DENMAN ISLAND
LOCAL TRUST COMMITTEE
AGENDA

REGULAR BUSINESS MEETING
OF THE DENMAN ISLAND LOCAL TRUST COMMITTEE
held at 10:30 am on Tuesday, July 16, 2013 at the Denman Seniors Hall,
1111 Northwest Road, Denman Island, BC

LATE ITEMS, ADDITIONS

AMENDMENTS/ADDITIONS
TO ITEMS:

7. APPLICATIONS AND PERMITS

7.2 DE-DP-2013.1 (Stoneman – 2600 Swan Road)

7.2.1 Staff Report dated July 8, 2013 - *attached*

7.2.2 Memorandum dated July 12, 2013 - *attached*

7.2.3 Correspondence from Courtney Simpson - *attached*

14. BYLAWS

14.4 W3 Zoning Amendments – *for discussion*

16. NEXT MEETING

16.1 Special Meeting: "Cooking up Housing Policy"

There will be a special community meeting, "Cooking up Housing Policy", held on Sunday, August 25, 2013 at the Denman Island Community Back Hall, 1196 Northwest Road, Denman Island BC at 2:30 pm (doors open at 2:00 pm).

16.2 Local Trust Committee Business Meeting

The next meeting of the Denman Island Local Trust Committee will take place on Tuesday, September 24, 2013 at 10:30 am at the Denman Seniors Centre, 1111 Northwest Road, Denman Island, BC.

18. CLOSED MEETING

18.1 **Motion to Close the Meeting**

THAT The Denman Island Local Trust Committee closes the next part of the July 16, 2013 business meeting to discuss matters pursuant to 90(1)(i)(Legal Advice) of the *Community Charter* and that Staff be invited to attend this meeting.

19. RECALL TO ORDER

19.1 Rise and Report from Closed Meeting

20. ADJOURNMENT

STAFF REPORT

Date: July 8, 2013 File No.: DE-DP-2013.1

To: Denman Island Local Trust Committee
For meeting of July 16, 2013

From: Courtney Simpson
Regional Planning Manager

CC: Rob Milne, Island Planner

Re: Development Permit Application – Lot A, Section 23, Denman Island, Nanaimo District, Plan VIP74719

Owner: Dan and Debra Stoneman
Applicant: Dan Stoneman
Location: 2600 Swan Road, Denman Island

THE PROPOSAL:

The Applicant has applied for a development permit or development permit amendment to authorize the following development on the above property:

1. **Farming, including land clearing and agricultural uses, within 15 metres of the crest of the bluff;**
2. **The existing structures that are subject to the court order requiring removal without a development permit, including the following structures as shown on the May 24, 2013 survey plan submitted with the application:**
   - **(a) a completed residence (18x17x7m, and 278 m2 floor area) located 57.6 metres from current crest of bluff;**
   - **(b) a two storey garage (18x13x6 and 318 m2 floor area) located 86.6 metres from the crest of bluff;**
   - **(c) a septic system between the house and garage;**
   - **(d) a chicken house (2x4x2) (not shown on survey plan but listed on the application);**
   - **(e) a wood shed (3x4x3) approximately 85 metres from crest of bluff;**
   - **(f) excavation of a beach access pathway at crest of bluff and on face of bluff;**
   - **(g) construction of beach access stairs and ramp on face of bluff;**

(h) drainage works, including pipes, cisterns, and ditches on face of bluff, and within 50 metres of crest of bluff;

(i) tree and vegetation removal on face of bluff and within 15 m of crest of bluff; and

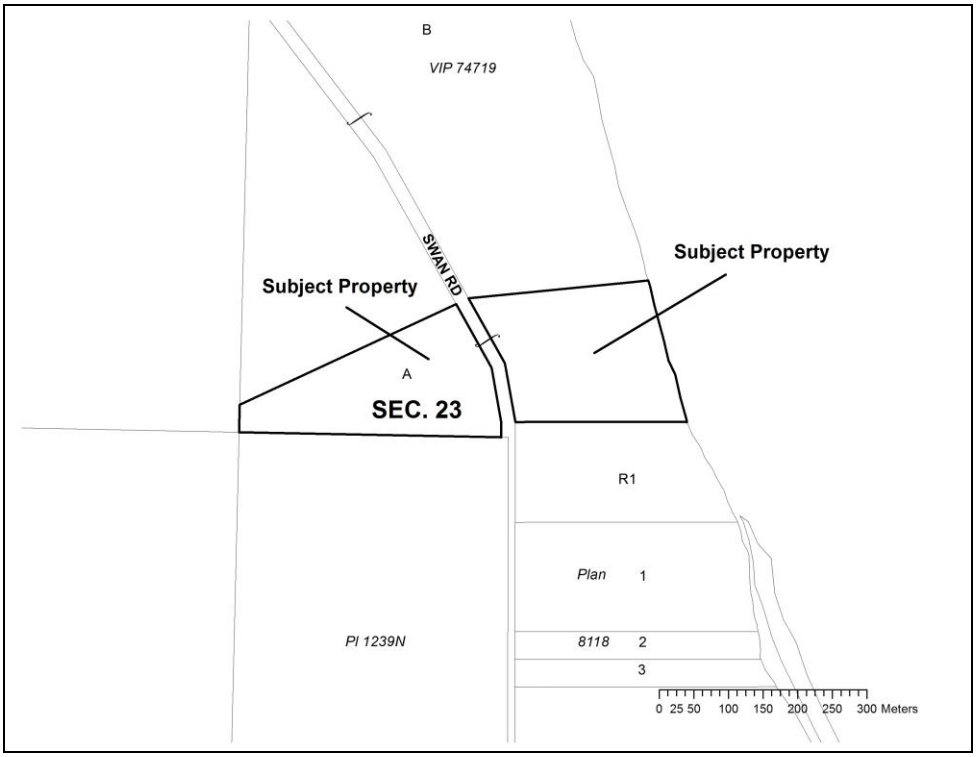
(j) excavation of toe of bluff for stair landing;

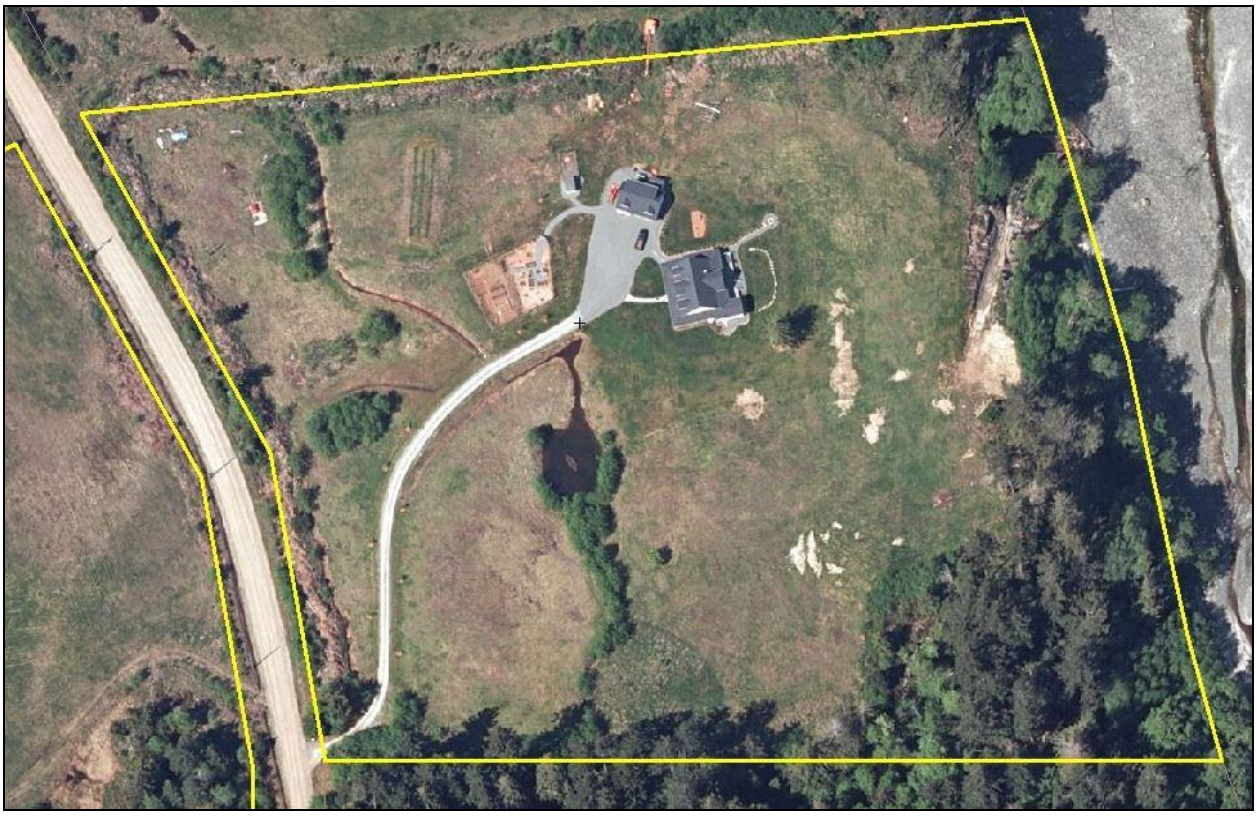
3. **Ongoing and unspecified geotechnical works based on future possible geotechnical recommendations;**
4. **The "management" of unspecified trees and vegetation on the bluff to create "low to medium heights;"**
5. **The "management" of unspecified hazardous trees along the bluff crest; and**
6. **The removal of unspecified small trees and trimming of unspecified large trees to enhance property views.**

