile salmonids utilize during outmigration)*

RCW 77.55.021

Permit.

(1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

Chapter 77.55 RCW Construction projects in state waters

RCW 77.55.011

Definitions.

(7) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation."

I certify under penalty of perjury under the laws of the State Of Washington that I have probable cause to believe the above named person(s) committed the above offense(s), and the foregoing is true and correct


Officer Ralph L. Downes (W192)

4/12/12
Date



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)

P.O. Box 1100

LaConner, WA 98257

WSP# (360) 757-1175, Cell# (360) 202-7562

April 20, 2011

Incident #: WA-11-001018

RCW 77.15.300

Unlawful hydraulic project activities — Penalty.

(1) A person is guilty of unlawfully undertaking hydraulic project activities if the person constructs any form of hydraulic project or performs other work on a hydraulic project and:

(a) Fails to have a hydraulic project approval required under chapter 77.55 RCW for such construction or work; or

(b) Violates any requirements or conditions of the hydraulic project approval for such construction or work.

(2) Unlawfully undertaking hydraulic project activities is a gross misdemeanor.

[2000 c 107 § 239; 1998 c 190 § 52.]

RCW 77.55.011

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water runoff devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered artificially.

(2) "Board" means the pollution control hearings board created in chapter 43.21B RCW.

(3) "Commission" means the state fish and wildlife commission.

(4) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

(5) "Department" means the department of fish and wildlife.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)

P.O. Box 1100

LaConner, WA 98257

WSP# (360) 757-1175, Cell# (360) 202-7562

April 20, 2011

Incident #: WA-11-001018

- (6) "Director" means the director of the department of fish and wildlife.
- (7) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.
- (8) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.
- (9) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.
- (10) "Marina" means a public or private facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.
- (11) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.
- (12) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining freshwater is the elevation of the mean annual flood.
- (13) "Permit" means a hydraulic project approval permit issued under this chapter.
- (14) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.
- (15) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)
P.O. Box 1100
LaConner, WA 98257
WSP# (360) 757-1175, Cell# (360) 202-7562

April 20, 2011

Incident #: WA-11-001018

(16) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

(17) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

(18) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

(19) "Waters of the state" and "state waters" means all salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state.

[2010 c 210 § 26; 2009 c 549 § 1028; 2005 c 146 § 101.]

RCW 77.55.021

Permit

(1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

(2) A complete written application for a permit may be submitted in person or by registered mail and must contain the following:

(a) General plans for the overall project;

(b) Complete plans and specifications of the proposed construction or work within the mean higher high water line in saltwater or within the ordinary high water line in freshwater;

(c) Complete plans and specifications for the proper protection of fish life; and



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)
P.O. Box 1100
LaConner, WA 98257

April 20, 2011

WSP# (360) 757-1175, Cell# (360) 202-7562 **Incident #: WA-11-001018**

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter.

(3)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned. Except as provided in this subsection and subsections (8), (10), and (12) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

(i) After ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

(b) Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(c) The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(4) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)
P.O. Box 1100
LaConner, WA 98257
WSP# (360) 757-1175, Cell# (360) 202-7562

April 20, 2011

Incident #: WA-11-001018

(a) Except as provided in (b) of this subsection, issuance, denial, conditioning, or modification of a permit shall be appealable to the board within thirty days from the date of receipt of the decision as provided in RCW 43.21B.230.

(b) Issuance, denial, conditioning, or modification of a permit may be informally appealed to the department within thirty days from the date of receipt of the decision. Requests for informal appeals must be filed in the form and manner prescribed by the department by rule. A permit decision that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

(5)(a) The permittee must demonstrate substantial progress on construction of that portion of the project relating to the permit within two years of the date of issuance.

(b) Approval of a permit is valid for a period of up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

(c) A permit remains in effect without need for periodic renewal for hydraulic projects that divert water for agricultural irrigation or stock watering purposes and that involve seasonal construction or other work. A permit for streambank stabilization projects to protect farm and agricultural land as defined in RCW 84.34.020 remains in effect without need for periodic renewal if the problem causing the need for the streambank stabilization occurs on an annual or more frequent basis. The permittee must notify the appropriate agency before commencing the construction or other work within the area covered by the permit.

(6) The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)
P.O. Box 1100
LaConner, WA 98257
WSP# (360) 757-1175, Cell# (360) 202-7562
001018

April 20, 2011

Incident #: WA-11-

(7) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request. A decision by the department is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

(8)(a) The department, the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

(b) The department, through its authorized representatives, shall issue immediately, upon request, oral approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency oral permit must be established by the department and reduced to writing within thirty days and complied with as provided for in this chapter.

(c) The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(9) All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)

P.O. Box 1100

LaConner, WA 98257

WSP# (360) 757-1175, Cell# (360) 202-7562

April 20, 2011

Incident #: WA-11-001018

(10) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(11)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and (3) of this section.

(b) Any projects proposed to address a chronic danger identified under (a) of this subsection that satisfies the project description identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions of the state environmental policy act, chapter 43.21C RCW. However, the project is

subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project.

(12) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)
P.O. Box 1100
LaConner, WA 98257
WSP# (360) 757-1175, Cell# (360) 202-7562

April 20, 2011

Incident #: WA-11-001018

environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

[2010 c 210 § 27; 2008 c 272 § 1; 2005 c 146 § 201.]

WAC 220-110-030

Hydraulic project approvals — Procedures.

A person shall obtain an HPA before conducting a hydraulic project.

(2) Receipt by the department of any one of the following documents constitutes an application for a written HPA:

- (a) A joint aquatic resources permit application (JARPA) submitted to the department;
- (b) A forest practice application submitted to the department of natural resources, if the hydraulic project is part of a forest practice as defined in WAC 222-16-010; or
- (c) A section 10 or 404 public notice circulated by the United States Army Corps of Engineers or United States Coast Guard.

(3) You shall request a written HPA by submitting a complete written application to the department. You shall request a pamphlet HPA by following the procedures in WAC 220-110-031. Your application for a written HPA shall contain general plans for the overall project, complete plans and specifications for the proposed construction or work waterward of the MHHW line in salt water, or waterward of the OHWL in fresh water, complete plans and specifications for the proper protection of fish life, and notice of compliance with any applicable requirements of the State Environmental Policy Act, chapter 43.21C RCW, unless otherwise provided for in chapter 77.55 RCW. You and your authorized agent, if one is acting for you, must sign and date the application.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)

P.O. Box 1100

LaConner, WA 98257

WSP# (360) 757-1175, Cell# (360) 202-7562

April 20, 2011

Incident #: WA-11-001018

(4) The department shall grant or deny approval within forty-five calendar days of the receipt of a complete written application. The department shall strive to issue HPAs in less than thirty days. The forty-five day requirement shall be suspended if:

(a) The site is physically inaccessible for inspection;

(b) You or your authorized agent, if one is acting for you, remains unavailable or unable to arrange for a timely field evaluation of the proposed project after ten working days of the department's receipt of the application;

(c) You or your authorized agent, if one is acting for you, requests a delay;

(d) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161 (3)(b); or

(e) The department is reviewing the application as part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(5) Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(6) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property.

(7) The department may issue an expedited written HPA in those instances where normal processing would result in significant hardship for the applicant, or unacceptable environmental damage would occur.

(8) Expedited HPA requests require a complete written application and shall take precedence over other nonemergency applications. These will be issued within fifteen calendar days of receipt of a complete written application. The provisions of the State Environmental Policy Act, chapter 43.21C RCW, are not required for expedited written HPAs.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)

P.O. Box 1100

LaConner, WA 98257

WSP# (360) 757-1175, Cell# (360) 202-7562

April 20, 2011

Incident #: WA-11-001018

(9) The county legislative authority or the department may declare an emergency or continue an existing declaration of an emergency where there is an immediate threat to life, the public, property, or of environmental degradation. Upon the declaration of an emergency, the department shall grant verbal approval immediately upon request for a stream crossing, or work to remove any obstructions, repair existing obstructions, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow. The verbal approval shall be obtained prior to commencing emergency work and the department must issue a written HPA reflecting the conditions of the verbal approval within thirty days. The provisions of the State Environmental Policy Act, chapter 43.21C RCW, are not required for emergency HPAs.

(10) The department may accept written or verbal requests for time extensions, renewals, or alterations of an existing HPA. The request must be processed within forty-five calendar days of receipt of the request. Approvals of such requests shall be in writing. Transfer of an HPA to a new permittee requires written request by the original permittee or their authorized agent, if one is acting for the permittee, and such request shall include the HPA number. This written request shall be in a form acceptable to the department and shall include a statement that the new permittee agrees to be bound by the conditions in the HPA. The new permittee shall not conduct any project activities until the department has issued approval.

(11) Each HPA is usually specific to a watercourse, stating the exact location of the project site, and usually consists of general, technical, and special provisions.

(12) The written HPA, or clear reproduction, shall be on the project site when work is being conducted and shall be immediately available for inspection.

(13) The department may grant HPAs for a period of up to five years. Permittees shall demonstrate substantial progress on construction of that portion of the project relating to the HPA within two years of the date of issuance. The following types of HPAs issued under RCW 77.55.021 shall remain in effect without the need for periodic renewal, provided the permittee notifies the department before commencing work each year:

(a) Work of a seasonal nature that diverts water for irrigation or stock watering purposes; and



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
INCIDENT REPORT

Officer Ralph L. Downes (W-192)
P.O. Box 1100
LaConner, WA 98257

April 20, 2011

WSP# (360) 757-1175, Cell# (360) 202-7562 **Incident #: WA-11-001018**

(b) Stream-bank stabilization projects if the problem causing the erosion occurs on an annual or more frequent basis as demonstrated by the applicant. Evidence of erosion may include, but is not limited to, history of permit application, approval, or photographs. Periodic floodwaters by themselves do not constitute a problem that requires an HPA.

(14) An HPA shall be denied when, in the judgment of the department, the project will result in direct or indirect harm to fish life, unless adequate mitigation can be assured by conditioning the HPA or modifying the proposal. If approval is denied, the department shall provide the applicant, in writing, a statement of the specific reason(s) why and how the proposed project would adversely affect fish life.

(15) Protection of fish life shall be the only grounds upon which the department may deny or condition an HPA.

(16) The department may place specific time limitations on project activities in HPAs to protect fish life.

(17) HPAs do not exempt the applicant from obtaining other appropriate permits and following the rules or regulations of local, federal, and other Washington state agencies.

(18) The department shall administer this chapter in compliance with SEPA, chapter 43.21C RCW, and chapters 197-11 and 220-100 WAC.

(19) The department may, after consultation with the permittee, modify an HPA due to changed conditions. The modification becomes effective unless appealed as specified in RCW 77.55.021(4) and WAC 220-110-340 and 220-110-350.

[Statutory Authority: RCW 77.12.047 and 77.55.021. 10-19-051 (Order 10-242), § 220-110-030, filed 9/13/10, effective 10/14/10. Statutory Authority: RCW 77.55.091(2), 77.12.047, and 77.04.020. 09-02-017 (Order 08-318), § 220-110-030, filed 12/29/08, effective 4/3/09. Statutory Authority: RCW 75.08.080. 94-23-058 (Order 94-160), § 220-110-030, filed 11/14/94, effective 12/15/94; 87-15-086 (Order 87-48), § 220-110-030, filed 7/20/87. Statutory Authority: RCW 75.08.012, 75.08.080 and 75.20.100. 84-21-060 (Order 84-176), § 220-110-030, filed 10/15/84; 84-04-047 (Order 84-04), § 220-110-030, filed 1/30/84. Statutory Authority: RCW 75.20.100 and 75.08.080. 83-09-019 (Order 83-25), § 220-110-030, filed 4/13/83.]



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254

SUSPECT #1: David NEEDHAM D.B.A Needham Construction

ADDRESS: PO BOX 177 Orcas Wa. 98280

PHONE: 360-376-2054

SUSPECT #2 Russell Bruce WISCOMB Jr.

