

AGRICULTURAL LAND COMMISSION AUG 14 2013

ATTACHMENT NO. 1 – Application by Land Owner for Subdivision in ALR

**2626 SWAN RD DENMAN IS.**



APPLICATION BY LAND OWNER

NOTE: The information required by this form and the documents you provide with it are collected to process your application under the Agricultural Land Commission Act and regulation. This information will be available for review by any member of the public. If you have any questions about the collection or use of this information, contact the Agricultural Land Commission and ask for the staff member who will be handling your application.

TYPE OF APPLICATION (Check appropriate box)

- ☐ EXCLUSION under Sec. 30(1) of the Agricultural Land Commission Act
- ☒ SUBDIVISION in the ALR under Sec. 21(2) of the Agricultural Land Commission Act
- ☐ INCLUSION under Sec. 17(3) of the Agricultural Land Commission Act
- ☐ Non-farm USE in the ALR under Sec. 20(3) of the Agricultural Land Commission Act

APPLICANT

Registered Owner: Francis Dean Ellis		Agent:	
Address: 3830 Salal Drive		Address:	
Hornby Island			
BC	Postal Code V0R 1Z0		Postal Code
Tel. (home) (335) 2669 (work) ( )		Tel. ( )	
Fax ( )		Fax ( )	
E-mail deanonrain@gmail.com		E-mail	

LOCAL GOVERNMENT JURISDICTION (Indicate name of Regional District or Municipality)

Denman Island ~~Island~~ Trust

LAND UNDER APPLICATION (Show land on plan or sketch)

Title Number	Size of Each Parcel (Ha.)	Date of Purchase	
		Month	Year
07424.025	31.00	March	2002

OWNERSHIP OR INTERESTS IN OTHER LANDS WITHIN THIS COMMUNITY  
(Show information on plan or sketch)

If you have interests in other lands within this community complete the following:

Title Number(s):

RECEIVED  
PROV AGRICULTURAL  
LAND COMMISSION

AUG 14 2013

**PROPOSAL** (Please describe and show on plan or sketch)

see attached documents

**CURRENT USE OF LAND** (Show information on plan or sketch)

List all existing uses on the parcel(s) and describe all buildings

existing uses hay production, some seedlings

buildings 1000 sq ft barn, 400 sq ft equipment storage/shop, plus a 40 foot trailer

**USES ON ADJACENT LOTS** (Show information on plan or sketch)

North 40 acre FLR hobbie

East water

South 23 acres hobbie farm

West 60 acre A1 Christmas trees

**DECLARATION**

I/we consent to the use of the information provided in the application and all supporting documents to process the application in accordance with the *Agricultural Land Commission Act* and regulation. Furthermore, I/we declare that the information provided in the application and all the supporting documents are, to the best of my/our knowledge, true and correct. I/we understand that the Agricultural Land Commission will take the steps necessary to confirm the accuracy of the information and documents provided.

APRIL 17/13   
Date Signature of Owner or Agent

DEAN ELLIS  
Print Name

\_\_\_\_\_  
Date Signature of Owner or Agent

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date Signature of Owner or Agent

\_\_\_\_\_  
Print Name

Please ensure the following documents are enclosed with your application:

- Application fee payable to the Local Government
- Certificate of Title or Title Search Print
- Agent authorization (if using agent)
- Map or sketch showing proposal & adjacent uses
- Proof of Notice of Application \*(See instructions)
- Photographs (optional)

## Sutton, Elizabeth ALC:EX

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**From:** Dean Ellis [deanonrain@gmail.com]  
**Sent:** Monday, August 26, 2013 3:34 PM  
**To:** Sutton, Elizabeth ALC:EX  
**Subject:** ALC file 53376  
**Attachments:** ALR pictures.docx; FINAL Staff report lp and dm - DE-ALR-2013.2.pdf; alc application.docx

Hi Elizabeth

I have enclosed a scale map with arrows of where the photos were taken. I have enclosed a few more photos than my original application. If any more are needed I can send more.