Note that all the developments for which a permit is sought are within the 50 metre buffer located between the toe of the slope and a 50 metre setback from the top of the bank of the bluff, with the exception of the development listed at 2(a) to (e) above.

No alterations of land are currently permitted in the 50 metre buffer pursuant to DE-DP-03-99, and the August 31 2005 court order in *Denman Island Local Trust Committee v. Ellis*.

Note that all the development listed in paragraph 2 are existing developments. The development listed at paragraphs 1, and 3-6 are new proposed developments.





2011 Orthophoto

CURRENT PLANNING STATUS OF SUBJECT LANDS:

Land Use / Zoning Bylaw:

The property is zoned Agricultural (A) in the Denman Island Land Use Bylaw No. 148.

The land below the natural boundary of the property is zoned Marine Conservation (W1) zone. The only permitted structures in this zone are marine navigation aids, moorage buoys, and signs. No stairs or access structures are permitted in this zone.

Official Community Plan:

The portion of the property where the proposed and existing development is located is designated as within Development Permit Area No. 1: Komas Bluff. The development permit area includes a list of guidelines that should be met prior to the issuance of a development permit. This report will review each of the guidelines and evaluate the extent to which the proposed and existing development for which a permit is sought complies with those guidelines.

Existing Development Permits

Development Permit DE-DP-03-99, is registered against the property and allows for the clearing and harvesting of trees on the majority of the property, and prohibits land alteration within 50 metres of the crest of Komas Bluff.

Contrary to the clause 1(a) of DE-DP-03-99 and Section 920(1)(d) of the *Local Government Act*, portions of the buffer area were cleared by the previous land owner, Ellis. A court order was issued prohibiting any land alterations within the 50 metre buffer area and on the face of the bluff. The extent of remediation of that breach was settled by consent order. This application would require an amendment or replacement of that permit to the extent that it seeks land alterations within 50 metres of the crest of the bluff and on the face and toe of the bluff.

Clause 1(c) of DE-DP-03-99 also required the planting of Christmas trees on the cleared portions of the property more than 50 metres from the bluff crest. That condition was imposed pursuant to the repealed Development Permit Area No. 7: Forest Cover, which was found to be invalid by the courts. Staff considers that in the absence of the Forest Cover DPA, clause 1(c) of DE-DP-03-99 should be removed. This aspect of the application is supported

Development Permit DE-DP-2002.1, is registered against the property and authorized a subdivision of the property. The development authorized in the permit has been completed. No amendment of this development permit is required.

Court Proceedings

In *Denman Island v. Ellis, Stoneman and Stoneman*, 2005 BCSC 1238, affirmed 2007 BCCA 536, the Court:

- found that the Komas Bluff DPA was valid;
- found that the land alterations within the 50 metre buffer was a violation of the Local Government Act and had increased the instability of the land;
- ordered that the area comprising the face of the bluff, and 50 metres back from the crest of the bluff (the Buffer) on the property not be altered without a development permit; and
- ordered Mr. Ellis to remediate this property and the one immediately adjacent to the North to restore the stability of the land to protect present and future development.

The terms of this remediation were settled by the parties, including the Applicant and the Local Trust Committee in 2006. The most urgent recommendation of Thurber Engineering in 2004 was that the drainage ditches be blocked and that drainage be re-directed away from the crest of the bluff. In April 2006, in a further report, Thurber indicated that the ditches had been filled, and redirection of the drainage had been accomplished at Swan Road. The 2006 Thurber report made no specific recommendations for the subject property, other than that the bluff remains undisturbed and allowed to re-stabilize over time. Residential development could be protected by

setbacks of an appropriate distance from the crest of the bluff that took into account the increased rate of erosion.

In *Stoneman v. Denman Island Local Trust Committee*, 2013 BCSC 218, the court found that the Stonemans had breached the Local Government Act by altering land and constructing the buildings and structures currently on the property, both within the 50 m Buffer, and within the DPA beyond the Buffer. The Court ordered the removal of all works and structures (and remediation in accordance with further terms to be decided) that the Stonemans do not obtain a development permit for. This application represents the Stonemans' application for a development permit for those works and structures.

In February 2013 counsel for the Denman Island Local Trust Committee wrote to counsel for the Stonemans in relation to the court order requiring removal of the works for which the Stonemans were unable to obtain a permit. A full copy of that letter is attached to this report

It included the following information regarding a possible development permit application to address the court order:

> We understand from this email that the Stonemans are willing to proceed with the development permit process for the house and outbuildings. The 2006 development permit does not include excavations at the crest of the bluff, tree removal at the crest or face of the bluff, drainage works down the face of the bluff or the construction of the path and stairs. A new development permit application will be required if your client wishes to pursue the option of obtaining a development permit for these works. Given that the setback from the house has been affected by the excavation at the crest of the bluff, and that all the works collectively have been found to be a contravention of the *Local Government Act*, we suggest that a single new development permit application be made with respect to both the house related works, and the path if the Stonemans wish to retain them. In any event, the 2006 permit application is over six years old now, and a new development permit application will be required.
>
> It is also clear that further professional engineering reports will be required as part of either any new development permit application, or any remediation order. In this regard, the 2007 EBA report with respect to the house, outbuildings, and associated drainage issues, does not address a setback of less than 80 metres for the house, and the crest and face of the bluff have been substantially excavated and suffered further subsidence since 2007. EBA's 2012 letter prepared for court purposes does not meet the requirements of the Development Permit Area Guidelines; indeed, it does not mention them.
>
> Therefore, if your clients wish to proceed with a development permit application in advance of further court proceedings regarding the terms and conditions of removal and remediation of the works, they will require a new report addressing the development permit guidelines for the property. A copy of those complete guidelines was attached to Mr. Marlor's Affidavit in these proceedings….

The applicant submitted the current application on April 9, 2013, indicating that he wished to proceed with the development permit application but would not be providing any additional reports from professional engineers. The applicant completed the application on June 14, 2013 with the submission of permit fees and a survey of the property, taking the position that no further reports are required.

In May 2013, the Court of Appeal ordered a stay of removal of the existing works and structures, pending the hearing of the Stonemans appeal in September 2013. The Court also ordered that the property not be sold in the interim period.

Previous Development Permit Applications

The Stonemans have applied for a number of development permits in the past. The most recent application, and the only one that sought approval for the construction of a house and garage on the property, was DE-DP-2006.2. That permit also sought approval to clear and farm the property up to 15 metres from the crest of the bluff, while retaining all existing trees on the property.

In October 2006, the Denman Island Local Trust Committee approved issuance of that permit upon provision of a number of plans and assurances recommended by the applicants' engineer, EBA, in relation to their then proposed development. The staff report with respect that application is attached, together with the application and correspondence related to the application, the 2006 EBA report, and the Local Trust Committee resolution.

Initially, the applicants advised that they would provide the required information for issuance of the development permit. However, EBA was not able to approve of the applicants' plans as drawn, and ultimately provided a new report in March 2007, modifying their original recommendations. The applicants then advised that they no longer wished to proceed with the development permit application, although they had already commenced the construction of the buildings. Attached to this report is the correspondence between the applicants and counsel for the Denman Island Local Trust Committee in this regard between November 2006 and June 2007.