ADDRESS: PO Box 174 Eastsound Wa 98245

PHONE: 360-376-2632

NARRATIVE

On 02-04-11, at approximately 1000 hours, I was on a boat patrol in San Juan County with WDFW Officers Downes and Kim. I observed a loading craft vessel unloading freight at a makeshift boat ramp on the Southern end of Blakely Island near Armitage Island. I saw that the boat ramp appeared to be heavily used and had recently had gravel added to it. There was a visible difference in color between the gravel and rock in the area of the boat ramp compared to the color the surrounding beach. I observed that a good portion of the new gravel and rock was well below the high tide mark on the beach. I also saw that a section of a rock wall bulkhead appeared to be under construction. I photographed the activities from the water. Officer Downes and I made note to contact WDFW Habitat Biologist to ensure that the project was properly permitted. The next week Officer Downes and I contacted several WDFW Habitat Biologists who advised no HPA permits had recently been issued to anyone on the south end of Blakely Island.

On 02-10-11 at approximately 1400 hours I was on a boat patrol in San Juan County with WDFW Officers Downes and Capelli. We observed an excavator working on a rock bulkhead well below the Mean Higher High Water line (hereafter referred to as MHHW)



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254

along the beach on the southern end of Blakely Island. (*The MHHW is the tidal elevation obtained by averaging each days highest tide at a particular location for a period of 19 years.*) From my observations it appeared as though the excavator was being used to smooth out the beach. A large log was grasped in the bucket as the operator moved the bucket back and forth. The log was then placed next to the rock wall. I photographed the excavator at work from my patrol vessel within the bay.



Photo taken by Officer Rosenberger 2-10-11 at approximately 1400 hours.

After photographing the excavator at work Officer Downes motored our patrol vessel towards a dock in front of a residence located on the property. Upon securing our vessel to the dock we were greeted by a male subject who identified himself as Hans. Hans asked how he could help us Officer Downes informed Hans that we were with the Department of Fish and Wildlife. Officer Downes informed Hans that we had noticed the construction project on the beach and wished to make sure that it was a permitted activity. Hans informed us that he was the grounds keeper for the estate and would contact the general contractor who could help us. He then left to get the contractor. While we waited, I continued to photograph the excavator while it worked on the beach.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254



Photo taken on 2-10-11 by Officer Rosenberger

Shortly thereafter a man who identified himself as David NEEDHAM arrived. Officer Downes identified us and informed NEEDHAM that we had noticed the excavator working on the beach well below the high tide mark. Officer Downes asked NEEDHAM if the activity had been permitted by WDFW, specifically if they had received an HPA permit. NEEDHAM stated that he was unaware that he needed a permit, and asked what the permit was called. Officer Downes and Officer Capelli informed him of the definition. NEEDHAM asked if a permit was needed when making emergency repairs. Officer Downes informed him that it is and inquired what the emergency was.

NEEDHAM stated that he was constructing two residences on the property and that heavy



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254

rain a few weeks prior had created problems with the new road and culvert that they had installed. The excess water created two washed out areas along the shoreline. NEEDHAM stated that the rock retaining wall was initially constructed as an "emergency retaining wall." NEEDHAM further stated that once the owner saw the initial "emergency wall" constructed he decided to expand the retaining wall further. Officer Downes asked how long ago they had started work on the bulkhead. NEEDHAM stated that it was two to three weeks ago. Officer Downes explained to NEEDHAM that WDFW does HPA permits, in "Emergency" situations like this; though the Department still needs to be contacted to begin the permitting process.

Officer Downes asked NEEDHAM how long the boat launch landing area had been in use, stating that the work done to create it would require an HPA permit as well. NEEDHAM informed us that it was his understanding that there had always been a small boat launch in this area. Officer Downes and I informed NEEDHAM that it appeared as though more rock and gravel had been added to the launch recently.

We asked NEEDHAM where the rock had been obtained for the bulkhead. NEEDHAM informed us that the first small portion was constructed using rock obtained while doing construction on the estate itself. The rest of the bulkhead was constructed from rock barged over from Orcas Island. I asked if any material from the beach had been used to construct the wall. NEEDHAM stated that everything had been barged over from off island. We asked what the excavator was doing on the beach today. NEEDHAM stated that it was placing driftwood logs back up against the wall, and that the wall was nearly finished. As we conversed the excavator motor turned off for a moment. When it was restarted the machine motored back along the beach and up the boat ramp where it was parked on a pile of gravel near the construction site of a residence.

Officer Downes and I requested that we walk down and inspect the bulkhead. NEEDHAM showed us the way to the beach. As we walked along the beach I clearly observed sections of the beach bed where it appeared the bucket of the excavator had been scraped along the top of the bed collecting gravel and rocks. Other areas had large holes dug into the bed to a depth of at least a foot deep. The holes had filled with muddy water preventing a closer inspection. Tracks from the excavator had created ruts in the beach area and had disturbed much of the upper portions of bed.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254



Photo taken by Officer Rosenberger 2-10-11. Construction activity evident on beach bed.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254



Photo taken by Officer Rosenberger 02-10-11. Hole dug in beach bed.

As Officer Capelli and I inspected the holes and scrape marks along the beach we believed that beach material have been used to construct the bulkhead. Officer Capelli again asked NEEDHAM if material from the beach had been used to construct the bulkhead. NEEDHAM stated that it was not. I then walked over to the rock bulkhead and inspected it. I observed that much of the large boulders making the wall itself appeared to have come from a quarry and had not been subjected to a marine environment for long. However smaller rocks fit between the larger rocks as well as gravel used to fill in on top of the bulkhead appeared to be from the beach, as evident by the barnacles and algae attached to many of the rocks. I informed NEEDHAM of my discovery. NEEDHAM conceded that it appeared as though some material from the beach was used after all. I asked if he had used a sub contractor to do the construction on the bulkhead. NEEDHAM stated that his sub contractor for the rock work was Orcas Excavators. I continued to photograph the bulkhead as we conversed.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254



Photo taken by Officer Rosenberger. Officer Downes and Capelli inspect rock bulkhead. Gravel and rocks on top of plastic contained barnacles and algae.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254



Photo taken by Officer Rosenberger. Close up of beach material on top of bulkhead. Multiple rocks containing barnacles and algae.

As I continued to inspect to bulkhead I observed that where NEEDHAM stated the wash out had occurred dirt was spread over the gravel and small rock atop the bulkhead. A ramp of drift wood and beach material had been constructed on the waterside base of the rock bulkhead allowing machinery to work on the uphill side of the bulkhead. All along the beach where the excavator had been operating large ruts from the machines tracts had torn up the beach well below the high water mark.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254



Photo taken by Officer Rosenberger on 02-10-11. Ramp visible at base of rock bulkhead. Large ruts from excavator visible along the beach.

Continuing toward the boat ramp we inspected another section of bulkhead where NEEDHAM initially stated that rock from excavating one of the residences foundation was used. I observed that a relatively small amount of rock appeared to have been excavated from the ground, the majority appeared to have been removed from the beach. Many of the rocks contained a significant number of barnacles attached to them. The barnacles must have been attached to the rocks prior to them being put in place because they were placed well above the high tide mark. Rock used to build up the boat ramp adjacent to this bulkhead appeared to have been introduced to the beach area recently due to its color and lack of barnacles or algae.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254



Photo taken by Officer Rosenberger from his patrol vessel on 2-10-11. Boat ramp and bulkhead visible.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254



Photo taken by Officer Rosenberger 2-10-11. Closer view of bulkhead next to boat ramp containing several rocks with barnacles attached.

As we walked up the boat ramp Officer Downes informed NEEDHAM of the following steps that the department would be taking. Officer Downes told NEEDHAM that we would be talking with WDFW biologist and would be in contact with him in the near future. Officer Downes and I exchanged contact information with NEEDHAM. We then walked back to our patrol vessel and cleared the scene.

At a later date contact was made with WDFW Habitat Biologist Laura Arber, who informed Officer Downes and I that the project described above was unpermitted. For more information see Officer Downes case report. More photographs of the violation taken by Officer Rosenberger on 2-10-11 are available by request.

On 3-22-2011 at approximately 1150 hours while on patrol in San Juan County with WDFW Officers R. Downes, Z. Gaston, and WDFW Sergeant R. Mullins; along with



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254

WDFW biologists, a Dept. of Ecology biologist, and two San Juan County building code personnel we executed a search warrant on the property owned by J. Runstad located on the south end of Blakely Island. We secured our patrol vessels to the dock on the property. Officer Downes and I walked up the ramp and onto the property where we were greeted by a man who introduced himself as Mr. Crooke. Officer Downes explained that we had a search warrant to inspect the rock bulkhead and search certain items and areas on the property. Officer Downes asked Mr. Crooke if there was someone with whom we could serve the warrant. Mr. Crooke stated that we could leave a copy of the warrant with him. We asked what Mr. Crooke's affiliation was with the property, Crooke stated that he worked on the property as a groundskeeper. Officer Downes and I served Crooke with a copy of the warrant.

Once the warrant was served WDFW biologist began to survey, inspect, and measure the unpermitted rock retaining wall. Officer Gaston and I began to search a construction work shack and construction vehicles located near the boat ramp and the residence that was under construction. As we searched the vehicles I observed a subject standing near the retaining wall watching the biologist make their measurements. I approached the subject and introduced myself, the subject identified himself as Chris NEEDHAM of Needham Construction. I conversed with C. NEEDHAM about the construction of the retaining wall and rational behind its construction. C. NEEDHAM stated that the bulkhead was first constructed as an "emergency repair" due to the fact that the slope above the beach had washed out in two places. I asked C. NEEDHAM if he could show me where the washouts had occurred. C. NEEDHAM walked me over to where the washouts had occurred and described the size and depth of the washouts. I asked C. NEEDHAM if they had taken any photos of the washouts and subsequent construction. C. NEEDHAM stated that they had, I asked if I could view the photo's, C. NEEDHAM stated that his computer was back in his mobile office but that we could walk there and he could show us. Sergeant Mullins, Officer Gaston and I then followed C. NEEDHAM his mobile office trailer.

C. NEEDHAM arrived prior to us. I knocked on the door of the office and requested if we could come in, C. NEEDHAM stated that we could. Once inside C. NEEDHAM showed us a series of photos of the washouts and the construction of the bulkhead on his laptop computer. Sergeant Mullins asked if we could make a copy of the photos. C. NEEDHAM stated that we could. Sergeant Mullins provided a jump drive to which NEEDHAM loaded the photos. Officer Gaston and I thanked C. NEEDHAM for his cooperation, we then left



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254

for our patrol vessel. Once at our patrol vessel I composed a list of items that were gathered during the search. Officer Gaston and I then walked back to C. NEEDHAM's mobile work office and presented him with the list of items. I again thanked C. NEEDHAM for his cooperation and encouraged him to give us a call if he had any questions or needed additional information from us. I then cleared NEEDHAM's office, and returned to our patrol vessel. All WDFW personnel cleared the property at approximately 1404 hours.

On 04-20-2011 while on patrol in Skagit County I phoned Bruce WISCOMB the president of Orcas Excavators. I identified myself and explained that I was conducting an investigation into some un-permitted hydraulic activity on Blakely Island that his company had been involved in. I asked WISCOMB if he would be available the following day to meet with me and discuss his companies involvement in the construction of the un-permitted rock bulkhead. WISCOMB was elusive in setting a time to meet and stated that his companies involvement in the construction was fairly straight forward. WISCOMB advised me that after a series of strong rains the bank above the beach had begun to wash out, and that the owner requested that they construct a rock bulkhead. WISCOMB informed me that he asked David NEEDHAM the general contractor if they were going to get the appropriate permits. WISCOMB stated that NEEDHAM had told him the owner did not want to get a permit, but wanted the bulkhead constructed without a permit. WISCOMB stated that they then went ahead and constructed the bulkhead without a permit. I asked WISCOMB if there was a specific time when we could meet with him the following day to further discuss these matters. WISCOMB was reluctant to set up a definite time but stated that he would be on Orcas Island all day. I stated that we would try and contact him at his office the next morning, and ended my conversation with WISCOMB.

