



Islands Trust

Denman Island Local Trust Committee Regular Business Meeting

Date: October 21, 2014
Location: Denman Seniors Hall
1111 Northwest Rd, Denman Island, BC

LATE ITEMS, ADDITIONS

AMENDMENTS/ADDITIONS TO ITEMS:

6. BUSINESS ARISING FROM MINUTES

6.2. Letter from Islands Trust Fund to Don Cadden dated October 15, 2014

7. APPLICATIONS AND PERMITS

7.1.2. Correspondence from Dan Stoneman dated October 20, 2014

7.1.3. Correspondence from Dan Stoneman re: Drainage and Unspecified Hazard
Trees - Stoneman Property

7.1.4. Correspondence from Dan Stoneman re: Golder Revegetation Requirements

October 15, 2014

Don Cadden
Regional Director, BC Parks
Ministry of Environment
2080A Labieux Road
Nanaimo, BC V9T 6J9

Dear Don Cadden:

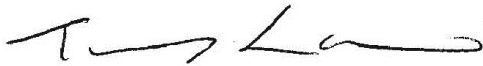
Re: Designation of Denman Island Lands, Your File 98100-20/DENMAN

On behalf of the Trust Fund Board, I am writing to express our concern over the proposed return of three Denman Island Crown properties to the Ministry of Forest, Lands and Natural Resource Operations with no protection in place. In particular, the Morrison Marsh and McFarlane Road parcels are of high interest to the Trust Fund Board, as they have considerable ecological value and the Trust Fund Board manages nature reserves in the immediate vicinity of those properties.

The Trust Fund Board would like to request that a meeting of interested parties, including the Trust Fund Board, the Denman Island Local Trust Committee, the Denman Conservancy Association, BC Parks, and the K'omoks First Nation, be convened before these lands are transferred. It is our hope that a suitable alternative could be found that will provide the most appropriate continued protection of these lands.

Thank you for considering our request; I look forward to your response.

Sincerely,



Tony Law
Chair, Trust Fund Board

Cc: Sharon Erickson, BC Parks
Denman Conservancy Association
Denman Island Local Trust Committee
K'omoks First Nation

October 20, 2014

To the Denman Island Local Trust Committee

I have reviewed staff recommendations regarding our 2014 development permit application. My wife I will not accept the permit on the basis of staff recommendations. Below are the reasons why.

You need go no further than the first page of the Golder Report to dismiss it.

Buffer Remediation

A) The objective of the Golder Report is “remediation measures to address noncompliance with the Development Permit requirements for the site.”

Whoever directed the Golder report to that purpose misrepresented the court decision. The courts have never declared noncompliance with the permit requirement which prohibits development within 50 metres of the bluff. There is no buffer. The alleged buffer has no legal status. There is only a development permit area.

Consequently there is no basis in law for compelling remediation to address alleged noncompliance with a permit requirement.

Context of Komas Bluff DPA guidelines

B) The other object of the Golder report is to address the “impact” of the Stoneman development “on the stability of shoreline bluff slopes in context of Komas Bluff DPA guidelines.”

The LTC need go no further than the statement of Louise Bell to recognize the Committee cannot withhold permits from applicants who met bylaw guidelines.

In the words of Louise Bell,

“Any landowner whose application meets the guidelines for a development permit is entitled to receive the requested permit. Local government may not withhold this permit or require something back from the landowner in exchange for the permit.”

Tetra Tech EBA is also of that opinion

“that there is no geotechnical justification for additional requirements for obtaining permits beyond those in present guidelines”

Golder adds \$191,676 worth of remediation, an additional and unnecessary requirement for the issuance a permit beyond bylaw guidelines.

Impact of Stoneman Development on Bluff Stability

The LTC need go no further than the Tetra Tech EBA conclusion that the Stoneman development did not negatively impact the bluff but rather enhanced bluff stability. Mr. Patrick states:

“that the development has not increased the potential for slope instability and/or erosion; and in fact the enhanced drainage from the Stoneman property may well have decreased the risk of slope failures and erosion.”

In their required continued blockage of highways culverts, Thurber Engineering, Golder Associates and EBA all indicate that the primary causes of bluff instability and its residual effects were flooding of the Stoneman property through Highways culverts — and not the Stoneman development.

Base of the stairs

On the basis of staff recommendations, should the LTC decide to deny us the Trust's green shore policy of beach logs to protect, and in this case our ability to monitor erosion, and the Surveyor General disagree that our remediation has not restored the natural boundary to its former position, we most certainly agree to amending the structure accordingly. Somehow it seems immoral that the LTC would seek to benefit from a boundary change they in fact caused by refusing 2002 EBA recommendations to conduct water to the base of the bluff in enclosed pipe which would have prevented this land loss. In any case this is not a development permit issue but at most the enforcement of property lines.