The number on the application that did not match was my roll number for the property, sorry for the mistake, the pid is shown on certificate of title and assessment

I have enclosed my 2013 Property assessment and it can be seen where I picked up the wrong number the PID is 025-563-254

Enclosed also is the Staff Report, I suspect Islands Trust will have to send you a copy.

Thanks

Hope this satisfies your request

Dean Ellis

**BC Assessment**

[www.bccassessment.ca](http://www.bccassessment.ca)

**IMPORTANT INFORMATION FOR PROPERTY IDENTIFICATION**

Area: 06  
Jurisdiction: 771 - Courtenay Rural  
Roll: 07424.025  
School District: 71





Neigh: 129

CONFIDENTIAL PIN: 0000345824

## 2013 Property Assessment Notice

This Notice provides you with an estimate of your property value, its classification and your entitlement to exemptions from taxation, if any apply. For most properties, the value is based on real estate sales and market conditions in your area.

**THIS IS NOT A TAX NOTICE. TAX NOTICES ARE ISSUED BY YOUR TAXING AUTHORITY.**

<b>PROPERTY DESCRIPTION</b> This is a general description of your property for assessment purposes.* For additional information, please contact your assessment office noted below.	<b>2626 SWAN RD</b> Lot B, Plan VIP74719, Section 23, Nanaimo Land District, DENMAN ISLAND PID: 025-563-254																								
<b>IMPORTANT DATES</b>  <b>July 1, 2012</b> – Assessed value is estimated for most types of properties as of this date.  <b>October 31, 2012</b> – Assessed value typically reflects the property's physical condition and permitted use as of this date.  <b>January 31, 2013</b> – Deadline for filing a Notice of Complaint (Appeal).	<table><thead><tr><th></th><th>VALUE</th><th>CLASS</th></tr></thead><tbody><tr><td>LAND</td><td>51,477</td><td>FARM</td></tr><tr><td>BUILDINGS</td><td>81,000</td><td>RESIDENTIAL</td></tr><tr><td>ASSESSED VALUE</td><td>\$132,477</td><td></td></tr><tr><td>TAX BASE</td><td>RURAL</td><td>SCHOOL &amp; OTHER</td></tr><tr><td></td><td>132,477</td><td>132,477</td></tr><tr><td>Less Exemptions</td><td>-61,700</td><td>25,739</td></tr><tr><td>TAXABLE VALUE</td><td>\$70,777</td><td>106,738</td></tr></tbody></table>		VALUE	CLASS	LAND	51,477	FARM	BUILDINGS	81,000	RESIDENTIAL	ASSESSED VALUE	\$132,477		TAX BASE	RURAL	SCHOOL & OTHER		132,477	132,477	Less Exemptions	-61,700	25,739	TAXABLE VALUE	\$70,777	106,738
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<b>ADDITIONAL INFORMATION</b> Visit <a href="http://www.bccassessment.ca">www.bccassessment.ca</a> or scan the QR code to visit our mobile page. Follow us ...    	<ul style="list-style-type: none"><li>• 2013 tax rates will be set in May. For tax information, please go to: <a href="http://www.sbr.gov.bc.ca/individuals/Property_Taxes/property_taxes.htm">www.sbr.gov.bc.ca/individuals/Property_Taxes/property_taxes.htm</a></li><li>• 2012 assessed value (as of July 1, 2011) was \$130,065.</li></ul>																								

**THE ASSESSMENT OFFICE FOR THIS PROPERTY IS:**

Courtenay Assessment Area  
2488 Idiens Way  
Courtenay BC V9N 9B5  
06-71-771-07424.025

Phone: 1-866-valueBC Or 1-866-825-8322  
Fax: 1-855-995-6209  
Click "CONNECT" at  
[www.bccassessment.ca](http://www.bccassessment.ca)

**THE OWNER/LESSEE OF THIS PROPERTY IS:**

S-06  
FRANCIS DEAN ELLIS 42/2 (V)  
3830 SALAL DR  
RR 1  
HORNBY ISLAND BC V0R 1Z0

13323

**QUESTIONS?**

Visit [www.bccassessment.ca](http://www.bccassessment.ca) for more information or contact staff at our offices.