Staff note that since the Local Trust Committee's 2006 resolution on DE-DP-2006.2, the land has been substantially developed, but not in accordance with the original plans provisionally approved in the 2006 application:

- A residence and garage have now been constructed.
- The residence is 57.6 metres from the crest of the bluff, not the originally applied for 66 metres.
- The garage is stated on the current application to be two stories and 6 metres in height, but its stated dimensions are different from those in DE-DP-2006.2.
- The 2006 permit sought approval for clearing and farming up to 15 metres from the crest of the bluff, with no land alterations within a 15 metre setback, and retention of all remaining trees within 50 metres of the bluff. The engineering recommendations supported this, provided that the bluff itself remained unaltered and replanting was done in the 15 metre setback in accordance with the 2003 Madrone Report. Drainage was also to be directed away from the bluff and all drainage works were to be outside the 50 metre setback.
- The 2007 EBA report recommended new drainage control measures and a new re-vegetation plan for the property to address increased instability.

- The current development and application include clearing and farming within the 15 metre setback, substantial excavation at the crest and down the face of the bluff, tree and vegetation removal on the crest and face of the bluff, drainage works within the 50 metre setback and down the face of the bluff, and the construction of a ramp and stair structure down the face and below the bluff.
- The crest of the bluff is no longer in the same location as it was in 2006 according to the 2013 survey plan, and the estimate of the rate of regression of the slope has increased according to the 2012 EBA report to 5-10 metres over the course of the lifetime of the building, or 5-10 cm per year. The actual regression of approximately 8-9 metres of the crest since 2006 (EBA measured the setback in December 2006 as 66 metres to the pulled back crest of the bluff, the 2013 survey shows it to be 57.6 metres now) in front of the residence would appear to be largely due to the Stonemans' unauthorized excavation of the crest of the bluff.

SITE CONTEXT

No site visit has been conducted in relation to the current development permit application. However, the current condition of the property has been documented and investigated in relation to the court application for an injunction and remediation of the property. The Affidavits of Barb Dashwood, Geoff Kinnear, Peter Phillips, and Harlene Holm documenting the land alterations of the property, and specifically within the Buffer, are attached in this regard.

This application includes an application to permit the existing garage to be permitted as a farm building, instead of as a garage or accessory residential structure. No inspection of the garage has been completed to determine how the garage is currently being used, and whether it contains residential facilities. It has the appearance of a carriage house, and an inspection of the structure would have to be completed to ensure that it is constructed and used strictly as a farm building before a permit could be issued for the existing building with that description.

If approved, the building should be clearly marked on the Development Permit as "farm building – no principal residential or accessory residential uses".

In addition, the applications describe the garage with more floor area than the existing residence, but the survey indicates a smaller structure. It is not clear if the applicant intends to remove the existing garage and replace it with a new structure, but the applicant's materials state that all buildings in the application already exist, and relate to the court order. This report will therefore assume that it is the existing garage that is the subject of this application, and relies on the survey plan rather than the dimensions of the buildings shown on the application.

This application included both a Siting and Use Permit Application and a Development Permit Application. This report considers only the Development Permit application. It should be noted, that if the development permit is approved, before an SUP could be issued, elevations for the existing or any proposed buildings would have to be provided.

DISCUSSION

The designation of the Komas Bluff DPA is to protect development from hazardous conditions, specifically erosion, land slip and subsidence. The objective of the Komas Bluff DPA is "To protect areas of unstable terrain from increased risk of slope failure and/or erosion due to cutting or removal of trees and other development." It is understood that this objective is to be considered in the context of protecting present and future development in the area.

The guidelines specify the manner in which the objective will be addressed pursuant to s. 919.1(2) of the Local Government Act. The guidelines of the Komas Bluff DPA are as follows:

> **Guideline 1:** ***Some properties or portions of properties may be in more than one development permit area; in this case, the guidelines of all development permit areas may apply.***

There are no other development permit areas on the property.

> **Guideline 2:** ***In order to assist the Denman Island Local Trust Committee in determining conditions to be included in a development permit, the applicant will be required to provide, at their own expense, a geotechnical report certified by a professional engineer with experience in geotechnical engineering who is acceptable to the Trust Committee. 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.***

The Applicant has provided the following nine geotechnical reports in support of his application, with reference to different aspects of the existing and proposed development in the application:

1. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd, dated June 11, 2002 related to the lot line boundary adjustment;
2. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd. dated November 9, 2004 related to intended farming on the property;
3. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd. dated January 17, 2005 regarding geotechnical assessment of intended usage as farmland;
4. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd. dated March 9, 2006 related to a siting and use permit application;
5. D. Smith, P. Eng., Thurber Engineering Ltd. dated April 4, 2006 regarding remediation on Komas Bluffs (this report was prepared for litigation and includes a second part relating to the adjoining property that is not included by the Applicant);

6. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd. dated March 13, 2007 regarding slope setback and drainage measures;
7. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd. dated March 3, 2009 regarding proposed stairway on the neighbouring property owned by Mr. Ellis;
8. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd. dated March 18, 2009 regarding geotechnical re-assessment of intended usage as farmland; and
9. Bob Patrick, P. Eng., EBA Engineering Consultants Ltd. dated September 17, 2012 regarding composition of slope and regression of the crest.

In addition, the Denman Island Local Trust Committee has the Thurber Engineering Report dated June 2004 which provides the most comprehensive review of the geology of the property available. Staff has also obtained a letter of clarification from Dave Smith of Thurber Engineering in relation to the 2006 Thurber Report dated July 9, 2013. Both of these reports are also attached.

Report 1: The June 11, 2002 EBA Engineering Consultants Ltd

This report was completed prior to alteration of the land by the removal of vegetation within the 50 metres buffer area. It recommends retention of all vegetation and major trees in the 50 metre buffer area. Land clearing for agricultural use was not considered or supported by this report and the geotechnical conditions have most likely changed due to the vegetation removal. Even if the report was still relevant, the report concludes that the recommendations "are intended to be preliminary and subject to more detailed study prior to site development".

Report 2: The November 9, 2004 EBA Engineering Consultants Ltd.

This report provided with the application is stamped "draft" and is not signed and will not be considered in support of this application.

Report 3: The January 17, 2005 EBA Engineering Consultants Ltd.

This report is related to farming activity that is not part of this application. Therefore, this report is irrelevant to the application.

Report 4: The March 9, 2006 EBA Engineering Consultants Ltd.

This report was requested by the Applicant in support of the construction of a residence and farming up to 15 metres from the crest of the bluff. Key recommendations of this report are:

- that the residence be sited a minimum of 80 metres from the crest of the Bluff;
- that runoff from hard surfaces should be collected and piped to the base of the bluff and not allowed to run over the bluffs;

- that irrigation should not be used and if it is used then soil moisture sensors and controlled application must be used to avoid excess watering;
- that planting as per the October 2003 Madrone Report must be undertaken;
- that farming activity should not take place within 15 metres of the crest of the bluff; and
- that surface runoff from the property be managed so that there is no concentrated flow over the crest of the bluff.

This report formed the basis of the Local Trust Committees decision to issue a development permit for the then proposed residence and garage, and farming up to 15 metres from the crest of the bluff, subject to the provision of assurances and plans incorporating the above conditions. That permit was never issued, as the applicant declined to fulfill the stated conditions.

Report 5: The April 4, 2006 Thurber Engineering Ltd.

This report was prepared as part of previous litigation in regards to remediation of the bluffs, and is to be read with the 2004 Thurber report. It related to the land alterations performed by Mr. Ellis. It found that the diversion of the ditches as recommended in the 2004 Thurber Report had been completed, and did not recommend any further specific remediation for the applicants' property, other than allowing the bluff to remain undisturbed and naturally re-stabilize over time to its then increased rate of erosion. In a clarification letter dated July 9, 2013, Thurber clarified that Thurber relied on the fact that there would be no further land alterations within the 50 metre buffer on the applicants' property (as required by the court order and DE-DP-1999-03).

This report has some relevance to the approval of the path and stairs excavated at the crest of the property. The only specific remediation recommended in the report was for a similar attempt to build a path to the beach on Mr. Ellis' adjacent property. The report recommended that the "notch" or excavation created for this purpose be intensively re-vegetated to control erosion.