Accountability

The LTC needs to recognize Trust staff was responsible for the episodic change in erosion rates through a series of planning mistakes the primary ones being;

A failure to confine ditch water within Highways right of ways to the nearest natural watercourse,

A failure to require geotechnical assessment before issuing a 2000 permit for clear cut logging uphill of the bluff,

A failure to incorporate recommended EBA geotechnical measures in a 2002 to control erosion

There are members in this community who are heavily invested in continuing false representation that LTC mandated a bluff-top forest on our property, perhaps for the above reasons no one more than Trust planners.

A Trustee's fiduciary duty is to the public. Trustees fulfill that duty by adherence to the basic tenants we all uphold, honesty, transparency and accountability.

In any case Staff recommendations require you breach that duty in defiance of court decisions, ALC and Agricultural regulation, protection of the public from hazards and geotechnical recommendations of your own Tetra Tech EBA expert. Recognize staff recommendations become your decisions. You — not they —shoulder the responsibility.

Restored and Remediated Natural Boundary.

Mature tree on right and vegetation below stairs all above high tide line and have not been swept away.



Attachments. In separate emails you will receive discussion on drainage and hazard trees as well as re-vegetation. I regret I cannot provide paper copies.

DRAINAGE and UNSPECIFIED HAZARD TREES
STONEMAN PROPERTY

It is unclear why Golder drainage is required or hazardous trees are being preserved.

If the reason is to address noncompliance with a permit requirement as the Golder Report confirms— **well there hasn't been noncompliance. Those who represented otherwise misrepresented the court decision.**

If the reason is a failure to meet bylaw guidelines, the bylaw guideline requirement is drainage away from the bluff. Golder remediation doesn't meet that requirement and will increase at least the potential for bluff instability.

With regard to hazard trees, it is Golder's opinion that a hazard tree along or near the crest of the bluff slope would not fall onto the beach but it would be retained on the tree covered bluff slope. As the history demonstrates, they most certainly fall on the beach putting the public at risk. Trust requirements that I preserve them without mitigation will pass liability to the Trust or Golder. As yet Golder has not consented to accepting liability. I point out a person camping on Wreck Beach was killed by landslide 2 months ago. Campers and walkers do use the beach below. At high tide they camp directly below the bluff.

I quote David Marlor,

“The purpose of the development permit area is to protect the hazardous conditions along Komas Bluff,”

2004, David Marlor Discovery, Pg 50

Mr. Marlor was wrong but persists. Mr. Justice Groberman:

The bylaw was passed under the authority of s. 919.1(1)(b) of the Local Government Act, not s. 919.1(1)(a). Its purpose was not to protect the designated land itself, but rather to protect development from potentially hazardous conditions. The purpose of the bylaw was not preserve land in an unaltered state, nor even to protect the bluff.

The effect of flooding the lands without drainage to the base of the bluff as recommended by EBA Engineering — but refused by Trust Planners — is demonstrated in the following photographs.

Bluff slide 2003 — Trees on the Beach before enclosed drainage to base of bluff.



One section of 2003 slide from above



EBA recommendation to Trust Planners before 2003 landslide

EBA 2002 *During site development it would be advisable to remove the trees and overhanging root/soil. This material should be pulled up as opposed to being pushed over the edge of the slope.*

EBA 2002 *As discussed while on site the water discharging from the two existing ditches will result in erosion/shallow failures which will cause localized regression of the slope. To mitigate this, the discharge could be collected into a pipe which extends down the slope.*

2002 EBA prediction comes true in 2003

Bluff slide in 2007 before enclosed drainage to base of bluff completed in 2012.
Tree collapse to the beach.



Referring to surficial soils called colluvium overlying the dense till layer Thurber confirms:

Thurber 2004 Expert Report Page 5 *“When saturated this soil has little strength and it deforms under gravitational soil movements, such as soil creep and sliding”*

Bluff Slide to the left in picture above before enclosed drainage to base of bluff completed in 2012. Tree fall to beach.



2007 Slide to the right before enclosed drainage to base of bluff completed in 2012.



2010 Tree slide to beach exposing till layer before enclosed drainage to base of bluff established.



NOTE:

These slides all occurred as a result of flooding and before drainage to the base of the bluff was established in 2012. Prior to that we relied on the counter intuitive and interim solution of Thurber Engineering to ensure bluff stability. Rather than enclose water draining over the bluff in pipes, the recommendation was to block ditches and rely on long seepage lines substantially back from the bluff face.

Golder states: "Specifically, no disturbance or modification of the crest and lower slopes of the bluff or the development of drainage works that direct concentrated surface or subsurface flows towards the bluff should be permitted."

The solution of Golder is virtually the same as the interim solution of Thurber, except Golder stores the water in interceptor trenches for seepage (hopefully un-concentrated) closer to the bluff face. Most certainly this will significantly increase the potential for bluff instability particularly if the water becomes concentrated in one area of the pipe rather than evenly distributed along its length.