During January, office hours are:  
Monday to Friday, 8:30 am to 5:00 pm.

**IMPORTANT APPEAL INFORMATION**

If you still disagree with your assessment after talking with an appraiser, you can file a formal Notice of Complaint (Appeal). The form is available at [www.bccassessment.ca](http://www.bccassessment.ca).

You can also mail, fax, hand deliver, or email a Notice of Complaint (Appeal) to your local BC Assessment office.

Mailed written Complaints (Appeals) must be postmarked on or before **January 31, 2013**.

\* Before using information in the Property Description box for non-assessment purposes, please verify records with the Land Title and Survey Authority of British Columbia ([www.ltsa.ca](http://www.ltsa.ca)).



Date: 01-Apr-2013  
Requestor: (PA71300)  
Folio:

TITLE SEARCH PRINT  
DEN-MARA ENTERPRISES LTD.  
TITLE - EV2774

Time: 06:21:34  
Page 001 of 002

VICTORIA LAND TITLE OFFICE TITLE NO: EV2774  
FROM TITLE NO: ET17894  
ET17895

APPLICATION FOR REGISTRATION RECEIVED ON: 10 JANUARY, 2003  
ENTERED: 14 JANUARY, 2003

REGISTERED OWNER IN FEE SIMPLE:  
FRANCIS DEAN ELLIS, BUSINESSPERSON  
75 CENTRAL ROAD,  
HORNBY ISLAND, BC  
V0R 1Z0

TAXATION AUTHORITY:  
COURTENAY ASSESSMENT AREA

DESCRIPTION OF LAND:  
PARCEL IDENTIFIER: 025-563-254  
LOT B SECTION 23 DENMAN ISLAND NANAIMO DISTRICT PLAN VIF74719

LEGAL NOTATIONS:

THIS CERTIFICATE OF TITLE MAY BE AFFECTED BY THE AGRICULTURAL LAND  
COMMISSION ACT; SEE AGRICULTURAL LAND RESERVE PLAN NO. 3, DEPOSITED  
29.5.74

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 26 OF THE LOCAL  
GOVERNMENT ACT, SEE EP76912

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 26 OF THE LOCAL  
GOVERNMENT ACT, SEE ET110372

CHARGES, LIENS AND INTERESTS:  
NATURE OF CHARGE  
CHARGE NUMBER DATE TIME

UNDERSURFACE RIGHTS  
M76301

REGISTERED OWNER OF CHARGE:  
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA  
M76301  
REMARKS: A.F.B. 38.106.D32048;  
INTER ALIA SECTION 172(3)

CERTIFICATE OF PENDING LITIGATION  
EV111657 2003-09-22 14:52  
REGISTERED OWNER OF CHARGE:  
DENMAN ISLAND LOCAL TRUST COMMITTEE  
EV111657  
REMARKS: INTER ALIA

JUDGMENT  
FB275483 2009-06-19 10:10  
REGISTERED OWNER OF CHARGE:  
DENMAN ISLAND LOCAL TRUST COMMITTEE

Date: 01-Apr-2013      TITLE SEARCH PRINT      Time: 06:21:34  
Requestor: (PA71300)      DEN-MARA ENTERPRISES LTD.      Page 002 of 002  
Folio:      TITLE - EV2774

FB275483  
REMARKS: INTER ALIA  
RENEWED BY CA2044656

UNDERSURFACE RIGHTS  
FB337930      2010-03-25      12:50  
REMARKS: PURSUANT TO MINERAL LAND TAX ACT, MINERALS HEREIN,  
FORFEITED AND VESTED IN THE CROWN

JUDGMENT  
CA2044656      2011-06-06      12:05  
REGISTERED OWNER OF CHARGE:  
DENMAN ISLAND LOCAL TRUST COMMITTEE  
CA2044656  
REMARKS: INTER ALIA  
RENEWAL OF FB275483

"CAUTION - CHARGES MAY NOT APPEAR IN ORDER OF PRIORITY. SEE SECTION 28, L.T.A."