On 4-21-11 while on patrol in San Juan County with WDFW Sergeant R. Mullins we arrived at 68 W. Beach Road Eastsound Wa. We walked around the building and were contacted by an individual driving a dump truck. Sergeant Mullins asked if Bruce was around, the man in the dump truck advised us that we could find Bruce on the second floor of the building and gave us directions. Once inside the building we contacted Bruce WISCOMB. Sergeant Mullins introduced us and asked if we could talk with him about the activity on Blakely Island.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254

WISCOMB invited us to sit in his office. Sergeant Mullins explained that we were trying to piece together who all was involved with the construction of the bulkhead on Blakely Island and who was responsible for its construction. Sergeant Mullins explained that we were aware that mistake had been made and that we were investing all the parties involved. WISCOMB advised us that he had been hired by David NEEDHAM as a sub-contractor to perform excavation work on the estate. WISCOMB further stated that he was aware that the rock bulkhead project was un-permitted.

WISCOMB stated that the Runstad project was a couple hundred thousand dollar job for his company. WISCOMB continued stating that Orcas Excavators had been working on the construction of the residences on the Runstad's property when a series of strong rains had washed out sections of the bank. WISCOMB stated that NEEDHAM approached his company about constructing a bulkhead to hold the bank in place and prevent further washouts onto the beach. WISCOMB informed NEEDHAM that this type of activity would require permits. WISCOMB informed us that he was told by NEEDHAM that the Runstad's were aware that they needed a permit, but that they didn't have the time to get one. Further the Runstad's wanted the project to go ahead anyway without a permit. WISCOMB informed us that he felt as though if his company did not build the bulkhead another company would have been hired to do so. Further WISCOMB stated something to the effect that "John Runstad was not the kind of person you say 'no' to."

WISCOMB stated that the construction of the bulkhead was outside the initial bid he had given to NEEDHAM for his companies excavation work on the property. WISCOMB explained that he charged time and materials for the construction of the bulkhead. Sergeant Mullins asked WISCOMB if there were any documents relating to a change of work order and construction of the rock bulkhead. WISCOMB stated that it had all been done verbally.

Sergeant Mullins and I expressed our thanks to WISCOMB for being so forth coming and willing to talk with us. WISCOMB informed us that after he had spoken with me the previous day he had contacted David NEEDHAM who then had contacted the Runstad's representatives.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254

WISCOMB let us know that he had been told by representatives for John Runstad to be cooperative and truthful with investigators. Sergeant Mullins asked if WISCOMB would be willing to draft a written statement as to the events we had discussed. WISCOMB agreed to do so and when his schedule allowed. Sergeant Mullins agreed to email WISCOMB a copy of the form. Sergeant Mullins and I again thanked WISCOMB and cleared the contact.

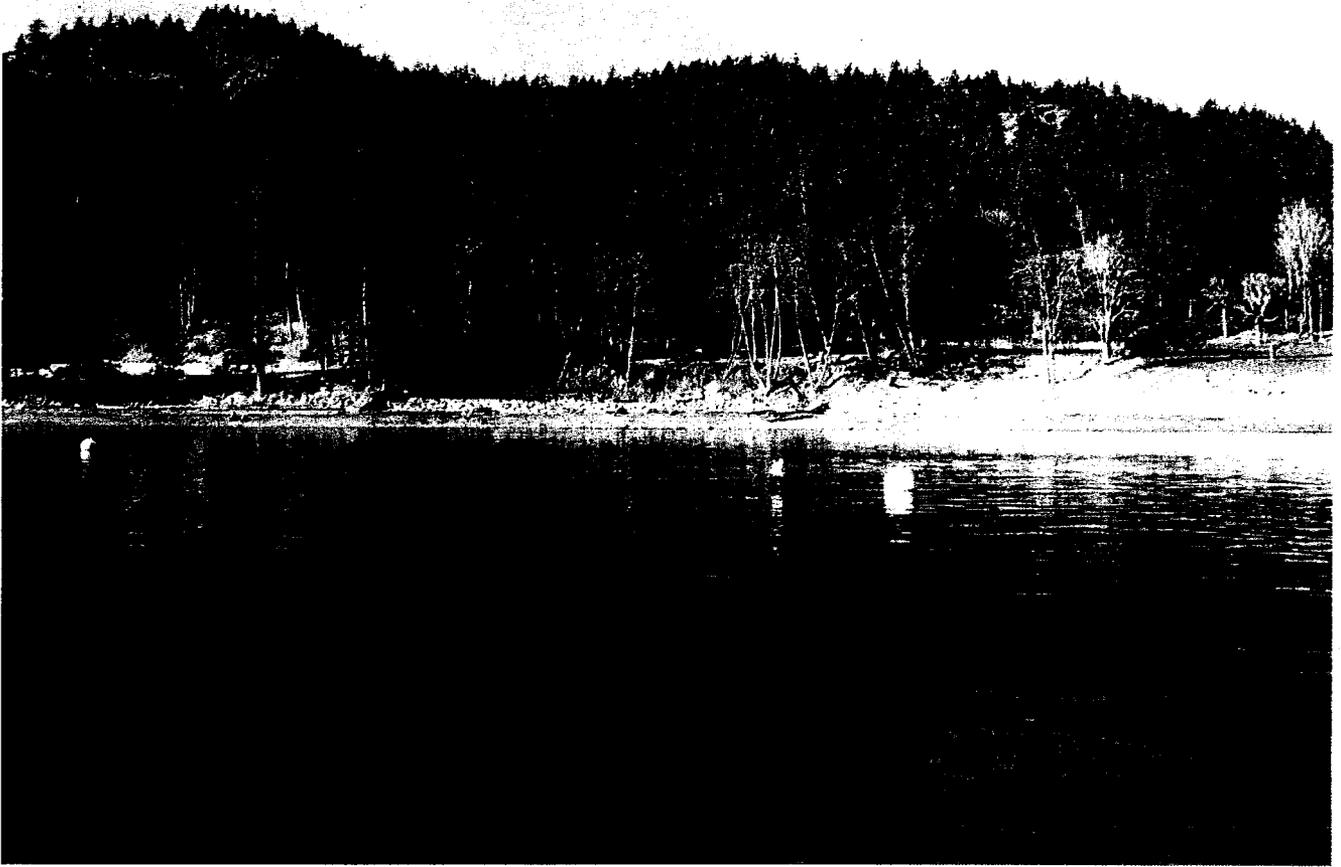
I Certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge. I also certify under penalty of perjury that this report is signed by me, in Skagit County, on the date listed below.


Officer Christopher Rosenberger W175


Date



(W175 PHOTO 1)



(W175 PHOTO 2)



(W175 PHOTO 3)



(W175 PHOTO 4)



(W175 PHOTO 5)



(W175 PHOTO 6)



(W175 PHOTO 7)



(W175 PHOTO 8)



(W175 PHOTO 9)



(W175 PHOTO 10)



(W175 PHOTO 11)



(W175 PHOTO 12)



(W175 PHOTO 13)

San Juan County Public Property Search

Map Scale: 1:1000

Find Address
Find Bound
Find Parcel
Find Street

Please select a map

Refresh Map Remove Map Link

Show a map
Enter a map name

Show Map Add as public

Color: Black
Size: 2
Type: Self

San Juan County Public Property Search

Home | Protected Area On

OBJECTID 15672
Parcel Number 151050018000
Island Blakely
Acres 8.27
Owner H JON RUNSTAD & ROGER
PEARCE TTEE & WALTER
R INGRAM TTEE
Address_1 1201 THIRD AVE STE#2700
Address_2
Address_3
City SEATTLE
State WA
Zip 98101
Short Legal Description SOUTH BLAKELY
ADDITION - LOT 18 TGW
TDS 8.51 CHS & INT IN
COM AREA
Tax_Area BLAKELY
Land Value \$753,370.00
Appraised Value \$1,973,910.00
Current Use Value \$0.00
Building Value \$1,220,540.00
Sale Date Null
Sale Price \$0.00
Shape_Length 3122.457188
Shape_Area 360078.478117

OBJECTID 15674
Parcel Number 151024003000
Island Blakely
Acres 0.74
Owner H JON RUNSTAD & ROGER
PEARCE TTEE & WALTER
R INGRAM TTEE
Address_1 1201 THIRD AVE STE#2700
Address_2
Address_3
City SEATTLE
State WA
Zip 98101
Short Legal Description PR GL 3 - SHORELINE
COMMON AREA TGW TDS
(FOR TPNS 151024001 &
151024002)
Tax_Area BLAKELY
Land Value \$1,850.00
Appraised Value \$1,850.00
Current Use Value \$0.00
Building Value \$0.00
Sale Date Null
Sale Price \$0.00
Shape_Length 874.605908
Shape_Area 32438.911945



OBJECTID	15983
Parcel Number	151024002000
Island	Blakely
Acres	10.93
Owner	H JON RUNSTAD & ROGER PEARCE TTEE & WALTER R INGRAM TTEE
Address_1	1201 THIRD AVE STE#2700
Address_2	
Address_3	
City	SEATTLE
State	WA
Zip	98101
Short Legal Description	PRS NW & GL 3 & PR LOT 17 S BLAKELY ADDITION - TGW BLDG SITE RESTRICTION TGW TDS TGW 1/2 INT IN COMM AREA TPN 151024003
Tax_Area	BLAKELY
Land Value	\$663,500.00
Appraised Value	\$663,500.00
Current Use Value	\$0.00
Building Value	\$0.00
Sale Date	Null
Sale Price	\$0.00
Shape_Length	3007.578555
Shape_Area	476121.19499

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SAN JUAN

STATE OF WASHINGTON

)

) SEARCH WARRANT

) AFFIDAVIT

vs.

)

H JON RUNSTAD, Defendant.

(1) **Officer Christopher Rosenberger**, being first duly sworn on oath, deposes and says:

I am a fully commissioned Peace Officer employed by the Washington Department of Fish and Wildlife (WDFW). I have been employed by WDFW for over two years, and have held a general authority law enforcement commission for the entire time of employment. I have been trained in fish and wildlife crimes and investigations and have conducted dozens of criminal investigations and made hundreds of arrests. That I am currently assigned to the North Puget Sound Marine Detachment; and have been engaged in an ongoing investigation of unlawful unpermitted hydraulic project activities on Blakely Island.

(2) **Crime being investigated: Unlawful Hydraulic Project Activities RCW 77.15.300 (1a), to wit:** A person is guilty of unlawfully undertaking hydraulic project activities if the person constructs any form of hydraulic project or performs other work on a hydraulic project and fails to have a hydraulic project approval required under chapter 77.55 RCW for such construction or work.

(3) **Circumstances supporting probable cause:**

On 02-04-11, at approximately 1000 hours, I was on a boat patrol in San Juan County with WDFW Officers Downes and Kim. I observed a loading craft vessel unloading freight at a makeshift boat ramp on the Southern end of Blakely Island near Armitage Island. (The property was later identified on the San Juan County Assessors website as Parcel Numbers 151024002000, 151024003000, 151050018000 owned by H JON RUNSTAD & ROGER PEARCE TTEE &

WALTER R INGRAM TTEE.) I saw that the boat ramp appeared to be heavily used and had recently had gravel added to it. There was a visible difference in color between the gravel and rock in the area of the boat ramp compared to the color the surrounding beach. I observed that a good portion of the new gravel and rock was well below the high tide mark on the beach. I also saw that a section of a rock wall bulkhead appeared to be under construction. I photographed the activities from the water. Officer Downes and I made note to contact WDFW Habitat Biologist to ensure that the project was properly permitted. The next week Officer Downes and I contacted several WDFW Habitat Biologists who advised that no Hydraulic Project Approval (HPA) permits had recently been issued to anyone on the south end of Blakely Island.

On 02-10-11 at approximately 1400 hours I was on a boat patrol in San Juan County with WDFW Officers Downes and Capelli. We observed an excavator working on a rock bulkhead well below the Ordinary High Water Line (hereafter referred to as OHWL) along the beach on the southern end of Blakely Island. (Ordinary high water line" or "OHWL" means the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland, provided that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of mean higher high water, and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood.) From my observations it appeared as though the excavator was being used to smooth out the beach. A large log was grasped in the bucket as the operator moved the bucket back and forth. The log was then placed next to the rock wall. I photographed the excavator at work from my patrol vessel within the bay.