Overall, the report does not support the proposed development in this development permit application.

Report 6: The March 13, 2007 EBA Engineering Consultants Ltd.

This report is a letter to "document our observations and recommendations regarding the geotechnical aspects of the slope setback and drainage measures" for the property, following upon the Local Trust Committee's resolution requiring EBA to sign off on the site plan and drainage plan proposed for the development. At the time of the site visit made by Mr. Patrick in December, 2006 the dwelling and other improvements were "under construction." The engineer recommends:

- that the 66 metre setback that existed at the time of Mr. Patrick's site visit in December, 2006 was suitable for the residence, but regression should be monitored;

- that final grading on the south side of the house should be such that any surface water is directed away from the structure;
- that "either the pond be lined to limit the ex-filtration, or that another cut-off ditch be constructed between the pond and the top of the bluff. This ditch could be connected to the existing ditch leading from the pond;"
- that discharge from ditches at the north and south sides of the property is collected and discharged at the base of the slope, and that this discharge is carefully constructed to avoid erosion; and
- a new re-vegetation plan be prepared to address the increased instability of the bluff, as the Madrone recommendations were no longer considered adequate.

No final drainage plan or site plan was provided or approved in relation to these recommendations for attachment to the permit.

In 2007, staff indicated that they would be prepared to recommend issuance of a development permit with these revised recommendations. The applicant declined to proceed any further. Since this report was provided the land has been significantly altered in ways that are contrary to the recommendations. The setback for the house is now 57.6 metres from the top of the bank, therefore the recommendation that the then 66 metre setback is sufficient is no longer applicable to the current development. Furthermore, substantial vegetation and land has been cleared and excavated within 15 metres of the crest of the bluff and on the face of the bluff.

The report states the Applicant proposed an infiltration gallery south of the house and 50 metres from the top of the bluff. The current survey shows a "cistern" much closer than 50 metres from the top of the bluff but does not provide setback measurements. Mr. Patrick's comments about the suitability of the infiltration field rely on it being 50 metres from the top of the bank, noting that groundwater flow to the slope should not be increased, and the 50 metre distance will assist in dispersing any seepage. Therefore this aspect of the report is also inapplicable to the current development of the property.

Overall, the report supports the possibility of approving the residence and a drainage plan for the property, but not in the current configuration. The report does not support the excavation, pathway and stairs, and vegetation and tree removal within 15 metres of the crest of the bluff and on the face of the bluff.

Report 7: The March 3, 2009 EBA Engineering Consultants Ltd.

This report was prepared for the neighbouring property owner, Mr. Ellis, in relation to a proposed stairway to the beach on the adjacent property. It makes no reference to being provided for consideration in relation to regulatory requirements, and does not refer to the guidelines. However, it is the only report that remotely addresses the advisability of a stairway in this general area.

The report does not address any of the development permit area guidelines. Specifically it does not "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" as required by Guideline 2.

Report 8: The March 18, 2009 EBA Engineering Consultants Ltd.

This report relates entirely to the property owned by Mr. Ellis adjacent to the subject property in relation to its use for hay production and the apparently successful re-vegetation of the attempted path to the beach (the "notch") in accordance with the consent order remediation.

This report makes no mention of the subject property or any of the proposed development in this application.

Report 9: The September 17, 2012 EBA Engineering Consultants Ltd.

The focus of this report is on the soil composition of the subject property, indicating that a previous EBA report misnamed the deposit as "Quadra Sand" instead of "Quadra Sediment or Cowichan Head Formation." The report does not recant any of the previous EBA findings that the property is unstable and subject to landslip and erosion.

The report provides an analysis of the expected regression of the bluff as at August 2012, and concludes that the residence located 65+ metres from the bluff is acceptable, with regular monitoring, from a geotechnical perspective. There is no indication that measurements were taken of this set back, and it appears to be an assumption of the setback as opposed to a determination. The report mentions surface pipes down the bluff, but does not comment on their appropriateness with respect to the recommendations in the March 9, 2006 report or the Komas Bluff DPA guidelines.

Critically, this is not a report prepared for the purposes of a development permit application. It is limited to the "sole use of Mr. Dan Stoneman and/or Mr. Dean Ellis," and no responsibility is taken for its contents if relied upon by anyone other than those two individuals. The general conditions of the report state:

> Unless stipulated in the report, EBA has not been retained to investigate, address or consider and has not investigated, addressed or considered any environmental or regulatory issues associated with development of the subject site.
>
> Because of the nature of geological deposits, the judgmental nature of geotechnical engineering, as well as the potential of adverse circumstances arising from construction activity, observations during site preparation, excavation and construction should be carried out by a geotechnical engineer….

The report does not meet the requirements of Guideline 2, in that it does not indicate that the proposed and completed 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, or sloughing.

Conclusion re Guideline 2 Reports

None of the reports provided consider the new development proposed in this application as follows:

1. Farming, including land clearing and agricultural uses, within 15 metres of the crest of the bluff;
3. Ongoing and unspecified geotechnical works based on future possible geotechnical recommendations;
4. The "management" of unspecified trees and vegetation on the bluff to create "low to medium heights;"
5. The "management" of unspecified hazardous trees along the bluff crest; and
6. The removal of unspecified small trees and trimming of unspecified large trees to enhance property views.

Only the 2006 and 2007 EBA reports provide advice and recommendations in relation to the requirements of the Komas Bluff DPA for the following existing developments:

2. The existing structures that are subject to the court order requiring removal without a development permit, including the following structures as shown on the May 24, 2013 survey plan submitted with the application:
    (a) a completed residence (18x17x7m, and 278 m2 floor area) located 57.6 metres from current crest of bluff;
    (b) a two storey garage (18x13x6 and 318 m2 floor area) located 86.6 metres from the crest of bluff;
    (c) a septic system between the house and garage;
    (d) a chicken house (2x4x2) (not shown on survey plan but listed on the application);
    (e) a wood shed (3x4x3) approximately 85 metres from crest of bluff;

These reports do not support the current setback of the residence, and expressly recommend and require re-vegetation of the 15 metre setback from the bluff, and no disturbance of this area.

Those conditions have not been met in this application.

There are no reports that can be relied on in this application that support the following existing developments for which approval is sought:

2. The existing structures that are subject to the court order requiring removal without a development permit, including the following structures as shown on the May 24, 2013 survey plan submitted with the application:
    (f) excavation of a beach access pathway at crest of bluff and on face of bluff;
    (g) construction of beach access stairs and ramp on face of bluff;

(h) drainage works, including pipes, cisterns, and ditches on face of bluff, and within 50 metres of crest of bluff;

(i) tree and vegetation removal on face of bluff and within 15 m of crest of bluff; and

(j) excavation of toe of bluff for stair landing;

Overall, Guideline 2 is not met with respect to this application.

Guideline 3: ***No permanent building should be permitted in any area subject to sloughing or damage from sloughing.***

According to the survey plan submitted by the applicant, the existing dwelling is sited 57.6 metres from the new top of bank. The existing garage is sited 86.6 metres from the crest of the bluff.

The site specific engineering reports for this property that consider an appropriate setback for a residential building are the following:

(1) The 2006 EBA report, which recommends a setback of 80 metres for a residential building;

(2) The 2007 EBA report which states that the then existing 66 metre setback from the top of bank "is suitable," but that ongoing monitoring of the bank is recommended;

(3) The 2012 EBA report which approves of a 65+ metre setback (though not for regulatory purposes), with required monitoring of the bluff, and in particular the drainage works down the face of the bluff.

Together, these reports suggest that a permanent building that is setback less than 80 metres will require monitoring to ensure that the building is not subject to damage from sloughing, and that if and when further bank regression occurs additional geotechnical work may be required to secure the building.

At best the reports support a 65 metre setback for permanent buildings.

None of the reports state that a building located 57.6 metres from the crest of the bluff will not be subject to damage from sloughing during the life of the building.

It may be possible that a professional engineer could or would come to that conclusion, or that there are works that could be implemented now, as opposed to in the future, that would ensure that the building is not subject to damage from sloughing during its useful life. However, the applicant has not provided a report that supports this conclusion with this application or which suggests appropriate works in this regard.

Therefore, staff considers that Guideline 3 is not met with respect to this development permit application.