DUPLICATE INDEFEASIBLE TITLE: NONE OUTSTANDING

TRANSFERS: NONE

PENDING APPLICATIONS: NONE

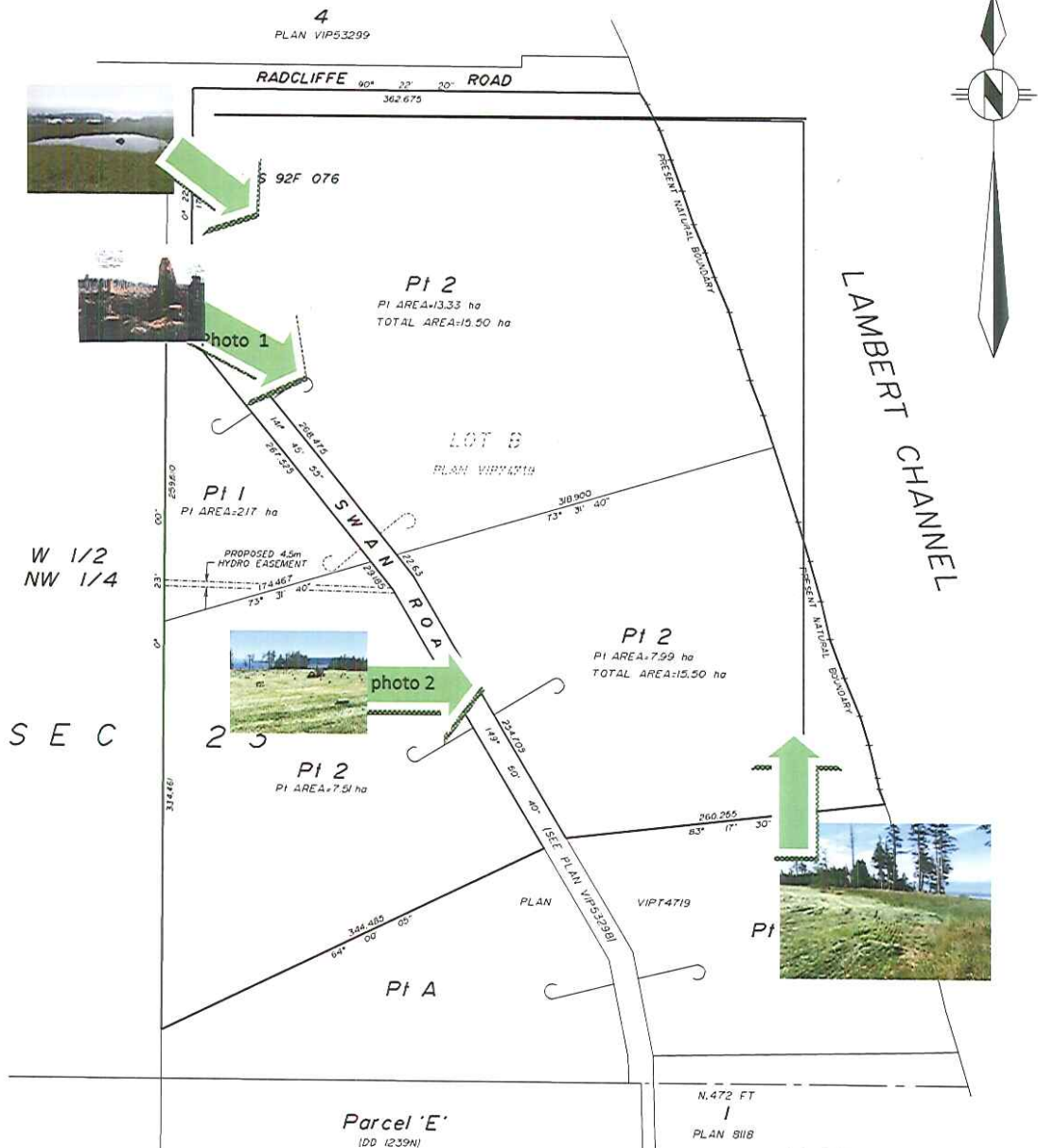
\*\*\* CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN \*\*\*