After photographing the excavator at work Officer Downes motored our patrol vessel towards a dock in front of a residence located on the property. Upon securing our vessel to the dock we were greeted by a male subject who identified himself as Hans. Hans asked how he could help us Officer Downes informed Hans that we were with the Department of Fish and Wildlife. Officer Downes informed Hans that we had noticed the construction project on the beach and wished to make sure that it was a permitted activity. Hans informed us that he was the grounds

keeper for the estate and would contact the general contractor who could help us. He then left to get the contractor. While we waited, I continued to photograph the excavator while it worked on the beach.

Shortly thereafter a man who identified himself as David NEEDHAM arrived. NEEDHAM identified himself as the general contractor for the project. Officer Downes identified us and informed NEEDHAM that we had noticed the excavator working on the beach well below the high tide mark. Officer Downes asked NEEDHAM if the activity had been permitted by WDFW, specifically if they had received an HPA permit. NEEDHAM stated that he did not have a permit, stating that he was unaware that he needed a permit. I recognized this as a violation of **RCW 77.15.300 (1a)**. NEEDHAM asked if a permit was needed when making emergency repairs. Officer Downes informed him that it is and inquired what the emergency was.

NEEDHAM stated that he was constructing two residences on the property and that heavy rain a few weeks prior had created problems with the new road and culvert that they had installed. The excess water created two washed out areas along the shoreline. NEEDHAM stated that the rock retaining wall was initially constructed as an “emergency retaining wall.” NEEDHAM further stated that once the owner John RUNSTAD saw the initial “emergency wall” constructed he decided to expand the retaining wall further. Officer Downes asked how long ago they had started work on the bulkhead. NEEDHAM stated that it was two to three weeks ago.

Officer Downes asked NEEDHAM how long the boat launch landing area had been in use, stating that the work done to create it would require an HPA permit as well. NEEDHAM informed us that it was his understanding that there had always been a small boat launch in this area. Officer Downes and I informed NEEDHAM that it appeared as though more rock and gravel had been added to the launch recently.

We asked NEEDHAM where the rock had been obtained for the bulkhead. NEEDHAM informed us that the first small portion was constructed using rock obtained while doing construction on the estate itself. The rest of the bulkhead was constructed from rock barged over

from Orcas Island. I asked if any material from the beach had been used to construct the wall. NEEDHAM stated that everything had been barged over from off island. We asked what the excavator was doing on the beach today. NEEDHAM stated that it was placing driftwood logs back up against the wall, and that the wall was nearly finished. As we conversed the excavator motor turned off for a moment. When it was restarted the machine motored back along the beach and up the boat ramp where it was parked on a pile of gravel near the construction site of a residence.

Officer Downes and I requested that we walk down and inspect the bulkhead. NEEDHAM showed us the way to the beach. As we walked along the beach I clearly observed sections of the beach bed where it appeared the bucket of the excavator had been scraped along the top of the bed collecting gravel and rocks. Other areas had large holes dug into the bed to a depth of at least a foot deep. The holes had filled with muddy water preventing a closer inspection. Tracks from the excavator had created ruts in the beach area and had disturbed much of the upper portions of bed.

As Officer Capelli and I inspected the holes and scrape marks along the beach we believed that beach material have been used to construct the bulkhead. Officer Capelli again asked NEEDHAM if material from the beach had been used to construct the bulkhead. NEEDHAM stated that it was not. I then walked over to the rock bulkhead and inspected it. I observed that much of the large boulders making the wall itself appeared to have come from a quarry and had not been subjected to a marine environment for long. However smaller rocks fit between the larger rocks as well as gravel used to fill in on top of the bulkhead appeared to be from the beach, as evident by the barnacles and algae attached to many of the rocks. I pointed this out to NEEDHAM and he conceded that some material from the beach was used as backfill after all. I asked if he had used a sub-contractor to do the construction on the bulkhead. NEEDHAM stated that his sub-contractor for the rock work was Orcas Excavation. I continued to photograph the bulkhead as we conversed.

As I continued to inspect to bulkhead I observed that where NEEDHAM stated the wash out had occurred dirt was spread over the gravel and small rock atop the bulkhead. A ramp of drift

wood and beach material had been constructed on the waterside base of the rock bulkhead allowing machinery to work on the uphill side of the bulkhead. All along the beach where the excavator had been operating large ruts from the machines tracts had torn up the beach well below the ordinary high water line.

Continuing toward the boat ramp we inspected another section of bulkhead where NEEDHAM initially stated that rock from excavating one of the residences foundation was used. I observed that a relatively small amount of rock appeared to have been excavated from the ground, the majority appeared to have been removed from the beach. Many of the rocks contained a significant number of barnacles attached to them. The barnacles must have been attached to the rocks prior to them being put in place because they were placed well above the high tide mark. Rock used to build up the boat ramp adjacent to this bulkhead appeared to have been introduced to the beach area recently due to its color and lack of marine organisms. .

At a later date contact was made with WDFW Area Habitat Biologist (AHB) Laura Arber, who informed us that the project described above was unpermitted and that an HPA would have been required prior to performing the work. WDFW Habitat Biologists and Enforcement Officers would like to inspect and document the unpermitted hydraulic activity located on the premises. The inspection, information, and evidence gathered through the course of this search warrant would be utilized in identifying ways to mitigate and repair damage that has been inflicted on the beach due to unpermitted hydraulic activity, as well as gather further evidence for the ongoing criminal investigation.

This affiant requests that in view of the foregoing, I believe that a violation of RCW 77.15.300 (1a), have been and are about to be committed; and that access to the aforementioned properties would produce or lead to evidence of the crime(s); and that authorization to inspect, photograph, obtain measurements, seize evidence related to the unpermitted rock bulkhead construction project should be authorized.

WHEREFORE, I request that a search warrant be issued for the purpose of entering private property on San Juan County Parcel Numbers 151024002000, 151024003000, 151050018000

owned by H JON RUNSTAD & ROGER PEARCE TTEE & WALTER R INGRAM TTEE. The properties are located on the south end of Blakely Island in a bay northwest of Armitage Island. Officers will have access to aforementioned properties by mooring a patrol vessel on a private dock located on parcel number 151050018000. A search warrant issued for the aforementioned property, would produce and/or lead to evidence of the crime(s) and identification of suspect(s). Authorization to inspect, photograph, obtain measurements, seize evidence related to the design and construction of unpermitted hydraulic project. Further, WDFW biologists would be able to identify new evidence, determine the extent of the environmental damage and gather information to mitigate and repair the damage caused by this unpermitted hydraulic activity to the beach and marine environment..

Affiant Peace Officer

Subscribed and sworn to before me this _____ day of
_____ 2011 at _____ A.M./P.M.

JUDGE
San Juan County Superior Court

SAN JUAN COUNTY SUPERIOR COURT
BEFORE DONALD E. EATON, JUDGE

SEARCH WARRANT
(CASE NO.11-1018)

TO ANY PEACE OFFICER IN THE STATE OF WASHINGTON:

1. Upon the declaration of Christopher Rosenberger, it appears that there is probable cause to believe that:

[x] Evidence of a crime, and/or

[] Contraband, the fruits of crime, or things otherwise criminally possessed, and/or

QEE
[x] ~~Weapons or other things~~ by means of which a crime has been committed, or reasonably appears about to be committed,

are under control or in the possession of some person(s) and are concealed in or on certain premises, vehicles or person(s) within San Juan County, Washington, hereinafter described.

2. YOU ARE COMMANDED TO:

[x] Search said premises, vehicles or person(s) specifically described as follows:

QEE
The entire real property, to include, but not limited to the upland property, shoreline beach beds of San Juan County Parcel Numbers ~~151050020000~~, ~~151050019000~~, 151050018000, 1510240010000, 151024003000, 151024002000, owned by H JON RUNSTAD & ROGER PEARCE TTEE & WALTER R INGRAM TTEE, and San Juan County Parcel Numbers 151050017000, ~~15105001600~~ owned by H. Jon Runstad, which are located on the south end of Blakely Island in a

QEE

SEARCH WARRANT
Page 1 of 4

CrRLJ 2.3
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REV: 5/96

PDE

bay northwest of Armitage Island in San Juan County, to include ~~residences~~, construction offices and supply sheds located thereon. See attachment A, which is hereby incorporated by reference.

[x] Vehicles (describe): Construction vehicles and equipment found on the above-described properties, the beaches and waters surrounding said properties.

[x] Seize the following property specifically described as follows:

- (1) Equipment and materials used in the preparation and construction of the bulkhead;
- (2) Documents and records relating to the preparation and construction of the bulkhead, to include, but not limited to: building and construction plans, instructions relating to the preparation and construction of the bulkhead, site maps, receipts for material used in preparation and construction of the bulkhead, receipts and contracts for the shipment of material and equipment to the work site, contracts and agreements with other contractors or subcontractors for work done on the project and supplies and material used on the project; pay stubs, contracts, time cards and lists of the names of persons employed on the project.
- (3) Evidence of dominion and control of the site, ^{Construction} vehicles and equipment on the property and beaches, to include, but not limited to ^{Construction} vehicle registration and insurance cards; ~~personal identification, to include but not limited to driver's licenses and identification cards.~~
- (4) Samples of materials used in the preparation and construction of the bulkhead and control or comparison samples.
- (5) Biological samples.

PDE

SEARCH WARRANT

Page 2 of 4

CrRLJ 2.3
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REV: 5/96

DE Officers are authorized to take photographs, video recordings and measurements *of the bulkhead, including the beach adjacent to same + any backfill of the same*
Officers may use the assistance of experts and consultants in the fields of biology, habitat restoration, environmental sciences and environmental engineering and other related fields.

3. Safely keep the property seized.
4. Return this warrant to the undersigned judge within ten (10) days following issuance. The return must include an inventory of property seized.

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession a copy and receipt shall be conspicuously posted ~~at the~~ place where the property is found.

DATED: 3/18/11



JUDGE

As authorized by the above Judge pursuant to CrR 2.3, CrRLJ 2.3 (Telephone Search Warrant).

Chris Rosenberger
Name

Christopher Rosenberger WDFW Officer
Type or Print Name
Title

SEARCH WARRANT
Page 3 of 4

CrRLJ 2.3
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REV: 5/96



ATTACHMENT A

Page 4 of 4

ABE

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE
ENFORCEMENT DIVISION

In the Superior Court of the State of Washington in and for the County of San Juan

Before Donald E. Eaton, Judge

Inventory and return of search warrant, Case # 11-1018

1. I received a search warrant for the premises, vehicle or person specifically described as follows:

The entire real property, to include but not limited to the upland property, shoreline beach beds of San Juan County Parcel Numbers 151050018000, 1510240010000, 151024003000, 151024002000, owned by H JON RUNSTAD & ROGER PEARCE TTEE & WALTER R INGRAM TTEE, and San Juan County Parcel Numbers 151050017000 owned by H Jon Runstad, which are located on the south end of Blakely Island in a bay northwest of Armitage Island in San Juan County, to include construction offices, and supply sheds located thereon.

2. I made a diligent search of the above-described premises, vehicle or person and found and attached the item listed as follows:

27 digital photos downloaded from Chris Needham's computer with Needham's consent.

Assorted photos of bulkhead and surrounding beach.

Measurements of bulkhead, boat launch, and affected beach area.

3. Name(s) of person(s) found in possession of property:

Chris Needham DBA: Needham Construction Inc.

4. The inventory was made in the presence of:
WDFW Officer R. Downes

The person(s) named in (3) from whose possession the property was taken.

_____ (At least one person other than the undersigned)

5. Name of person served with a copy of warrant and given a receipt for the property taken or description of place where copies posted:

Richard Crooke was served with a copy of the warrant.

Chris Needham was given a receipt for the property taken.

