



# News Release

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## **SUPREME COURT ORDERS SALE OF DENMAN PROPERTY IN A BYLAW ENFORCEMENT CASE**

VICTORIA — The B.C. Supreme Court ordered the sale of a Denman Island property to recover legal costs earlier awarded to the Denman Island Local Trust Committee (DILTC) in ongoing litigation with a landowner over the validity, application and enforcement of regulations that govern development on unstable slopes.

The June 11<sup>th</sup> order of Madam Justice Bruce authorized the sale of a property owned by Mr. Dean Ellis to collect over \$90,000 in special legal costs earlier awarded to the DILTC, but not paid by Mr. Ellis since 2009. In order to collect the costs, Islands Trust passed a resolution to take legal action in order to recover taxpayer money spent to defend the community's bylaw, the Official Community Plan and public safety.

"We are relieved with the Supreme Court decision and can now collect legal costs involving a bylaw that has been debated at length and from various positions, that the courts have ruled to be valid and reasonable and passed and enforced for proper purposes under the *Local Government Act*," said Peter Luckham, Islands Trust Council Chair. "The decision to seek a court order for the sale of the property was not an easy one, but if the Islands Trust does not collect the costs, it is at risk of setting a precedent and encouraging others to ignore bylaws that are in place to protect safety and security of land, people and structures. We also don't wish other taxpayers to subsidize Mr. Ellis' actions."

On Denman Island, an area known as the Komas Bluffs is prone to land slips and erosion. In 1988, the Denman Island Local Trust Committee created a Development Permit Area (DPA) to protect development within the Komas Bluffs area. Certain activities, such as tree removal, building construction and drainage alteration can cause slope failure and threaten the security and safety of buildings, roads and people. Therefore, these activities within this DPA are only allowed by permit supported by advice from a qualified geotechnical expert.

"When local governments do not regulate development on unstable slopes, there is a real risk to life and property," said Laura Busheikin, Denman Island Local Trustee. "As the local trust committee responsible for land use planning decisions, the Denman Island Local Trust Committee has a responsibility to make decisions that protect the safety and security of people, while ensuring the well-being of the community."

Mr. Ellis removed trees within the Komas Bluffs in contravention of the DPA restriction and, after exhausting all attempts at a reasonable resolution, the DILTC was successful in getting a court injunction in early 2005 requiring compliance with the DPA and remediation of the affected area. Since that court injunction, Mr. Ellis has proceeded with further claims, counterclaims and petitions covering a gamut of issues ranging from the validity of the bylaws to the conduct of staff and the trustees. The courts have repeatedly found that the bylaws are valid, enforced for proper purposes under the *Local Government Act* and do not impair right to farm legislation. In the earlier proceedings, the court required Mr. Ellis to pay special costs to the DILTC for deliberately presenting false evidence and attempting to mislead the courts.

This court order allows the Islands Trust to collect outstanding legal costs that it agreed to reduce in order to resolve the case, but that Mr. Ellis has continually refused to pay. The court order will now go to the District Registrar of the Supreme Court to further define the next steps.

The Islands Trust is a federation of local government bodies representing 25,000 people living within the Islands Trust Area and another 10,000 non-resident property-owners. 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.

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