PROPOSED SUBDIVISION PLAN OF LOT B, SECTION 23,  
DENMAN ISLAND, NANAIMO DISTRICT, PLAN VIP74719.

SCALE 1:5000



All Distances are shown in Metres



DATED: 15 JULY, 2005.

**McElhanney Associates**  
Professional Land Surveyors  
495 - 6th Street  
Courtenay, B.C. V9N 6V4  
Tel. 338-5495 Fax 338-7700  
File 04828









Ariel view looking east



Tractor shed



Barn  
workshop

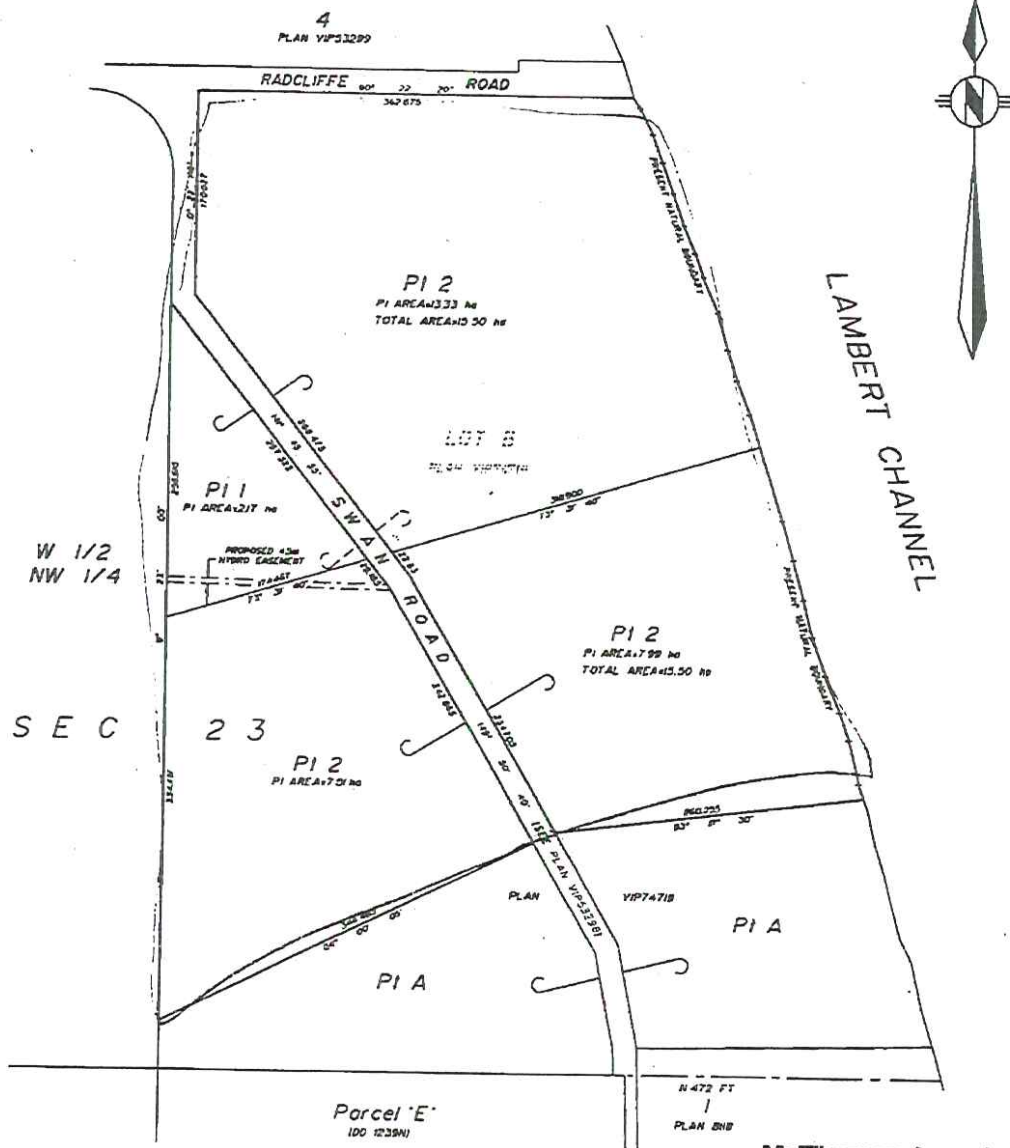
PROPOSED SUBDIVISION PLAN OF LOT B, SECTION 23,  
DENMAN ISLAND, NANAIMO DISTRICT, PLAN VIP74719.