Guideline 4: ***No part of a septic tank, deposit field, or irrigation system should be constructed in any portion of the site that is subject to sloughing or***

damage from sloughing or in any area containing unstable soil or water which is subject to degradation.

A septic system is installed to the north of the dwelling as shown on the surveyed plan. It appears to be set back between 56 and 86 metres from the crest of the bluff. None of the reports address the location of the septic system and whether its current location is subject to damage from sloughing, and staff cannot determine whether this is area will be subject to sloughing or damage from sloughing.

Guideline 5: ***Notwithstanding the drainage bylaw provisions or requirements, drainage facilities should be required to divert drainage away from any areas subject to sloughing or damage from sloughing.***

The applicant indicates that drainage from eave troughs on the house are directed to the base of the bluff in an enclosed pipe. An orthophoto with line drawings, apparently created by the applicant, is attached to the application and shows a network of pipes, generally draining over the bluff in non-perforated pipes. The plan states "the pipes are above ground for easier monitoring of drainage." Photographs of these drainage pipes are attached to the affidavit of Geoff Kinnear. The surveyed site plan indicates that the location of some of these pipes. It also shows the "drainage distribution cistern" well within the 50 metre buffer, and approximately 10 metres from the crest of the bluff.

The 2004 Thurber Report stated in relation to the run-off issues prior to any development of hard surfaces on the property:

> In my opinion, the Bluff slopes are too steep and unstable to allow install buried pipes or steep rock lined (riprap) channels from crest to beach level.… Geotechnical engineering advice will be required to secure storm water drains on the unstable Bluff and to design outlet structures to resist storm wave damage. Once installed, the drains will require continuous inspection and long term maintenance programs… These factors suggest that the concept of pipe conveyance of ditch water to beach level is not feasible….
>
> Other ditching or surface-water retention schemes are possible on the plateau. For example, water retention ponds and berms might be constructed to delay or diffuse groundwater discharge along the bluff. Remedial options require conceptual thought by a civil engineer, a geotechnical engineer, and a vegetation reclamation specialist, all in context with land-use planning options.

The 2006 EBA report recommends that runoff from hard surfaces "be collected and piped to the base of the bluff for discharge," and that "surface run-off from the property must be managed such that there is no concentrated flow over the crest of the bluff."

The 2007 EBA report recommends that the pond on the property be lined to limit ex-filtration, or that another cut-off ditch be connected to the existing ditch. It also recommended that the water in the ditches at the North and South side of the property be collected to control the discharge over the bluff with a pipe, armoured swale or erosion resistant conduit, with a discharge point carefully constructed at the base of the slope to avoid erosion.

The 2012 EBA report does not review the existing drainage in any detail. It does recommend to the owners that they regularly monitor their drainage pipes. The

limitations of the report prevent the reliance on the report for regulatory purposes or by future owners. With respect to drainage systems, the report's conditions state "Specific design detail of such systems should be developed or reviewed by the geotechnical engineer."

Overall, the network of drainage pipes installed by the applicant, do not divert drainage away from areas subject to damage by sloughing and erosion. Nor have they been designed by an engineer, or sealed by an engineer, as is recommended in the 2004 Thurber report, and as was required for approval in 2006 by the Denman Island Local Trust Committee. All of the engineering reports raise serious issues about the requirement for ongoing maintenance and monitoring of the current drainage system, and the potential for significant instability and sloughing to occur in the event of a failure of the current network of pipes, junctions and cisterns.

There is no feasible way for a development permit to enforce ongoing monitoring and maintenance. The permit must consider whether the proposed development, as designed, will ensure drainage is kept away from areas prone to sloughing and erosion.

Staff does not consider that this Guideline has been met.

Guideline 6: ***Trees or other vegetation should be retained or replanted in order to control erosion along the top or the face of the bank.***

Unlike the 2006 application, the applicant is no longer committing to maintain trees and vegetation on the face of the bluff and within 15 metres of the crest. This application is to approve tree and vegetation removal that has already occurred in these areas, and to pre-authorize additional tree and vegetation removal to enhance views, keep trees and vegetation to a "low to medium height" and to remove trees considered by the applicant to be hazardous.

The applicant also opposes the implementation of the Madrone replanting recommendations prepared for the previous owner in 2003, and which formed a key recommendation of their 2006 EBA report. The applicant also opposes the preparation of an updated re-vegetation plan as recommended in the 2007 EBA report to address the increased instability of the property.

The 2002, 2006, and 2007 EBA reports all recommend retention of vegetation. The 2006 and 2007 EBA reports recommend re-vegetation, as does the 2004 Thurber report, for the purposes of controlling erosion, and protecting the residential development.

The existing land alterations and tree and vegetation removal do not comply with this Guideline, as they have removed trees and vegetation rather that retaining them.

The proposed additional land clearing and farming within 15 metres of the crest of the bluff, and the management, cutting, trimming and removal of trees and vegetation within 50 metres of the crest of the bluff is not supported by any of the engineering reports or the guideline.

Guideline 7: ***All new lots created by subdivision should provide for suitable building sites in areas not subject to sloughing.***

The applicant is not proposing to subdivide the property.

Guideline 8: ***Subdivision applications should make provisions for clustering lots in areas away from the hazard area.***

No new lots are proposed as part of this application.

Guideline 9: ***Prior to issuing a development permit, the local trust committee may require security in an amount acceptable to the local trust committee.***

Guideline 10: ***On receipt of a final report or written request, as stipulated in the development permit, the local trust committee shall return the security, minus any amount required to correct any unsafe conditions caused by a contravention of a condition in the development permit (see Appendix B).***

In this case, the applicant is seeking an unconditional permit, so security would not be appropriate where there are no conditions to fulfill. Generally security is taken to ensure compliance and completion of a condition.

Should the Local Trust Committee wish to issue the permit on conditions, Staff would recommend that the permit not be issued until the conditions are fulfilled, because the proposed development is already complete. However, it is an option to take security in the amount to complete specific works or conditions, for example, re-vegetation works, , drainage works, or removal of specified works, if they are a condition of the permit that have not been fulfilled at the time of issuance.

Guideline 11: ***Development permits issued in Development Permit Area No. 1: Komas Bluff should contain a condition stating that a letter must be submitted by a time specified in the development permit indicating that the work has been completed in accordance with the terms and conditions of the development permit***

In this case, most of the proposed development has already been completed. In this case, therefore, the permit should not be issued until all conditions approved by the Local Trust Committee for the development are completed, and certified by an engineer.

REVIEW OF PROPOSED DEVELOPMENT

Buildings and structures more than 50 metres setback from the Top of Bank

The development permit seeks approval of the following existing works more than 50 metres from the top of bank:

2. The existing structures that are subject to the court order requiring removal without a development permit, including the following structures as shown on the May 24, 2013 survey plan submitted with the application:

    (a) a completed residence (18x17x7m, and 278 m^2 floor area) located 57.6 metres from current crest of bluff;

    (b) a two storey garage (18x13x6 and 318 m^2 floor area) located 86.6 metres from the crest of bluff;

    (c) a septic system between the house and garage;

    (d) a chicken house (2x4x2) (not shown on survey plan but listed on the application);

    (e) a wood shed (3x4x3) approximately 85 metres from crest of bluff;

These buildings were approved by the Local Trust Committee in 2006, subject to conditions that were rejected by the applicant and not complied with.

The key aspects of these buildings that are different from what was approved in 2006 are:

1) The setback from the crest of bluff for the residence is less than 80 metres;
2) The 15 metre setback from the crest of the bluff was not re-vegetated, and instead was substantially disturbed with additional vegetation removal and excavation;
3) The face of the bluff was not left undisturbed, and instead was excavated and built upon, and trees and vegetation were removed;
4) The drainage plan was not professionally designed by an engineer to prevent erosion and sloughing of the bluff.

Furthermore, none of the reports submitted with this application address any of the above issues, except that a setback of 65+ metres was found to be acceptable with monitoring. The residence does not comply with that recommendation.

Staff cannot recommend approval of these buildings on the basis of the submitted application.