6. Place where property is now stored:
WDFW computers, and notebooks.

Dated: _____

Witnessed by:

signature

type or print name

Signature of Peace Officer
Christopher Rosenberger

Officer
title

Inventory and return of search warrant



(NEEDHAM Photo #9 Taken 01-26-2011)



(NEEDHAM Photo #10 Taken 01-26-2011)



(NEEDHAM Photo # 11 Taken 01-26-2011)



(NEEDHAM Photo #12 Taken 01-26-2011)



(NEEDHAM Photo #1 Taken 01-27-2011)



(NEEDHAM Photo #2 Taken 01-27-2011)



(NEEDHAM Photo #3 Taken 01-27-2011)



(NEEDHAM Photo #4 Taken 01-27-2011)



(NEEDHAM Photo #5 Taken 01-27-2011)



(NEEDHAM Photo #6 Taken 01-27-2011)



(NEEDHAM Photo #7 Taken 01-27-2011)



(NEEDHAM Photo #1 Taken 02-01-2011)



(NEEDHAM Photo #2 Taken 02-01-2011)



(NEEDHAM Photo #3 Taken 02-01-2011)



(NEEDHAM Photo #4 Taken 02-01-2011)



(NEEDHAM Photo #5 Taken 02-01-2011)



(NEEDHAM Photo #6 Taken 02-01-2011)



(NEEDHAM Photo #7 Taken 02-01-2011)



(NEEDHAM Photo #8 Taken 02-01-2011)



(NEEDHAM Photo #1 Taken 02-03-2011)



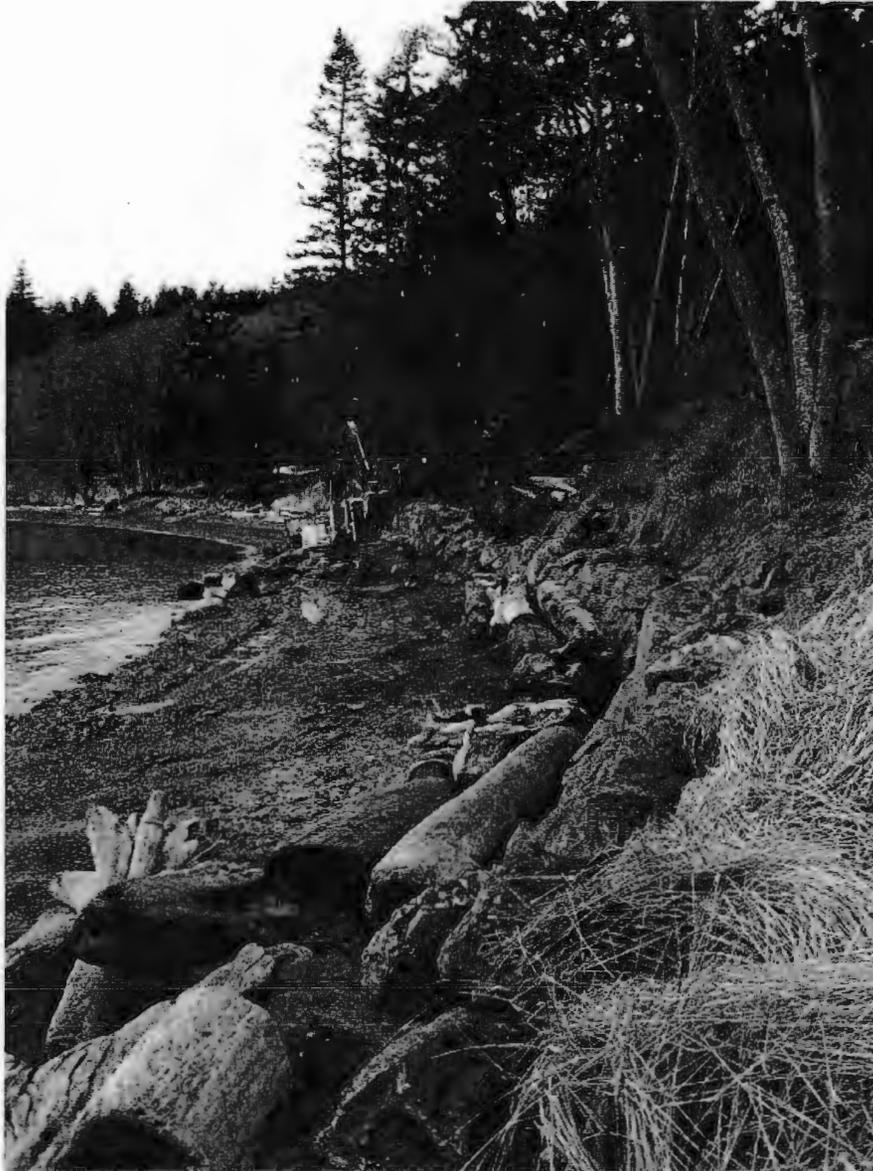
(NEEDHAM Photo #2 Taken 02-03-2011)



(NEEDHAM Photo #3 Taken 02-03-2011)



(NEEDHAM Photo #4 Taken 02-03-2011)



(NEEDHAM Photo #5 Taken 02-03-2011)



(NEEDHAM Photo #6 Taken 02-03-2011)



(NEEDHAM Photo #7 Taken 02-03-2011)



(NEEDHAM Photo #8 Taken 02-03-2011)

April 11, 2011

**Runstad Blakely Island Rock Bulkhead
Hydraulic Project Approval Violation Report**

Project Location:

Site is located on the southeast shore of Blakely Island and northwest of Armitage Island.

WDFW Communications History:

On February 4, 2011 Ralph Downes contacted Brian Williams by phone regarding new rock wall construction on Blakely Island. Brian Williams informed Ralph that to the best of his knowledge, an HPA had not been issued for the construction of a new rock bulkhead on Blakely Island and that WDFW had not been consulted regarding construction of a new rock bulkhead on Blakely Island.

Ralph Downes contacted Brian Williams on February 12, 2011, and informed him that he and enforcement officers Kit Rosenberger and Jason Capelli had engaged Orcas Excavating constructing a new rock bulkhead on Blakely Island. Ralph Downes and Kit Rosenberger took pictures of the site and emailed copies of the pictures to Laura Arber and Brian Williams.

Ralph Downes, Laura Arber and Brian Williams made arrangements to survey the Blakely Island site on March 9, 2011. Site survey abandoned due to poor weather.

Ralph Downes, Laura Arber and Brian Williams made arrangements to survey the Blakely Island site on March 22, 2011.

WDFW March 22, 2011 Survey Notes:

GENERAL

Laura Arber and Brian Williams from WDFW Habitat Program conducted a survey of the Runstad Blakely Island site with officers Ralph Downes, Russ Mullins, Kit Rosenberger, and Zach Gaston from WDFW's Enforcement Program. Bob Fritzen from the Department of Ecology's (DOE) Bellingham office and 2 representatives from San Juan County Planning Department were also in attendance. We arrived at the Runstad property at approximately 12:00pm. Laura Arber and Brian Williams initiated a survey of the shoreline and beach at the Runstad site at approximately 12:30. The representatives from DOE and San Juan County did not enter or survey the rock armoring or beach at the Runstad site.

SHORELINE REACHES

The shoreline and beach at the Runstad site was partitioned into 7 reaches. The length of each reach was measured. Reach lengths are illustrated on the attached site plan and presented in Table 1.

WAVE EXPOSURE

The beach at the Runstad site is oriented to the southeast. Armitage Island partially protects the beach from a southern exposure to Thatcher Pass and the eastern exposure to Rosario Strait.

SHORELINE CHARACTERISTICS

The shoreline at the Runstad site ranges in height from approximately 2 foot to 20 feet. The height of the shoreline is greatest at the interface between reaches 2 and 3 tapering to the east to 10-12 feet and to the west to 2 feet. The height of the shoreline is approximately 10-12 feet in reach 1, 15-20 feet in reaches 2, 3, 4 and 5, 2-15 in reach 6 and 2 feet in reach 7.

East of reach 1 is a bed rock outcrop. Reaches 1, 2, 3, 4, and 6 are armored with quarry and native rocks. There is a narrow 15 foot wide bedrock outcrop between reaches 3 and 4. Reach 5 is unarmored. Immediately west of reach 6 is a 30 foot wide beach access. Reach 7 is unarmored. West of reach 7 the beach transitions to bedrock.

The upper shoreline at the Runstad site is predominantly vegetated with grasses and mature alders and evergreen trees. Reach 1 is vegetated with grasses and a few immature evergreen trees. Reach 2 is vegetated with grasses, a single evergreen tree and 5 mature alders. Reach 3 is vegetated with grasses mature alders at the eastern end and mature evergreens at the western end. Reach 4 is a bed rock outcrop. Reach 5 is vegetated with grasses and mature evergreen. Reach 6 is vegetated with grasses and a single mature evergreen. Reach 7 is vegetated with grasses and mature alders.

There is an access road at the top of the shoreline between boat ramp and dwellings.

Jute fabric has been installed between the top of the new rock bulkhead and the top of the bank in reach 3 evidence of potentially a recent bank failure.

BEACH ELEVATIONS

The tide elevation (water line) during the site survey (12:30 and 1:30) on March 22, 2011 ranged from approximately -0.50 to -0.70 (MLLW = 0.00). MHHW for the site based on NOAA's Thatcher Pass station is +8.2 MLLW. Laura Arber and Brian Williams used a hand level, stadia rod and known tide line elevation to determine that OHW was approximately +9.5 MLLW at an undisturbed reach of shoreline immediately southwest of the existing boat ramp site. Bed elevations were established at the toe of the existing rock bulkheads for each reach. Bed elevations were also established for a quarry spall deposit on the beach in reach 3 and at the boat ramp site. Bed elevations are illustrated on the attached site plan and described in Table 1.

ROCK BULKHEADS

There were 3 different rock materials used to armor the Runstad shoreline. The bulkhead in reaches 1 and 2 was constructed from a bright (white) quarry rock. The bulkhead in reaches 3

and 4 was constructed with a dull gray quarry rock. The bulkhead in reach 6 was constructed with round native beach rock. The character of the shoreline bulkheads are described below for each reach and are illustrated in the attached site plan.

Reaches 1 and 2:

Bright (white) quarry rocks characterize the rock bulkhead along reaches 1 and 2. Dune grass and established vegetation between the bright rocks used to armor reaches 1 and 2 indicate that the construction of the rock bulkhead along reaches 1 and 2 is not recent and not associated with the rock bulkhead construction along reaches 3, 4 and 6. WDFW does not currently know when the rock bulkhead along reaches 1 and 2 was constructed.

Reaches 3 and 4:

Dull gray quarry rock characterizes the rock bulkhead along reaches 3 and 4. The beach was significantly impacted by the operation of equipment on the beach and the removal of native rocks from the beach to construct the new rock bulkhead in reaches 3 and 4. Native rocks from the beach are evidenced by the presence of barnacles attached to the rocks. Native beach substrates were used to backfill the new rock bulkhead and to fill in the spaces between the larger quarry rocks along the face of the new rock bulkhead. The new rock bulkhead eliminates future recruitment of native substrate materials to the beach from the shoreline in reaches 3 and 4.

Reach 6:

Round native rock characterize the rock bulkhead along reach 6. The beach was significantly impacted by the operation of equipment on the beach and the removal of large native rocks from the beach to construct the new rock bulkhead in reach 6. Native rocks from the beach are evidenced by the presence of barnacles attached to the rocks. The new rock bulkhead eliminates future recruitment of native substrate materials to the beach from the shoreline in reach 6.

Reaches 5 and 7:

Undisturbed

BEACH SUBSTRATE

Though surf smelt and sand lance spawn has not been documented along the beach at the Runstad site, WDFW's SalmonScape data base has identified the beach substrate as potential forage fish (surf smelt, sand lance) spawning habitat. A description of the substrate character for each reach at the Runstad site is described in the Table 1 and illustrated in the attached site plan.

The beach substrate between approximately the +3 to OHW is described below and in Table 1. Reach 1 is predominantly composed of sands, silts and cobbles to the east transitioning to predominantly sand and scattered cobbles to the west.