BCGS 92F 076

SCALE 1:5000



All Distances are shown in Metres



DATED: 15 JULY, 2005.

**McElhanney Associates**  
Professional Land Surveyors  
495 - 6th Street  
Courtenay, B.C. V9N 6V4  
Tel. 338-5495 Fax 338-7700  
File 04828



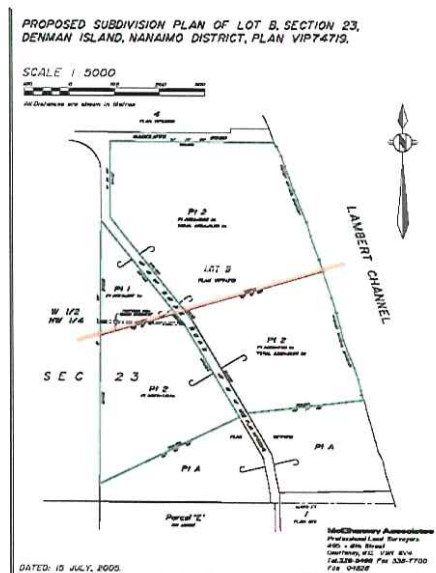
## HISTORY

I purchased the land after it had been clearcut in 2002. During the next 3 years I cleared the land and planted hay. This is before and after. The land is in the Komas Bluff DP areas 111



In 2005 I wished to subdivide off 40 acres and to keep the north half to farm. I was stopped by litigation and liens from Islands trust. DILTC said I needed a geotek report to sign off on subdivision (I had produced 4 geotechnical reports and all were denied.) Now as a result of the **Denman Island Farm Plan** that has maps that show my property may not be in the DP area and the change of the former DILTC position that ALR lands should be preserved as forest or parkland, I am applying for subdivision. Also the court ordered a geotechnical report from Thurber Engineering, it stated once the Highways ditches were rerouted off my property, the land was now stable. This was agreed upon by all parties by consent order in 2009.

Denman Farm Plan <http://www.islandstrust.bc.ca/lrc/de/pdf/defarmplanfinalnov152012.pdf>



. In 2005 I had put in 2 approved septic fields and had McElhaney do a proposed subdivision proposal.





## Reasons to subdivide 31 ha to 2- 15.5 parcels as per zoning

- My intentions to subdivide (as shown by subdivision plan and septic fields) were before ALC disapproved of subdivision.
- The existing road network on the land services both pieces.
- The nature of the land would lend itself to more intensive localized use in the small front area rather than the very marginal hay usage on the not very productive gravely soils above.
- Because this is an island with high transportation costs, smaller ALR parcels are more likely to attract farmers willing to in fact subsidize a small farm operation, a hobby along simply to enjoy a rural island lifestyle and produce food. The large ALR plots on Denman are all left dormant.
- Today the serious income dependent farmer simply isn't interested with ferry fares, ferry line-ups and off island machinery maintenance. It simply isn't economically feasible as there is more cost efficient cheaper ALR land elsewhere closer to markets and supplies. Lack of labour and costs of labour seriously constrain larger farms.
- On a large scale deer fencing becomes an expensive and difficult issue.
- The land is best suited for small scale orchard, berry crops, poultry farming or market gardening that can be sold locally.
- The Denman Farm Plan shows the only economic farms are the smaller localized ones
- 40 acres is still a very large farming parcel on Denman.
- In recent litigation 2 Judges have stated my land has subdivision potential.