<u>Existing Land Alterations, Excavations, Drainage Works, Path, Stairs and Tree and Vegetation Removal within 50 metres of the Top of Bank</u>

The development permit seeks approval of the following existing works within 50 metres from the top of bank:

2. The existing structures that are subject to the court order requiring removal without a development permit, including the following structures as shown on the May 24, 2013 survey plan submitted with the application:

    (f) excavation of a beach access pathway at crest of bluff and on face of bluff;

    (g) construction of beach access stairs and ramp on face of bluff;

(h) drainage works, including pipes, cisterns, and ditches on face of bluff, and within 50 metres of crest of bluff;

(i) tree and vegetation removal on face of bluff and within 15 m of crest of bluff; and

(j) excavation of toe of bluff for stair landing;

None of the submitted reports support the excavation and tree and vegetation removal within 15 metres of the crest of the bluff, or on the face of the bluff. None of these works comply with any of the guidelines of the Komas Bluff DPA. Furthermore, the 2004 Thurber report, and the 2006 EBA report, suggest that these works may, in fact, increase the rates of erosion and slumping of the property. This is of even greater concern, as they are located directly in front of the constructed residence.

With respect to the stairs, it should also be noted that the survey plan submitted with the application clearly shows the structure supporting the stairs to be below the natural boundary of the property, as registered in the land title office. It is not on the applicant's property, and is located in the W1 Zone, where it is not permitted. This development permit cannot vary the uses permitted in the W1 zone, even with consent of the Province as property owner.

It is also relevant to note that the photographs showing stumps and fill and grass growing at the base of the stair structure are the product of fill placed by the applicant (apparently excavated from the toe of the bluff slope). Photographs showing the excavation of the toe of the bluff, the placement of logs and fill, and the seeding of the fill, are part of the court record in *Stoneman v. Denman Island local Trust Committee*, and specifically the affidavits of Peter Phillips, Louise Bell and Harlene Holm, attached.

These affidavits, as well as the affidavit of Geoff Kinnear, include pictures indicating that there is sloughing and erosion in the area of these land alterations, and at the toe of the slope where the drainage pipes discharge.

Staff cannot support the issuance a development permit for these works as they do not meet the guidelines for approval of development in the Komas Bluff DPA, and they likely increase the susceptibility of this property to the hazards of sloughing and erosion.

<u>Proposed New Developments: Clearing of Bluff within 15 metres of crest, managing, cutting and trimming unspecified trees and vegetation</u>

This application also seeks approval for the following additional developments and land alterations:

1. Farming, including land clearing and agricultural uses, within 15 metres of the crest of the bluff;
3. Ongoing and unspecified geotechnical works based on future possible geotechnical recommendations;
4. The "management" of unspecified trees and vegetation on the bluff to create "low to medium heights;"
5. The "management" of unspecified hazardous trees along the bluff crest; and

6. The removal of unspecified small trees and trimming of unspecified large trees to enhance property views.

No engineering reports were provided to support the removal of trees and vegetation within 15 metres from the top of bank. All of the reports provided recommend or require retention of remaining trees and vegetation on the property within 15 metres of the bluff and on the face of the bluff.

No report was provided to identify the presence of any hazardous trees. All of the reports since the clearing by Ellis in 2004 support retaining all remaining trees.

The guidelines require the retention of trees and vegetation. This guideline is not met in relation to this proposed development.

Staff does not recommend approval of these new proposed developments.

RECOMMENDATIONS:

Staff recommends:

That the development permit application be refused, with the exception that the Local Trust Committee approve amendment of DE-DP-03-99 to remove clause 1(c).

Respectfully submitted by:

Courtney Simpson — July 11, 2013

Courtney Simpson, MCIP, RPP
Regional Planning Manager

Date

David Marlor — July 11, 2013

David Marlor, MCIP, RPP
Director of Local Planning Services

Date

Attachments:

1. 2011 Orthophoto of property showing 2002 surveyed 50 metre top of bank, and Komas Bluff DPA boundary
2. Survey and Site Plan dated May 22, 2012 and May 24, 2013
3. Orthophoto showing location of drainage works prepared by applicant
4. Development Permit Application and related correspondence
5. Development Permits DE-DP-03-99 and DE-DP-2002.1

6. Court order in *Denman Island Local Trust Committee v. Ellis* dated August 31, 2005
7. Court Order in Stoneman v. Denman Island Local Trust Committee dated February 13, 2013
8. 2006 Staff Report with related application, correspondence and Local Trust Committee resolution
9. Correspondence between the applicant and counsel for the Local Trust Committee regarding the 2006 development permit application
10. Geotechnical reports submitted with application:
    a. Bob Patrick, P. Eng., EBA Engineering Consultants Ltd. dated September 1, 2012 regarding composition of slope and regression of the crest;
    b. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd. dated March 3, 2009 regarding proposed stairway on the neighbouring property owned by Mr. Ellis;
    c. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd. dated March 18, 2009 regarding geotechnical re-assessment of intended usage as farmland;
    d. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd. dated March 13, 2007 regarding slope setback and drainage measures;
    e. D. Smith, P. Eng., Thurber Engineering Ltd. dated April 4, 2006 regarding remediation on Komas Bluffs;
    f. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd. dated March 9, 2006 related to a siting and use permit application;
    g. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd. dated January 17, 2005 regarding geotechnical assessment of intended usage as farmland;
    h. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd. dated November 9, 2004 related to intended farming on the property
    i. R.A. Patrick, P. Eng., EBA Engineering Consultants Ltd, dated June 11, 2002 related to the lot line boundary adjustment
11. Additional site-specific Thurber Reports:
    a. 2004 Thurber Report
    b. 2013 Thurber Letter clarifying 2006 Thurber Report
12. Affidavits with photographs of existing path, stairs and drainage works:
    a. Barb Dashwood (orthophotos);
    b. Peter Phillips;
    c. Geoff Kinnear;

d. Louise Bell;
e. Harlene Holm.

Islands Trust

Memorandum

700 North Road Gabriola Island BC V0R 1X3
Telephone **(250) 247-2063** FAX: (250) 247-7514
Toll Free via Enquiry BC in Vancouver 660-2421. Elsewhere in BC **1.800.663.7867**
northinfo@islandstrust.bc.ca www.islandstrust.bc.ca

Date: July 12, 2013 File Number DE-DP-2013.1

To Denman Island Local Trust Committee
For meeting of July 16, 2013

From Courtney Simpson, Regional Planning Manager

Re DE-DP-2013.1 (Stoneman) application amendment

On July 12, the applicant for the above noted application contacted staff to report an error in their application that would amend our understanding of the application. As the staff report has been finalized and distributed in advance of the Local Trust Committee meeting on July 16, this memorandum has been prepared to address the amendment. As described in the email from Mr. Stoneman attached, the application was intended to be for farming up to 15 metres from the crest of the bluff and not within 15 metres of the crest of the bluff as the application stated, relying on the January 17, 2005 EBA report in support of this proposed land clearing.

This amendment does not change the staff recommendations; the existing geotechnical reports were prepared prior to substantial land alterations within the 15 metre setback, as well as the construction of a house and new drainage patterns. As noted in Islands Trust legal counsel's letter to counsel for the Stonemans in February 2013 (an attachment to the staff report), the existing reports do not consider these changes. This also applies to the revised application to farm up to 15 metres instead of within 15 metres. Several specifc considerations are described below:

1. The January 17, 2005 EBA report that the applicant refers to in his attached email did not in fact support agricultural uses up to 15 metres from the crest on the whole property. The proposal approved in that report was for agricultural use up to 15 m from the bluff or to the existing tree line, whichever is greater. In 2005 there were trees beyond the 15 metre setback, up to 50 metres from the bluff, particularly at the south end of the property.

2. The January 17, 2005 EBA report notes that the recommended Madrone planting was being done at the time, and it is a condition of the recommendations in that report that the Madrone planting being completed and maintained on the property. The Madrone report generally requires intensive planting within 15 metres from crest of bluff, the retention of existing trees and vegetation, and legumes and long rooted grasses in all areas up to 50 metres. This development permit application, however, does not include replanting of the 15 m and the 15-50 metre set backs in accordance with Madrone's recommendations. Nor does it include the retention of existing trees and vegetation, or

the limitation that crops are limited to legumes and long rooted grasses within 50 metres of the bluff.

