



# News Release

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## DENMAN LOCAL TRUST COMMITTEE SEEKS COURT ORDER FOR BYLAW COMPLIANCE

VICTORIA — The Denman Island Local Trust Committee, supported by the Islands Trust Executive Committee, has filed proceedings in the BC Supreme Court seeking a court order requiring Daniel John Stoneman and Debra Monica Stoneman to remove a pathway and stairs on the face of the Komasa Bluff, and to obtain a development permit for their house and outbuildings within the Komasa Bluff Development Permit Area on their property on Denman Island.

This will not be the first time the Denman Island Local Trust Committee and Mr and Mrs Stoneman have been to court regarding the development permit requirements that apply to development on their property. In 2005, the BC Supreme Court found that the previous owner of the property, Mr. Ellis, had contravened the *Local Government Act* by altering land in the Komasa Bluff Development Permit Area without a development permit, and issued an order that prohibited “cutting trees on, clearing, developing, excavating or otherwise altering” the Stoneman property within 50 metres of the top edge of the Komasa Bluff or on the face of the Komasa Bluff. In that action, the Court rejected the many arguments made by both Mr. Ellis and Mr. Stoneman that the Komasa Bluff Development Permit Area was invalid or inapplicable to the property, and that they did not require further development permits to alter the land. Costs were awarded against Mr. Ellis, but not against Mr. and Mrs Stoneman at that time, on the basis that there was no indication that the Stonemans would continue the unauthorized clearing and land alterations on the property.

In 2007, the BC Court of Appeal upheld the orders of the BC Supreme Court, and specifically the Komasa Bluff Development Permit Area as validly protecting development from hazardous conditions through restrictions on land alteration and tree clearing on the Stoneman property. In 2003, a significant slump on the property received Province-wide attention. A geotechnical report prepared by Thurber Engineering concluded the slump was a result of “incautious human activity:” tree cutting and ditching too close to the crest of the bluff without a development permit. In areas of BC that are subject to natural hazards, development permits are one of the primary mechanisms that local governments can use to require geotechnical reports or place other conditions on development to protect structures from flooding, mudflows, erosion, land slip, rock falls, avalanche and wildfire.

In 2006, the Stonemans applied for a development permit to build a house and outbuildings in the Komasa Bluff Development Permit Area. That development permit was approved by the Denman Island Local Trust Committee, subject to the Stonemans’ complying with the recommendations of a geotechnical engineer hired by the Stonemans to review their plans. The Stonemans later declined to complete the engineer’s requirements for issuance of the development permit, but nevertheless proceeded to construct the house and outbuildings.

In March 2012, Islands Trust bylaw enforcement staff received a complaint about tree removal and path construction on the face of the Komasa Bluff on the property. A visit to the Stonemans’ property confirmed new construction of a path, stairs, ditching work, the removal of trees and vegetation on the slope face, as well as the installation of drainage works, all without the necessary permits.

“We recommended this action now because of a concern about the stability of the bluff and, therefore, the safety of the house and other structures on the property and surrounding the property. We have seen the results on this property of unauthorized clearing and drainage works before, and recent erosion and sloughing on the bluff is now evident. We recognize the need to remedy the situation as soon as possible,” said Miles Drew, Islands Trust Manager of Bylaw Enforcement.

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"The local trust committee's role is to develop community bylaws with respect to land use and development, after extensive input from islanders," said David Graham, a Denman Island local trustee.

"We feel an obligation to uphold the community's bylaws," added Laura Busheikin, also a local trustee on Denman Island. "Our preference is always to seek voluntary compliance, but this is not taking place in this case."

The Denman Island Local Trust Committee is seeking a court injunction to require the Stonemans to remove the path and stairs on the face of the bluff, to implement the requirements of a geotechnical report to remediate the property, and to complete their development permit application in relation to their house and outbuildings in accordance with geotechnical recommendations.

The Stonemans have also initiated two court actions of their own against the Denman Island Local Trust Committee, claiming the Komasa Bluff Development Permit Area is invalid, that they do not require a development permit for the house and outbuildings, and that local trustees and staff have acted improperly. The Islands Trust has agreed that the Stonemans' judicial review may be heard together with its application for enforcement of the Komasa Bluff development permit requirements, which is currently set for the week of October 29, 2012. A trial regarding the second of the Stonemans' actions is currently scheduled for February 2013.

In accordance with the Islands Trust policies regarding bylaw investigations and enforcement, enforcement actions are primarily triggered when the Islands Trust receives complaints from community members that indicate that individuals or corporations are not complying with the land use regulations that have been adopted by their locally-elected representatives. Efforts are then made to investigate complaints, educate violators and obtain voluntary compliance with a community's bylaws. In most cases, violators have a variety of options, including ceasing or amending their operations, or applying for variances or required permits. A court injunction is only sought in unusual circumstances, such as when more immediate action is required to prevent significant property damage.

Islands Trust staff estimate that more than 90% of its bylaw investigation files are resolved before legal action is required. Court action is only taken after other avenues to achieve compliance have failed.

The Islands Trust is a federation of local government bodies representing 25,000 people living within the Islands Trust Area. The Islands Trust is responsible for preserving and protecting the unique environment and amenities of the Islands Trust Area through planning and regulating land use, development management, education, cooperation with other agencies, and land conservation. The area covers the islands and waters between the British Columbia mainland and southern Vancouver Island. It includes 13 major and more than 450 smaller islands covering 5200 square kilometres.

Editors/News Directors Please Note: Photos attached

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**February 8, 2012: Komas Bluff, Denman Island – showing erosion following construction of un-permitted stairs and ditches on unstable terrain**



**December 19, 2003: Komas Bluff, Denman Island – erosion following un-permitted tree removal and drainage alteration on unstable terrain**