### **Judge Curtis states *Stoneman v. Denman Island Local Trust Committee* Page 6**

**[7] "Development Permit Area No. 1: Komas Bluff**

**Category:**

The area indicated on Schedule "E" as Development Permit Area No 1: Komas Bluff is designated a development permit area according to Section 879(1 )(b) of the Municipal Act for the protection of development from hazardous conditions.

**Area:**

Development Permit Area No. 1: Komas Bluff shown on Schedule "E"

**Justification:**

In 1980 the Resource Analysis Branch of the Ministry of Environment conducted a reconnaissance study and identified bank instability in the area referred to as the Komas Bluff. Sloughing was confirmed by detailed site inspection. The majority of the area was classified as active or inactive, with relatively little classified as stable. Past logging and road construction have already demonstrated that this area is prone to landslides and other forms of erosion. The area has subdivision potential.

### **Judge Saunders states *Denman Island Local Trust Committee v. Ellis*, 2007 BCCA 536**

**[43]** The purpose of ss. 919.1 and 920 of the Act is to empower local authorities to designate development permit areas to further particular objectives, including the protection of development from hazardous conditions. The inclusion of subdivision and alteration of land as activities that require permits indicates that one purpose of the power to designate permit areas is to protect development potential, and that a local authority may consider how any alteration of land may affect development potential. Thus, the term "development" in s. 919.1(1)(b) should be interpreted as including future development.

## RECENT LITIGATION

Islands Trust contends that my land is in the Komass Bluff Development Permit Area and has been the subject of 3 court cases all of which the DILTC has been successful in showing there is a 180m , forest top "buffer" zone where they can regulate farming. I have applied for 4 permits and provided 8 geotechnical reports to support of farming within 15m of the bluff. I have been unsuccessful. Islands Trust has continually stated any land alteration what so ever in this 180m zone requires a new development permit, this making it completely uneconomic to farm. DILTC has never issued a permit to farm. This is still the situation now but I am hoping it will end soon.

ALC is very familiar with this case, ALC states part of Komass Bluff DPA is contrary to ALC legislation. ALC has not taken any part of the litigation and have in fact repassed this bylaw under a promise DILTC will properly map the areas. ALC has let this unkept promise lapse since 2009. ALC is fully aware DILTC has no intention of defining hazard boundaries (which would remove my land from the DPA). These cases have been very expensive for me. I am hoping with the adoption of the **Denman farm Plan**, DILTC will not use this land to further other agendas rather than agriculture <sup>pg 69</sup>. The **Denman Farm Plan** map also shows my property to not be in erosive soils <sup>pg 91</sup>. I am also hoping ALC and AGRI become successful in applying provincial legislation as they have stated for some time now.

Farm Plan <http://www.islandstrust.bc.ca/ltc/de/pdf/defarmplanfinalnov152012.pdf>

**1. January 2008, Erik Karlsen, chair ALC, to Bill Huot, Ministry of Community Affairs,**

*"in particular DPA 1 Komass Bluffs and DPA 4 ...the Commission's position has changed and it now has concerns relating to these provisions, similar to those outlined in a letter dated 12 December 2006"* (do not have)

*"In this light the Commission is no longer able to condone the DPA provisions and considers that they may be contrary in whole or in part to the spirit of the Commission's legislation and inconsistent, of no force and effect".*