3. In their March 13, 2007 report, EBA revised their recommendation to say that the Madrone replanting was inadequate and that a new professionally prepared re-vegetation plan was required. That has not been provided to support this application.

cc: Dan Stoneman, Applicant
Rob Milne, Island Planner
David Marlor, Director of Local Planning Service

Attachments:

1. Email from Dan Stoneman to Courtney Simpson dated July 12, 2013 regarding "Error".
2. January 17, 2005 EBA Geotechnical Report

From: Dan Stoneman [mailto:dan_stoneman@me.com]
Sent: Friday, July 12, 2013 7:43 AM
To: Courtney Simpson
Cc: Dan Burnett; Peter Luckham; Laura Busheikin; David Graham
Subject: Error

Dear Courtenay,

Respectfully, my application is for agricultural use up to a 15 meter setback from the top of the bluff - not for agricultural use within a 15 meter setback. . Item 1 under proposal of your report should read:

1. Farming, including land clearing and agricultural uses, **up to** 15 metres of the crest of the bluff;

My error. I apologize. Only those geotechnical measures necessary to protect development and monitor erosion have been installed within 15 meters of the top of the bluff or on the bluff slope to protect from erosion.

Agricultural use up to a 15 meter setback is supported by EBA's geotechnical assessment dated Jan 17, 2005, a copy of which I attach.

Dan

January 17, 2005 File No: 0802-2800112

Mr. Dean Ellis
3830 Salal Drive
Hornby Island, BC, V0R 1Z0

Regarding: 2600 and 2626 Swan Road, Denman Island
Geotechnical Assessment of Intended Usage as Farmland

Dear Sir:

EBA Engineering Consultants Ltd. (EBA) were requested by you to provide a geotechnical opinion regarding the intended farming on these properties.

This study resulted from a request to Island Trust to approve this land use. One of their requirements was a geotechnical assessment of the property.

EBA's scope of services during this study were limited to the following:

- Review of available information;
- A site walkover and discussions with Mr. Ellis; and
- Preparation of this letter.

Authorization to proceed with this study was received by email on October 21, 2004.

1.0 INFORMATION REVIEW

The information reviewed during the preparation of this letter is listed below:

- BC Ministry of Environment and Parks, Water Management Branch "Coastal Environment and Coastal Construction, A Discussion Paper - Elevations and Setbacks for Flood and Erosion Prone Areas", 1987

- EBA, "Preliminary Slope Stability Assessment, Swan Road Property, Denman Island, BC", July 11, 2002

- Madrone Environmental Services Ltd., "Planting Recommendations for Erosion Control for Ellis Property. Komas Bluffs, Denman Island", October, 2003.

- Fisheries and Oceans Canada, "Komas Bluffs Denman Island", January 21, 2004
- Development Permit Application, March 19, 2004, Dean Ellis
- Island Trust "Denman Island – Development Permit Application – Lot B Section 23 Denman Island, Nanaimo District, Plan VIP74719", May 21, 2004

The site has been sufficiently described within these documents and this information will not be repeated herein.

It is relevant to note that the bluffs in this area have been regressing in a geologic time frame (likely since the last glaciation). The recent removal of vegetation on the upland terrace area has likely accelerated the degradation due to increased overland flow and groundwater seepage to the bluffs.

2.0 SITE WALKOVER AND DISCUSSION

On November 4, 2004, Mr. Bob Patrick, P.Eng. of EBA met Mr. Ellis on site to observe current conditions and discuss his intended use of the Property.

Based on these discussions, we understand that the cleared land will be utilized for growing hay which will be harvested once per year (in the summer).

Mr. Ellis indicated that he is implementing the planting recommended by Madrone along the top of the bluff and will not be removing any more trees.

His proposed haying operation would extend to the existing tree line or 15 m from the bluff, whichever is greater.

Our site observations will be presented in two parts, Parcel A or No. 2600 Swan Road and Parcel B or No. 2626 Swan Road.

On both parcels the area between the trees and Swan Road has been cleared of stumps and other logging debris and seeded.

Parcel A:

On Parcel A the grasses provide continuous ground cover and are up to 0.25 m high.

Approximately half way along the east boundary in this parcel the edge of the bluff has been pulled back. It is understood that there had been a failure and Mr. Ellis removed the overhang to lessen the volume of material falling down the slope.

A Ministry of Highways drainage swale which runs along the south boundary has been made redundant by diverting the flow elsewhere. The ditch, for approximately 50 m from the bluff, has been infilled.

Parcel B:

It is understood that subsequent to EBA's site visit in 2002, many of the trees along the bluff were removed after some wind fall was experienced. There are now places with few or no trees, although small conifers have been planted. The area within 35 m of the bluff has an established cover of grasses.

The area between this and the road has recently been seeded and the grasses are less than 50 mm high.

There is a drainage swale running diagonally across the property from the northwest corner which discharges into a small pond near the middle of the east side. The flow from this pond percolates to the bluff and drains over the slope.

Another pond has been formed in the northwest corner of the site.

The ground was wet, with much of the area near the bluff having water evident at the surface. There was evidence of recent slope movement in several areas along the bluff.

3.0 CONCLUSIONS/RECOMMENDATIONS

As discussed previously the bluffs have been regressing for many years prior to the present. The removal of trees in 2000 would likely have accelerated this degradation as more water would have been available to the slope.

As well, at any location where a concentrated flow is discharged over the slope, significant erosion and sloughing is evident.

The proposed usage of the property for hay production is acceptable from a geotechnical perspective providing the following are carried out:

- Irrigation is not used or if it is, soil moisture sensors and controlled application are employed such that excess watering does not occur. If an irrigation system is put in place, regular inspections and maintenance are required to prevent leakage;
- The planting suggested by Madrone is carried out and maintained; and
- There is no farming activity with 15 m of the bluff.

The ponds which have been formed do not have a proper outlet. During wet weather, these ponds may overtop resulting in uncontrolled release of water. An armoured outlet discharging to a drainage channel should be installed.

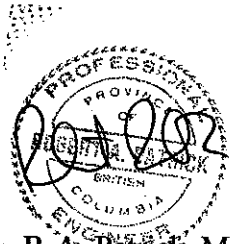
4.0 CLOSURE

The conclusions / recommendations made herein will not prevent regression of these bluffs, however the intent is to put in place measures such that the degradation is not accelerated.

We trust the above is sufficient for your purposes at this time.

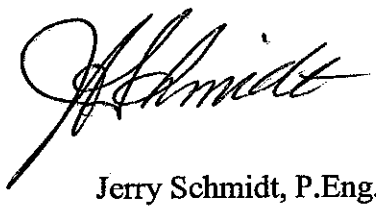
Respectfully Submitted;

EBA Engineering Consultants Ltd.



R.A. Patrick, M.Sc., P.Eng.

Reviewed by:



Jerry Schmidt, P.Eng.

From: Courtney Simpson
Sent: July-15-13 3:51 PM
To: David Graham; Laura Busheikin
Cc: David Marlor; Peter Luckham
Subject: Questions and answers re DE-DP-2013.1 (Stoneman) staff report

Dear David and Laura,

You have asked questions about the staff report on tomorrow's Local Trust Committee meeting agenda and I've provided answers below. We will have printed copies of this email at the meeting tomorrow that will be available to anyone in the audience.

Questions from David Graham:

1. Assuming this property was owned by a someone without the history of Mr Stoneman, relying on the drawings and setbacks of the site plan, other than the stairs to the beach, would Staff be recommending we issue a DP and SUP?

No. The geotechnical reports provided do not adequately address the current development on the property. Particularly problematic is that no geotechnical report speaks to the suitability of the house sited 57.5 metres from the bluff. All speak to the dwelling being sited further from the bluff, as they were written before the pathway down the slope was constructed that changed the crest of the slope. As well, drainage is not sufficiently addressed: one geotechnical report speaks to the suitability of a drainage pond sited more than 50 metres from the bluff, but the survey from 2013 shows a cistern sited much closer. The siting of this cistern is not addressed in any geotechnical report. There are a number of other deficiencies in the application addressed in the staff report.

It is possible that a house may have been recommended for a residence with a 57 metre setback, if the slope was found to be stable and a vegetated buffer was present, with no increased rate of erosion. This property had an increased rate of erosion of approximately 5 times after the land clearing in 2002-2004, and has experienced major slumps. The reports we have indicate that the current clearing and excavation and drainage works within the 50 metre buffer may well have increased the incidence and rate of erosion again, and recommend an 65+ metre setback. So this property is not analagous to a property with a relatively undisturbed bluff crest and slope

2- Mr Stoneman refers to a "Consent Order" which he and Mrs Stoneman signed, at the request of the Trust, which included directions to them to not remediate their property, in order to avoid being responsible for costs, considering it was Mr Ellis's action which participated the need to remediate. Is this a true statement?