Reach 2 is predominantly composed of sands to the east transitioning to predominantly cobbles to the west.

Reach 3 transitions back and forth between areas predominantly composed of cobbles with some pea gravel to areas predominantly composed pea gravels with scattered cobbles. There is an area

of scattered 6-8" quarry spall materials on the beach in reach 3.

Reach 4 is composed of predominantly pea gravel transitioning to sand towards the bulkhead.

Reach 5 is composed of predominantly pea gravel transitioning to sand towards OHW.

Reach 6 is composed of predominantly pea gravel transitioning to sand towards the toe of the rock bulkhead.

Reach 7 is composed of predominantly pea gravel transitioning to sand towards OHW.

The area of 6" to 8" quarry spalls on the beach in reach 3 is approximately 15 feet wide and 44 feet long. The quarry spalls are assumed to be what is left from where quarry spalls were delivered to the site by barge to construct the new rock bulkhead.

A healthy eelgrass bed is present offshore and occupies the entire pocket cove extending out to both rocky out crops and beyond. Loss of erosion material from the bluff due to the bulkhead may potentially negatively impact the health of the eelgrass bed and fish habitat.

BOAT RAMP

What may have been an undeveloped shoreline access site to the beach was modified with 6" to 8" quarry spalls and rubberized mats to accommodate the passage of equipment and construction materials from the beach to the upland. 6" to 8" quarry spalls were deposited on the beach in an area that is 30 feet wide and 44 feet long. This quarry spall deposit begins at approximately the +7.5 tide elevation (MLLW) and extends down the beach to approximately the +3.5 tide elevation (MLLW). Two strips of rubberized matting approximately 3 feet wide extend from the top of the beach (+11.0 MLLW) to approximately the +3.5 tide elevation (MLLW).

BOAT RAMP

The history of the beach access towards the west end of the Runstad beach is unknown. It appears that the naturally occurring low bank shoreline was modified somewhat to allow barge landings and equipment/material off loading to the upland roadway. The beach access was recently enhanced through the introduction of 6-8" quarry spall material between the +7.5 and +3.5 tide elevations (MLLW = 0.00). The quarry spall materials cover an area 44 feet long and 30 feet wide or 1,320 square feet. Two strips of composite mat were placed across beach and quarry spalls between OHW and the +3.5 tide elevation (MLLW = 0.00).

Hydraulic Project Approval

The Runstads and/or their agents did not apply for or receive an HPA to:

1. Construct the new rock bulkheads in reaches 3, 4 and 6.
2. Create and/or modify a shoreline access to the beach.
3. Land a barge, operate trucks and equipment on the beach.
4. Offload and stockpile rock materials onto the beach.
5. Remove native substrate materials from the beach for construction of bulkheads.

The shoreline along the beach at the Runstad site has been significantly altered through the construction of rock bulkheads along reaches 1, 2, 3, 4, and 6. The newly constructed rock bulkhead along reaches 3, 4 and 6 appear to have been constructed above the mean higher high water elevation (+8.2) and within 6 feet of OHW. As such, the newly constructed rock bulkhead along reaches 3, 4, and 6 would have potentially been permissible under the Hydraulic Code only

after an investigation by the Runstads of soft shore alternatives to protecting the shoreline demonstrated that soft shore protection alternatives were not appropriate for this site.

The history of the rock bulkhead along reaches 1 and 2 is unknown though the presence of grasses between the rocks confirms that it was not constructed at the same time the bulkheads in reaches 3, 4 and 6 were constructed. The history of the rock bulkhead along reaches 1 and 2 should be investigated for compliance with the Hydraulic Code.

The existing beach was significantly impacted by the operation of equipment on the beach and through the removal of native beach materials to construct the new rock bulkheads in reaches 3, 4, and 6. The beach has also been impacted by the deposition of 6-8 inch quarry spalls on the beach at the boat ramp site and at reach 3.

Recommendations

1. Require the Runstads to contract a coastal geologist to evaluate the shoreline and shoreline processes along the Runstad Beach.
 - a. Evaluate the wave and current dynamics at the Runstad beach.
 - b. Evaluate shoreline erosion and beach nourishment dynamics at the Runstad Beach.
 - c. Evaluate the stability of the shoreline and how upland activities may be affecting the stability of the shoreline
 - d. Evaluate the shoreline vegetation as it relates to shoreline stability.
 - e. Evaluate potential soft shore protection alternatives to the existing rock bulkheads.
2. Based on the evaluations conducted in item 1, require replacing the existing rock bulkheads with soft shore protection if practical.
3. Based on the evaluations conducted in item 1, if it is not practical to replace the existing rock bulkhead with a soft shore alternative, allow the existing rock bulkheads to be retained as constructed but require that the beach be nourished with the appropriate size and volume of materials as determined by the evaluations conducted in item 1 for the life of rock bulkhead structure.
4. Require that the shoreline be re-vegetated with native shrub and tree materials.
5. Require that the quarry spall materials at the beach access site and in reach 3 be removed from the beach.
6. Require that the native substrate materials removed from beach be replaced with an appropriate size and volume of native materials as determined by the evaluations conducted in item 1.
7. Require that the Runstads contract a biologist certified by WDFW to conduct forage fish surveys to conduct monthly sand lance and surf smelt spawning surveys at the Runstad beach using WDFW survey protocols for 1 year.
8. Require that the Runstads contract a qualified biologist to monitor the distribution and density

of the existing eelgrass bed adjacent to the Runstad beach for 5 years.

Table 1

Beach Reach	Toe Elevation (MLLW)	Beach Substrate	Reach Length (ft)	Shoreline Armoring	Riparian Vegetation
1	8.3	Variable sand, silt, & cobble	205	Bright rock	Grass & few evergreen trees
2	8.3	Sand (east) to cobble (west)	218	Bright rock	Grass, single evergreen, 5 alders
3	8.3	Variable cobble, pea gravel mix, area of scattered quarry spalls (15' x 44')	252	Dull rock	Grass, alders & evergreen trees
4	8.8	Pea gravel & sand	39	Bedrock & dull rock	Bed rock outcrop
5	11.0	Pea gravel & sand	82	Undisturbed	Grass & evergreen trees
6	11.0	Pea gravel & sand	125	Native round rock	Grass & evergreen trees
7	11.25	Pea gravel & sand, boat ramp & quarry spalls	30 (boat ramp)	Undisturbed except for boat ramp	Grasses and alders

Runstad - Blakely IS 3/22/11
12:30 pm

Reach # 12
OHD

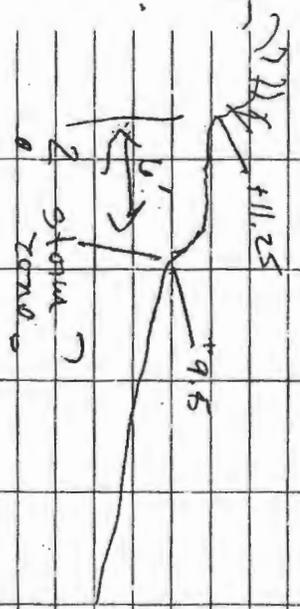
pos	1B	34 + 98 = 132	8.3
218	2A	149 + 149	8.3
252	3B	125 + 127	8.8
24	4	24	
undisturbed	82		

6-12.5
7- west of road undisturbed
OHD = 11.75

WATERLINE	-0.5	-0.5
MID	5.0	5.0
	5.0	5.0
	11.25	11.25
	11.75	11.75

← south of road →
mass slone transition to today slone

Reach 7



Thakela Bay
with HD = 11.82

- 1) FEW COBBLES, MOSTLY SAND
- 2) COBBLES 2 IN - 9 IN, FEW Boulders ^{COBBLES} _{COBBLES}
- 2.8 COBBLES 2 IN - 9 IN, FEW Boulders
- 3) COBBLES 2 IN - 9 IN, SOME PER GRAVEL
- 3) PER GRAVEL TO COBBLES 2-4 IN LOIN
Quarter SPALLS split by ^{15 FT} _{15 FT} 4 FT
- 4) PER GRAVEL THINNING TO SAND
NOT SPOONING, OTHER BECAUSE OF DRIFT LOGS
- 5) PER GRAVEL THINNING TO SAND
NOT SPOONING, OTHER BECAUSE OF DRIFT LOGS
- 4) UPPER RICH PER GRAVEL
- 7) UPPER RICH PER GRAVEL
(E.G. HABITAT REPAIRMENT)
SOME SANDS

✓ Cross-section of stream
 not made of sand
 of sand & gravel
 All
 check this for
 months to years
 gravel

R1.5
 $\frac{1.9}{5.0}$
 $\frac{1.9}{4.1}$

R2.1
 $\frac{1.9}{5.0}$
 $\frac{1.9}{4.1}$

R2.8
 $\frac{1.9}{5.0}$
 $\frac{1.9}{4.1}$

R2.1
 $\frac{1.9}{5.0}$
 $\frac{1.9}{4.1}$

R3.8
 $\frac{1.9}{5.0}$
 $\frac{1.9}{4.1}$

R4.5
 $\frac{1.9}{5.0}$
 $\frac{1.9}{4.1}$

RUNSTAD PROPERTY



Note: Approximate compass heading



PHOTO 1: Enforcement photo of equipment operating on beach and constructing non-permitted bulkhead.



PHOTO 2: Enforcement photo showing large boulder recently removed from beach. May have been used in bulkhead construction.



PHOTO 3: Enforcement photo illustrating recent equipment activity on beach at soft boat ramp.



PHOTO 4: Enforcement photo showing construction of bulkhead.



PHOTO 5: View from east (white rock on right) to west (gray rock on left). Older rock bulkhead is white and new bulkhead, which is gray, begins in middle of photo. Taken by Area Habitat Biologist.



PHOTO 6: Close-up of intersection between new and older bulkhead location. Also illustrates end of Reach 2 (Total reach 218 lineal ft) and beginning of Reach 3 (Total reach 252 lineal ft). Taken by Area Habitat Biologist.



03-22-2011 10:13

PHOTO 7: Portion of Reach 3 (Total reach 252 lineal ft). Taken by Area Habitat Biologist.



03-22-2011 10:13

PHOTO 8: Reach 4 (Total reach 39 lineal ft) and Reach 5 (Total reach 82 lineal ft). Taken by Area Habitat Biologist.



PHOTO 9: Portion of Reach 1 (Total reach 205 lineal ft), with older white bulkhead with established dune grass growing between some rocks. Taken by Area Habitat Biologist.



PHOTO 10: Sgt. Mullins assisting Brian Williams in measuring each reach and documenting the habitat type. Taken by Area Habitat Biologist.



PHOTO 11: Brian Williams and Sgt. Mullins measuring Reach 3 (Total reach 252 lineal ft). Taken by Area Habitat Biologist.



PHOTO 12: New bulkhead includes rocks that have barnacles present on rock face indicating rocks were taken from the beach. Taken by Area Habitat Biologist.



PHOTO 13: Close-up of barnacles on rocks. Taken by Area Habitat Biologist.



PHOTO 14: Barnacles on rocks. Taken by Area Habitat Biologist.



PHOTO 15: More barnacles on rocks. Taken by Area Habitat Biologist.



PHOTO 16: Portion of Reach 3 (Total reach 252 lineal ft) showing bankline work to minimize erosion. Taken by Area Habitat Biologist.



PHOTO 17: Reach 5 (Total 82 lineal ft) with undisturbed shoreline and illustrating what shoreline looked like along this stretch before bulkhead installation. Taken by Area Habitat Biologist.



PHOTO 18: Reach 6 (Total reach 125 lineal ft) shows native round rock likely taken from the beach to use in the bulkhead. Taken by Area Habitat Biologist.



PHOTO 19: New stormwater drainage tightline outfall and quarry spalls for dissipation between Reaches 5 and 6. Taken by Area Habitat Biologist.



PHOTO 20: Reach 7- Shows barge access ramp constructed with quarry spalls and geo-pads on top of rocks. Boat ramp 30 lineal ft wide by 44 ft long. Taken by Area Habitat Biologist.