Thurber Report 2004

Page 16 *For now I recommend that all ditches be filled with granular material for a distance of 50m. ... This scheme may seem counter-intuitive but it is intended to drastically increase seepage path lengths at the end of the existing ditches and thereby slow groundwater discharge rates at the crests. In my opinion, filling operation may buy time until more detailed plans are implemented."*

TEN years later Golder requires a Thurber solution that failed.

Present Hazard Trees

Remaining undermined hazard trees from 2004





Hazard tree from above. Note the large tree leaning downslope.



Same Trees 2009





Stump Hazard 2012



References

Planting Recommendations for Erosion Control for Ellis Property prepared by Madrone Environmental Services Ltd. Report

Madrone 2004 3.1 Recent Land Use *Recent windthrow on the site has likely been the result of trees finding themselves on an exposed "edge" following the clear cut logging that took place in 2000.*

Madrone Report *"plant mixture of grasses and deep-rooted legumes for soil enrichment and protection"* Planting was completed in 2004. This report was done specifically at the request of the DILTC then rejected in favour of litigation to restore mature trees rather than grasses.

SOFOR REPORT 2004 page 3 *Also, a number of trees on the very edge of the bluff show the roots being exposed by the erosion of the bank and the trees almost hanging over the edge of the bluff, These trees are extremely prone to blow-down by wind during winter storms*

Tetra Tech EBA 2014 *The potential for another major runoff/seepage event has been greatly reduced by the blocking of Highways culverts which in 2002/2003 resulted in an episodic event of erosion and landslide (AppendixD); EBA 2014*

Golder Associates *Golder agrees with Tetra Tech that blockage of the Highways culverts should be maintained such that no concentrated runoff from offsite properties is directed towards the creast of the bluff slopes, with resulting increased risk and magnitude of erosion and landslide activity, as occurred on or about 2002/2003. Golder 2014*

CONCLUSION

The very purpose of the geotechnical exercise is stated in guidelines as:

The report must indicate that the proposed tree cutting, buildings, structures, land alteration, roads, driveways, or other proposed developments would not cause any potential erosion of soil or contribute to any land slip, rock fall, mud flow, sloughing, or water degradation.

Mr. Patrick, the very geotechnical expert the LTC approved, states:

that the development has not increased the potential for slope instability and/or erosion; and in fact the enhanced drainage from the Stoneman property may well have decreased the risk of slope failures and erosion.

Respectfully as possible, and recognizing the complete circumstances of the situation, why would the LTC ever continue to endorse planners who for the past ten years have misrepresented court decisions and geotechnical reports to them.

In case there is any confusion over section numbers in the Local Government Act

Section 920(b) and (d) **support bylaw authority** in the OCP to require development permits before undertaking development.

Section 928 **supports authority for compliance with individual conditions in permits.**

Both Mr. Justice Curtis and Mr. Justice Groberman before him have both declined the LTC declarations of noncompliance with Section 928. Consequently the LTC has no authority to enforce remediation to restore a buffer.

The bluff in 2014 after Stoneman remediation and drainage to the base of the bluff.



GOLDER REVEGETATION REQUIREMENTS

Requirements of specific plant selection, drip irrigation as well as professional landscaping design and installation are not in bylaw guideline requirements.

These are choices of the property owner. Since there is no such guideline requirement, the Trust holds no authority to dictate or require these choices for the issuance of a development permit.

Trustees know this. **In the words of Louise Bell, “ Any landowner whose application meets the guidelines for a development permit is entitled to receive the requested permit. Local government may not withhold this permit or require something back from the landowner in exchange for the permit.”**

Golder Re-vegetation

It is unclear on what basis Golder re-vegetation is required.

If it is remediation to address noncompliance with a permit requirement— well there hasn't been noncompliance. Those who represented otherwise misrepresented the court decision.

If it is a failure to meet bylaw guidelines, the guideline requirements is;

“trees **or other vegetation shall** be retained or replanted in order to control erosion along the top of the bank or the face of the bank”

Trees and/or other vegetation have been planted and do control erosion. The guideline has been met and exceeded.

There is no guideline requiring professional landscaping either in design or in installation. There is no guideline requirement of specific plantings.

For the issuance of permits the trust has no authority to require permit conditions beyond those in bylaw guidelines.

The buffer was a requirement beyond permit guidelines and not upheld by the court as a requirement for meeting guidelines. Golder planting requirements are the same.



The area between the blue lines is in front of our home is a Golder enhanced planting area.

In 2005 the DILTC sued to replace this area with mature trees and lost— now its small bushes — at a cost of over \$80,000.

Our choice is lower height vegetation. We used vegetation grasses, the very same re-vegetative mix Highways uses for erosion control on highway embankments as well as a plant mixture of long rooted orchard and fescue grasses as advised by Gordon Butt geotechnical engineer and Madrone Environmental Services and completed in 2004.

Before Revegetation Bluff slope



After Planting Bluff Slope



Before planting remediation below stairs



After Planting Remediation