The 2006 report prepared by Thurber Engineering is attached to the staff report. It only recommended immediate bio-remediation of the Ellis property, which was consented to in the Ellis litigation by both the Stonemans and Mr. Ellis. It is not true that the 2006 Thurber report directed the Stonemans NOT to remediate their property--it relied on the re-direction of drainage away from the bluff in 2005, and that there would be no further disturbance or land alteration in the buffer on the Stonemans' property. The report does not preclude further vegetation being planted, and does not consider the specific

requirements of additional development of the land (ie the construction of a residence with drainage etc.) In his letter of July 2013, Dave Smith of Thurber Engineering clarifies these points.

3- From the site plan submitted, can we tell whether the stairs terminate on their property or not?

Yes, it is clear that the stairs do not terminate on their property. You'll see that the bottom portion of the staircase is in an area between the old 1875 survey and new survey that is marked as "return to Crown".

4- I should know this, but does one's property boundary remain even after land has eroded and been replaced by ocean foreshore? I know people can apply to gain land which is added through deposition etc.

No, the land returns to the Crown. You are correct that people can apply to have land added to their property when the land is extended towards the sea through gradual and natural deposition. But when the reverse happens the land returns to the Crown.

In this case, it appears that the Stonemans built up a base for their stairs with logs and soil from the base of the slope, and seeded it. Photographs showing the construction of the base in this respect are also attached to the staff report. The placement of fill and soil on the foreshore and seeding it does not change the location of the natural boundary established in the registered survey plan.

5- Does the building of a stairway need to comply with the BC Building Code?

I don't know as we don't have a building inspection service in the Islands Trust but will endeavour to have an answer for you at the LTC meeting on Tuesday.

6- What would we require to consider allowing the stairway to remain. (I presume what ever we required which allowed the stairway to be built accessing Morning Beach Park?)

For the staircase to remain we require a geotechnical report that addresses the DP guidelines. However we would also require a rezoning for the foreshore area where the stairs trespass on the foreshore as the a staircase is not a permitted structure in the marine zone. The property owner could amend their design so the stairway doesn't trespass and then only a DP would be required. Guideline 2 of the DPA would have to be met, in particular that the geotechnical 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**."

In this case, as the path and stairway is already constructed, the report would have to certify that the vegetation removal, stairway, path and drainage works have not contributed to any erosion, sloughing or land slip, and do not have the potential to do so, or should identify the extent of that risk.

The March 3, 2009 report is the only one that speaks to a stairway, and it speaks to a stairway on the neighbouring property, not Mr. Stonemans' property, and does not provide the information required in DPA Guideline 2.

Questions from Laura Busheikin:

1. Does the LTC have options between the two positions of "grant the DP" and "deny the DP"? (Such as asking the applicant to make alterations to the application, add on supporting material, etc, and come back?) If we deny it, will the applicant then need to start from scratch in the future, with a new application and payment?

The key information that is missing is a report that meets the requirements of the guidelines, most significantly Guideline 2. We have proceeded without that report because the applicant advised that they would not provide it, even after it was clearly stated that a new report for the current development and addressing the guidelines was necessary. With respect to delaying the decision, first, there would need to be a request from the applicant for this, presumably on the basis that they would provide further reports that address the guidelines.

This application is being made in the context of complex and multi-pronged litigation with respect to this property. The applicant has legal counsel in this matter, and this application is the owners' opportunity to address the breach of the Local Government Act found by the BC Supreme Court. Overall, a clear decision on the application as submitted by the owners to the LTC is preferable in the context of the litigation and the ongoing issues with this property.

The owners could make another application if this application is denied subject to the following provision of the Development Procedures Bylaw No. 71:

"An application or substantially similar application may not be submitted in respect of the same development less than one year from the date of refusal of a previous application or in the case of an application for conversion of a building into strata lots less than one year from the date of refusal of a previous application, unless the Trust Committee has agreed to such reconsideration."

The Local Trust Committee would have to pass a resolution to authorize another application. Staff do not recommend such a resolution in the absence of a concrete proposal that addresses the deficiencies of the current application.

Note also that the Court's order in Denman Island v. Stoneman requires the remediation of the property and removal of all unauthorized works for which a permit is not issued, in accordance with further reports. Those reports have not yet been prepared, pending a decision on this development permit application, but would address all the guideline requirements, and may recommend retention of some or all of the existing works and buildings that can be made to comply with the guidelines. Such a report may be the basis for a future court order and/or a future recommendation for a development permit.

2. Is there an option of separating out different aspects of the development, ie the buildings, and considering a DP for those, while deferring consideration of a DP for the stairway, tree removal, and other activities? If so, what would be staff's opinion on the advisability of this?

As the application currently stands, it is for all existing works, buildings and structures, and for additional contemplated future works. If the applicant agreed to only pursue some aspect of the application, it is possible that a development permit could issue on that basis, but it would require the applicants' agreement.

The staff report reviews each proposed or existing development in the application separately in light of the development permit area guidelines. The LTC may wish to review each development in this way and consider whether it is prepared to issue a development permit for only some of the development. The report does not recommend issuance of a development permit for any of the existing or proposed development individually on the bases stated in the report.

Note that the house and garage were originally approved for a development permit in 2006, subject to conditions that were not fulfilled or met in the course of the construction of the house and garage. The applicant declined to proceed with the issuance of that permit, so it should not be assumed that the applicant will proceed with the issuance of a permit on conditions other than those stated in the application.

3. Can you comment on the idea that the DPA is not valid for this property because the bluff is not, in fact, composed of Quadra sands?

The court has decided that the DPA 1 is valid in Denman Island v. Ellis & Stoneman. The soil composition of the property was in evidence in that decision.

4. We have an assertion that the base of the stairway extends onto the foreshore below the natural boundary, and an assertion that it doesn't. What is the final arbiter of these sorts of conflicting assertions?

The 2013 survey clarifies that the base of the stairway is beyond the legal boundary of the property.

5. Justice Groberman stated that the court should be involved in determining what type/degree of remediation is adequate, and advised against relying on a geotech for this. And yet the court has not spoken on this. So what would constitute best practices for determining the appropriate remediation?

This is not an accurate summary or understanding of the decision of Mr. Justice Groberman in 2005. In that case, the court directed that further geotechnical reports be prepared for consideration by the court in relation to the appropriate remediation order to be made in those specific proceedings in respect to that specific breach. The court was not seized in that case in relation to future development or future breaches.

The BC Supreme Court has now ordered removal and remediation for the new development and works (since 2005) not approved by the Local Trust Committee by way of development permit. So the proper procedure is for the Local Trust Committee to consider the development permit application in light of the existing guidelines to determine what, if any, of the new development it is prepared to approved

under those guidelines. Anything not approved will go back to court for a remediation order on further geotechnical advice.

6. Can you comment on the suggestion that neighbours are being treated differently?

This property has to be evaluated on the basis of the geotechnical reports specific to this property and the specific proposed development under the current guidelines. Development permits issued for different properties do not provide useful guidance in this regard. This is particularly true in the case of development permits processed under different guidelines (pre-1999).

7. Should we anticipate that the act of removing the staircase would have significant negative impact on slope stability, and if so, what would be the ideal way to deal with the situation?

The applicants have not provided any geotechnical advice or recommendations in this regard. Therefore removal and remediation would have to be addressed by further court order, informed by further geotechnical reports, as contemplated in the order of Curtis J.

8. Can you comment on Mr. Stoneman's request to remove DE-DP-03-99 from title?

As stated in the staff report, clause 1 (a) and (b) of DE-DP-03-99 related to the guidelines and requirements of the Komas Bluff DPA 1. The requirement not to clear trees within 50 metres of the crest of the bluff therefore continues to be relevant. It could also be amended or replaced by a new development permit that allowed clearing of trees in this area.

Clause 1(c) of DE-DP-03-99 also required the planting of Christmas trees on the cleared portions of the property more than 50 metres from the bluff crest. That condition was imposed pursuant to the repealed Development Permit Area No. 7: Forest Cover, which was found to be invalid by the courts. Staff considers that in the absence of the Forest Cover DPA, clause 1(c) of DE-DP-03-99 should be removed This aspect of the application is supported

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