PHOTO 21: Barge access ramp and recent landing activity. Taken by Area Habitat Biologist.

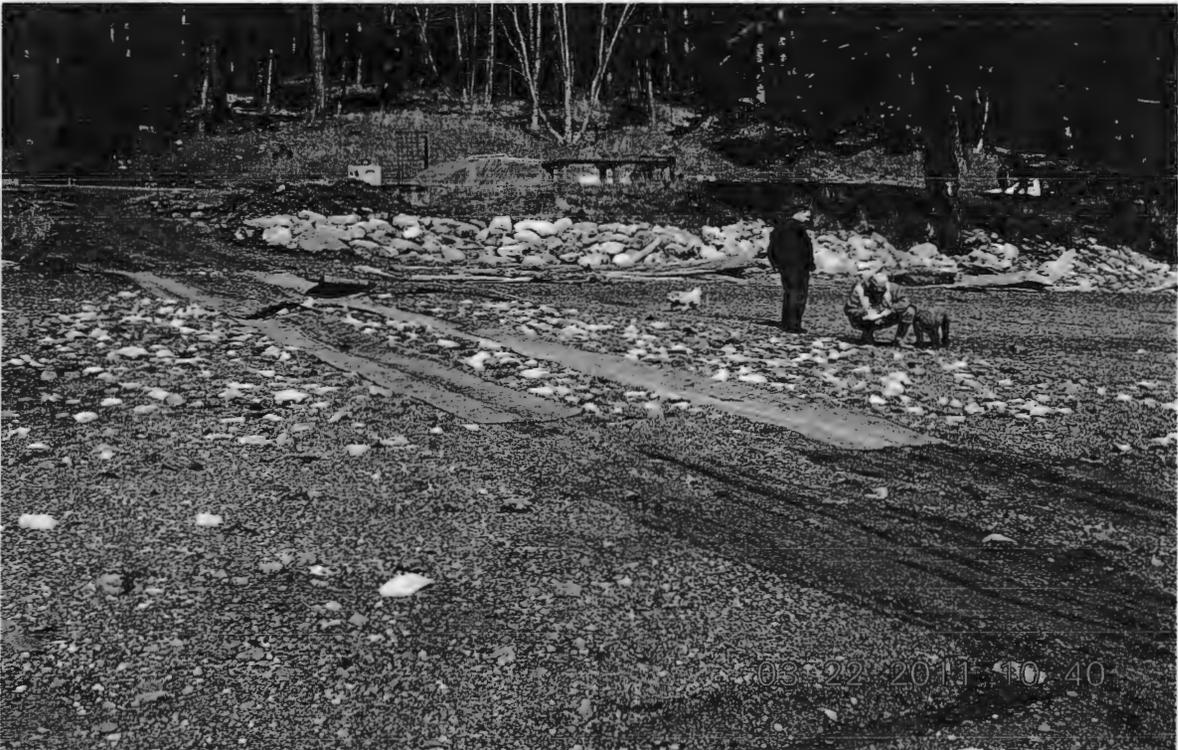


PHOTO 22: Barge access ramp and recent landing activity. Taken by Area Habitat Biologist.



PHOTO 23: Reach 7- Barge access ramp (Total 30 lineal ft) and geo-pads over non-native quarry spalls, and showing native beach substrate (sand and pea gravel), at west end adjacent to the remaining natural shoreline. Taken by Area Habitat Biologist.



PHOTO 24: View of beach and bulkhead from the west end looking north east. Taken by Area Habitat Biologist.



PHOTO 25: View of bulkhead and beach (largely pea gravel and sand) from west end looking east.

Taken by Area Habitat Biologist.



PHOTO 26: Non-native quarry spalls on beach left by barge (do not belong on beach). Taken by Area Habitat Biologist.



PHOTO 27: Size of quarry spalls relative to native material (sand and pea gravel) beneath. Taken by Area Habitat Biologist.



PHOTO 28: View of bulkhead and beach (largely sand and fine grain sediments with some native round rock) from east end looking west. Taken by Area Habitat Biologist.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL CASE REPORT

Sergeant Russ Mullins (W-33)
808 Harrison St., 3rd Floor
Blaine, WA 98230
WSP# 360-676-2076, Cell# 360-201-0638

April 21, 2011
CASE# WA-11-001018

On 4/21/11, at about 0900 Hrs., Officer Rosenberger and I contacted the corporate president of Orcas Excavators Inc., Bruce WISCOMB, at his office located at 60 W. Beach Rd., Orcas Island. WISCOMB had agreed to meet with us regarding his company's involvement with the construction of the un-permitted hydraulic project at the RUNSTAD property on the south end of Blakely Island.

WISCOMB was asked to explain the business relationship Orcas Excavators had with John RUNSTAD and Needham Construction. He explained that his company had been hired by David NEEDHAM, owner of Needham Construction, to do the excavation work for a major residential construction project at the Runstad property. Needham Construction was the general contractor and Orcas Excavators was a sub-contractor.

I explained to WISCOMB that it was clear to us that some mistakes had been made in the course of the bulkhead construction and that the bulkhead construction process was the subject of our investigation. WISCOMB said he understood and admitted that no permits had been obtained to do the bulkhead work. This was a somewhat unexpected confession. I asked for more detail and WISCOMB told me that he and NEEDHAM had a conversation regarding the lack of permits that both of them new they needed. He said that NEEDHAM told him that John RUNSTAD told him that he was not getting permits and to do the bulkhead construction anyway. I confirmed with WISCOMB that it was his understanding that John RUNSTAD was aware that permits were required. He said yes.

WISCOMB offered an explanation for why he and NEEDHAM completed the project without the proper permits in hand. He told us the Runstad project is a large project for his company (approximately \$200,000) as it is for Needham Construction. WISCOMB said that refusing to do the work for John RUNSTAD due to the lack of permits would have possibly had a very negative impact on his financial bottom line. He said something to the effect of, "John Runstad is not the kind of person you say 'no' to." He said that if he did not do the work another contractor would be hired.

WISCOMB told me that the bulkhead construction was not part of the original scope of work and that he billed for time and materials. He told me that he did not have any change orders or contracts that document expanding the scope of the project to include construction of the bulkhead.



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL CASE REPORT

Sergeant Russ Mullins (W-33)
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WSP# 360-676-2076, Cell# 360-201-0638

April 21, 2011
CASE# WA-11-001018

WISCOMB told me that he and NEEDHAM had recently been told by a representative of John RUNSTAD to fully cooperate with investigators and that they did not want to pressure any witnesses.

When asked, WISCOMB agreed to prepare a written statement as to the facts from his perspective when his schedule allows. I emailed a written statement form to him on the afternoon of 4/21/11.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Sergeant Russ Mullins

W-33
Badge #

04/21/2012
Date



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
WRITTEN STATEMENT

Date:

Time:

My name is: Russell Bruce Wiscomb
Address P.O.Box174

My date of birth is: December 1, 1944
Eastsound, Wa 98245

Phone#:(360) 376-2319 Business

Narrative of Facts: In late November or early December the shoreline banks at the Runstad residence on Blakely Island started caving into due to the excessive amount of rain and snow melt. Mr. Runstad told the general contractor to have my people build retaining walls to prevent the banks from caving into the beach. The contractor, David Needham, asked if a permit was required. He was informed that it was required. I was not present during his discussion with Mr. Runstad. We were told by David Needham to design and build the wall as soon as possible without the permit, that the Runstad's would be responsible. The Runstad project is a very large building project for our company. We did not feel we could refuse to do the work without losing the balance of the project. At no time were threats made or implied.

Russell Wiscomb



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL CASE REPORT

Sergeant Russ Mullins (W-33)
808 Harrison St., 3rd Floor
Blaine, WA 98230
WSP# 360-676-2076, Cell# 360-201-0638

February 22, 2012

TELEPHONE CONVERSATION WITH JUDY RUNSTAD – 2/22/2012

On 2/22/2012, at 0856 Hrs., I called the cell phone number belonging to Judy RUNSTAD (206-953-5839) in an attempt to contact Jon RUNSTAD in an effort to discuss the HPA violation on his property on Blakely Island. I had previously been advised that the number belonged to Jon RUNSTAD. I introduced myself and asked to speak to Jon RUNSTAD. Judy RUNSTAD advised that her husband was not available. I told her that I had some questions regarding their project on Blakely Island asked if she would mind helping me. She agreed and I explained that WDFW was nearly finished with the investigation and that I wanted to be sure that she and her husband had an opportunity to provide their account of what happened.

I told Judy RUNSTAD that I was calling her them directly because I had made three calls and sent one email to their attorney within the past week and that the calls had not been returned and there had been no reply to the email. She told me that she had been wondering what the status of the case was for some time. I asked her if she was familiar with the project and she said that she was. She told me that the bank was eroding away and that the work had been ordered because it was of an “emergency” nature and required to protect their property. I asked if it would be possible to set up a time for to meet with her and her husband so that we could speak about the matter in depth. She agreed to talk to Jon RUNSTAD and come up with a mutually agreeable date and time. We agreed at 1300 Hrs., on March 6th at Jon RUNSTAD’s office in Seattle.

Judy RUNSTAD was polite and cooperative throughout the conversation. She indicated a willingness to help resolve the matter.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.


Sergeant Russ Mullins

W-33
Badge #

2/23/2012
Date



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254

FOLLOW UP INTERVIEW OF DAVID NEEDHAM

SUSPECT: David NEEDHAM

ADDRESS: PO BOX 177 Orcas Wa. 98280

PHONE: 360-376-2054

NARRATIVE

On 03-01-12, while I was on patrol, I phoned David NEEDHAM at his office number of 360-376-2054. I was attempting to contact NEEDHAM to schedule a follow up interview regarding his involvement in the construction of the unpermitted rock bulkhead along the shoreline of the property owned by Jon and Judy RUNSTAD on Blakely Island. When NEEDHAM answered the phone, I identified myself and informed him that I wished to meet with him to further discuss the construction of the rock retaining wall. NEEDHAM told me that he would be on Blakely Island working on the RUNSTAD's property the following day and that he could meet with me that afternoon. I agreed to meet with him at approximately 1400 hours the next day.

On 03-02-12, while on patrol with WDFW Officer R. DOWNES, we contacted David NEEDHAM at the RUNSTAD's property on Blakely Island at approximately 1330 hours. Officer Downes and I introduced ourselves and asked if there was somewhere we could talk out of the weather. NEEDHAM stated that we could talk in his office and offered to give us a ride in his vehicle. NEEDHAM transported us a short distance to a mobile work office where we followed him inside.

NEEDHAM offered Officer Downes and I a seat in some nearby chairs, NEEDHAM sat across the room. The door was located between where NEEDHAM and I were seated. Officer Downes again thanked NEEDHAM for meeting with us, and explained that we were wrapping up our investigation concerning the unlawful construction of the rock bulkhead. Officer Downes informed NEEDHAM that our meeting with him was completely voluntary and he could end our conversation at any point. Further, NEEDHAM could choose to have an attorney present



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
La Conner WA 98257-9612
Cell# 360-708-7254

before any questioning if he wished. NEEDHAM jokingly stated that maybe he needed a lawyer present. Officer Downes informed him that the decision was up to him, and that we didn't need to continue if he didn't feel comfortable. NEEDHAM replied that he wished to continue, and then said that he had been expecting a visit from us.

Officer Downes began the conversation by reminding NEEDHAM that on 02-10-11, he had informed us that he wasn't familiar with the HPA requirements associated to the construction projects he had performed on the beach. I observed NEEDHAM nod his head as to acknowledge that he had told us that. Officer Downes further stated that he found it hard to believe that an individual with his construction experience in the islands would not be familiar with the proper permitting requirements. NEEDHAM stated that when we met with him on 02-10-11, he was aware of the HPA permitting requirements, but chose not to admit it to us at that time.

NEEDHAM stated that in December of 2010 work began on the beach and was concentrated to the boat ramp area. This was done to firm up the ramp for barge landings of construction material. NEEDHAM stated that he had been informed by the RUNSTADS that the ramp area had historically been there and that no additional permitting would be required for the activity. NEEDHAM stated that he had hired Russell B. WISCOMB, the owner of Orcas Excavators, for earth work at the beginning of the RUNSTAD projects. WISCOMB was originally hired to work on projects including the boat ramp, digging out the building sites prior to home construction, and building roads and installing utilities.

We asked NEEDHAM when the work on the bulkhead projects had begun. NEEDHAM advised us that they started work in January of 2011. NEEDHAM stated that the original work had been to combat erosion and to repair areas where erosion had occurred. NEEDHAM reiterated that two areas upland of the beach had suffered from erosion issues and were the first to be addressed. NEEDHAM stated that the work had been started to prevent portions of the road from washing out. Later, a small bulkhead had been constructed near the washout areas along the beach.

NEEDHAM stated that once the small bulkheads had been constructed water ward of the erosion areas the RUNSTADS had told him that they wanted the bulkhead to be continued along the shoreline. NEEDHAM informed us that when



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL REPORT
CASE# WA-11-001018

Officer C. Rosenberger (W-175)
PO Box 1100
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Cell# 360-708-7254

he talked with WISCOMB about this plan he was advised by WISCOMB that additional permitting would be required for the bulkhead project. Officer Downes asked if WISCOMB had advised him that permits from WDFW would be required, NEEDHAM stated that he did. NEEDHAM said that it was at this point in time that he first became aware of the additional permit requirements for construction activities along the shoreline.

We asked NEEDHAM if he had relayed this information to the RUNSTADS. NEEDHAM stated that he had. He further said that he had been told by the RUNSTADS to continue the bulkhead project and that they would take care of any permitting issues later on. Officer Downes asked if he or the RUNSTADS had notified anyone from San Juan County of the additional work along the shoreline, NEEDHAM stated that he believed they had not.

Officer Downes asked NEEDHAM if he would be willing to give us a written statement concerning what we had just talked about. NEEDHAM stated that he would do so, but asked if he could finish it at a later date and send it to us. Officer Downes said that would be fine and supplied NEEDHAM with a statement form. NEEDHAM asked if he should just summarize what we had talked about during our conversation. We informed him that would be great. Officer Downes gave NEEDHAM his email address and asked him to send him the statement once it was completed. NEEDHAM stated that he would get it back to Officer Downes within a few days. We thanked NEEDHAM for his cooperation and exited the office. Officer Downes and I conversed with NEEDHAM about the homes he was building for a brief while outside before walking back to our patrol vessel and clearing the area.

I Certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge. I also certify under penalty of perjury that this report is signed by me, in Skagit County, on the date listed below.

Officer Christopher Rosenberger W175

Date



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL CASE REPORT

Sergeant Russ Mullins (W-33)
808 Harrison St., 3rd Floor
Blaine, WA 98230
WSP# 360-676-2076, Cell# 360-201-0638

March 6, 2012

JON AND JUDY RUNSTAD INTERVIEW – 3/6/2012

On March 6, 2012, at about 1230 Hrs., WDFW Officer Downes and I arrived at the Seattle office of Jon RUNSTAD for our previously scheduled meeting with Jon and Judy RUNSTAD. The meeting began at about 1300 Hrs. Also present in the room was the RUNSTAD's attorney, Joe Brogan.

I thanked the RUNSTADS for taking the time to meet with us and expressed a desire to hear their side of the story and gain their personal perspective. Judy RUNSTAD began by explaining that they had ordered the work to, "protect their property," and that permits were not obtained due to the, "emergency," nature of the problem. She indicated that there had recently been unusually high levels of rainfall in the area and the resulting runoff led to the emergency situation.

Judy RUNSTAD told us that in the course of her legal career, she only dealt with the Shorelines Management Act (SMA) and not the state Hydraulics Code or HPA process. She told us that there are provisions in the SMA that allow landowners to take emergency action to protect their property. NOTE: See attached memo from WDFW AHB Arber regarding the applicability of emergency exemptions to the SMA. Judy RUNSTAD said that both she and her husband were unaware of the legal process for conducting emergency hydraulic projects under the State Hydraulic Code.

Jon RUNSTAD explained that there were locations along the bank that had been eroding. Jon RUNSTAD said that he hired Dave NEEDHAM, the owner of Needham Construction, to construct the bulkhead in order to stop the bank erosion prior to leaving on a business trip and vacation on 1/25/11. NEEDHAM was the general contractor who was building the two new residences for the RUNSTADS. He said that he had at least one conversation with NEEDHAM regarding the bulkhead construction and that he did not speak with subcontractor, Bruce WISCOMB. The bulkhead project had been completed prior to the RUNSTADS returning from their trip on 2/23/2011.

Jon RUNSTAD presented six high-quality photographs that appeared before and after shots of areas with the most bank erosion. There were two photographs on each page. Three pages were dated 1/16/2011 and three were dated 2/26/2011. He placed them out on the conference table in order of left to right from the perspective of on the water looking toward the shoreline. Jon RUNSTAD explained that the photographs showed the locations where the "emergency" work was done. I later labeled each photograph one through twelve. See included photographs.

When looking at photograph one, it appeared that bulkhead work had been done just prior to 1/16/11. The bulkhead was constructed from a different type of boulder than the new bulkhead and it was considerably smaller. It appeared as though beach material had been dumped on top of the boulders. I



WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE
SUPPLEMENTAL CASE REPORT

Sergeant Russ Mullins (W-33)
808 Harrison St., 3rd Floor
Blaine, WA 98230
WSP# 360-676-2076, Cell# 360-201-0638

March 6, 2012

asked Jon RUNSTAD about this part of the project and he told me that rock that had been excavated from the foundation dig of the nearby home that was under construction. The rock was then used to construct the bulkhead shown in Photograph 1. Based on this photograph, it appears that the erosion issues had been present for an extended period of time. This early work unpermitted work also seems to call into question the alleged "emergency"

nature of the unpermitted bulkhead project. Photograph 4 is the corresponding photo that shows the area after the work was completed.

Photograph 2 shows the reach just east of the large rock in photograph 4, prior to the construction work. There appeared to be some natural bank erosion, however, the presence of the nearby trees indicates there had not been recent major bank sluffing. Photographs 3, 5, and 6 show this work area after the project was completed.

Photographs 7 and 8 show what appears to be the third area of significant erosion. Photograph 7 shows the presence of a previously installed rock bulkhead. This area after the project was completed is shown on the right-hand side of photograph 3.

Photograph 9 and 10 show another area of historic erosion. This area is to the east of the others. Photograph 11 and 12 show this area after the project was complete.

Our conversation went back to the RUNSTAD's thought process behind failure to obtain required permits for the project. When they were asked whether they contacted San Juan County environmental staff at any point, Judy RUNSTAD told us that they had not and that she did not think they would have been responsive to the emergency nature of their request. She explained that the County had delayed the issuance of their building permits for three months. She was clearly not pleased with the County permitting process and she implied that working with the County would have caused unreasonable delay.

Near the end of our meeting, I asked Jon RUNSTAD when they had replaced their dock float. He explained that a storm had destroyed their other float about five years ago and they had replaced the float shortly thereafter. I asked if they had obtained an HPA as is typically required in order to replace a dock float. Judy RUNSTAD became visibly irritated with my line of questioning and indicated that she felt as though they were being, "harassed." I assured her that was not our intent. NOTE: WDFW records indicate an HPA was not issued to replace the dock float.

As we concluded our interview, Jon RUNSTAD indicated that the photographs he had produced were for us to take. We thanked them for their time and left.

After the interview, I copied the photographs and numbered them in the lower left corner for reference.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.



Sergeant Russ Mullins

W-33
Badge #

3/13/2012
Date



2/26/2012



2/26/2012

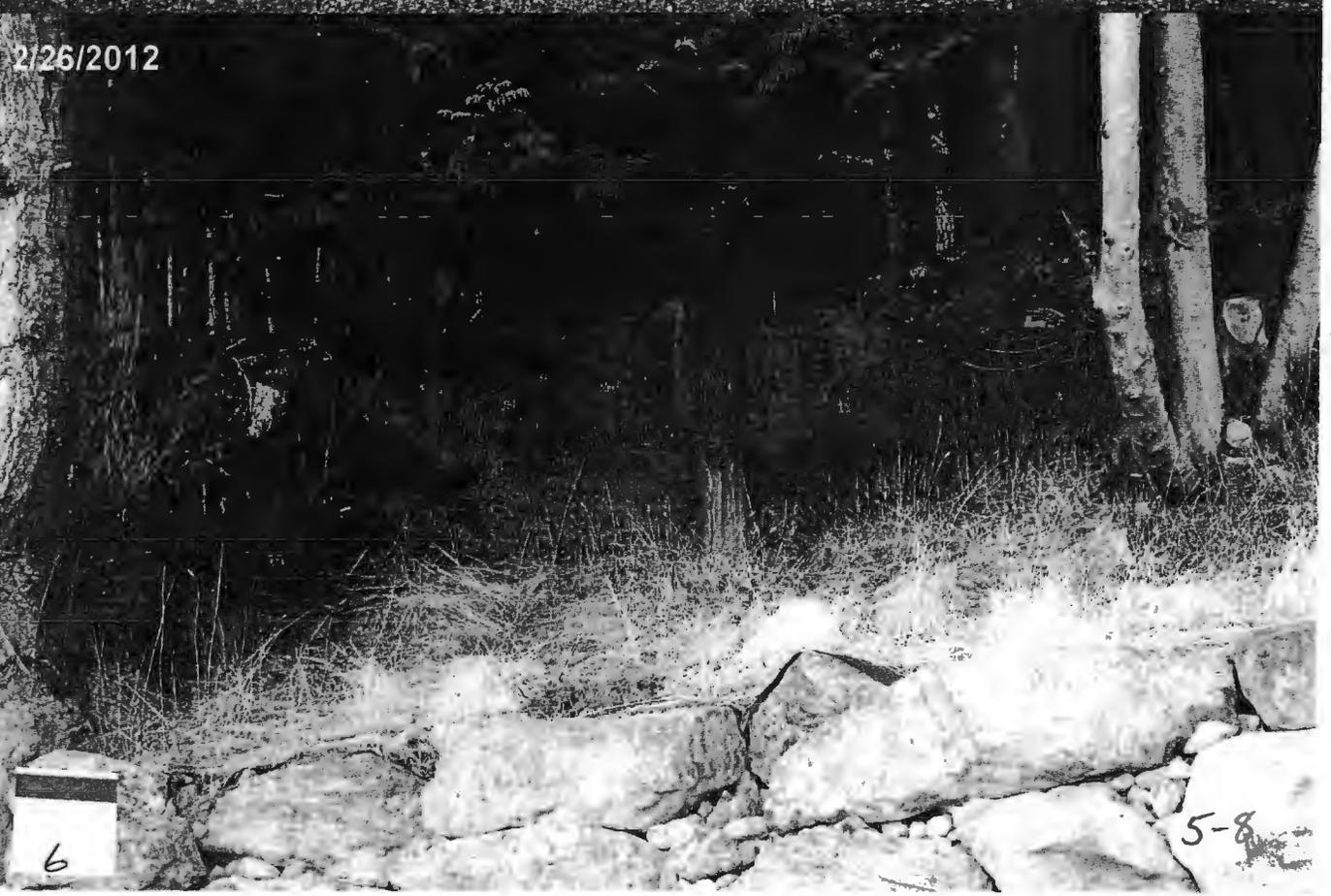


2/26/2012



5

2/26/2012



6

5-8







March 14, 2012

Ralph Downes

Washington State Dept of Fish & Wildlife

P. O. Box 1100

LaConner, WA 98257

Ralph,

In late December 2010 or January 2011 we experienced extremely heavy rains at our construction site, Whaleback Estate on Blakely Island, that caused several mud slides on the shoreline. The slides were large enough to threaten our new project access road and site utilities. They increased in size daily over a period of several days. We had excavation equipment on the site and decided if we didn't act immediately, we would risk sustaining damage that would be very difficult, if not impossible, to repair.

The assumption was that we would be able to obtain a permit after the fact, but the enforcement officers from your department arrived before we completed the work.

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