**2. August 2008, ALC Staff Summary Report- Planning Issues<sup>1.107 1.99</sup>**

*"Similar concerns to those expressed previously remain –That the extent of the DPAs can be justified having regard to their purpose"*

*"In respect of the Komass Bluff and Steep Slopes DPA this would involve justification from a geotechnical perspective for the extent of the areas included in the DPAs".* Same as 4064 appeal courts asked for

**3. December 2009, Bert Van Dalfsen, AGRI to Chris Jackson, Islands Trust<sup>1.117</sup>**

*"Likewise without details of the criteria that determined the boundaries of the Komass Bluff (DPA 1) it is difficult to assess the implications on agriculture of that DPA".<sup>206 132</sup>*

**4. March 2009, Chris Jackson, Island Trust to Rodger Cheetham, ALC and Bert Van Dalfsen, AGRI,**

Concerns in regard to Denman Bylaws 185 and 186 Chris Jackson states:

- *mapping - hazard area is being extended to Denman in the 2009/2010 timeframe,*
- *Hazard Area Mapping is a component of the second phase of the OCP/LUB review, work expected completed by 2009*



- The above mapping products are essential before re-establishing DPA Boundaries Staff commits to recommending to the DILTC to review and rewrite guidelines for the DPA's to bring them into compliance with RAR regulations and to address concerns raised by AGRI and ALC.
- We understand in exchange for Islands Trust Staff commitments listed above, the ALC and AGRI will advise their respective officials to remove objections to bylaw 185 and advise Bill Hout to forward bylaws for approval as soon as possible <sup>142</sup>

**5. May 2009, ALC Staff Summary Report, Planning Issues,**

*"priority be given to raise issues resolving the issues relating to Komasa Bluff DPA"* <sup>139 1.107</sup>

**6. May 2009, Eric Karlsen, Chair , ALC to Linda Adams, Islands Trust, New Denman Island Official Plan and Land Use Bylaw**

*" documents recently provided to the Commission and to Jill Hatfield of the Ministry of Agriculture by Dean Ellis that call into question the delineation of the Komasa Bluff DPA. ...consideration be given to prioritizing the work relating to this DPA"* <sup>1.108 137</sup>

**7. October 09, Eric Karlsen, chair ALC to L. Pierce, Komasa Bluff DPA: Dan and Deb Stoneman,**

*"Specifically with regard to the Komasa Bluff DPA the Trust has indicated its willingness to review the boundaries of the DPA in the context of hazard area mapping to be undertaken by the Trust over the next year. Further it has agreed to review sections of the DPA .....having regard to the purpose of the DPA."* <sup>400</sup>

**8. Rodger Cheetham to MacFraser, Director, Local Planning Services, Nov 2009** <sup>149</sup>

*"With regard to the Hazard Mapping we had expectations that the work would have progressed and now understand that it will only be getting under way in February of next year with an anticipated completion date in early 2011. As you are aware the Commission is particularly anxious to see a resolution of the issues relating to the Komasa Bluff DPA for which the hazard mapping is critical."*

**9. Feb 2010 Bert Van Dalfsen to Dan Stoneman, cc'd to R. Cheetham, ALR. Bill Huot, Ministry of Community affairs, Jill Hatfield, AGRI ,**

*" the Ministry has requested the Islands Trust to carry out additional work to refine their hazardous area mapping particularly for Komasa Bluffs", The Islands Trust is being asked to better define these areas AGRI still not clear on the map and area*

**10. April 2010, Eric Karlsen to Mac Fraser, Islands Trust,**

*"provide an update in particular with regard to the Komasa Bluff DPA"* , cc'd to all participants

**11. November 2011, Wes Shoemaker, Deputy Minister AGRI to Dan Stoneman,**

*"In 2008/09 AGRI staff , together with ALC received a commitment from DILTC to review the mapping of the Komasa Bluff DP boundaries. I am advised that the DILTC has not met their timeframes for reviewing the mapping of the Komasa Bluff DPA boundaries."* <sup>212a</sup>

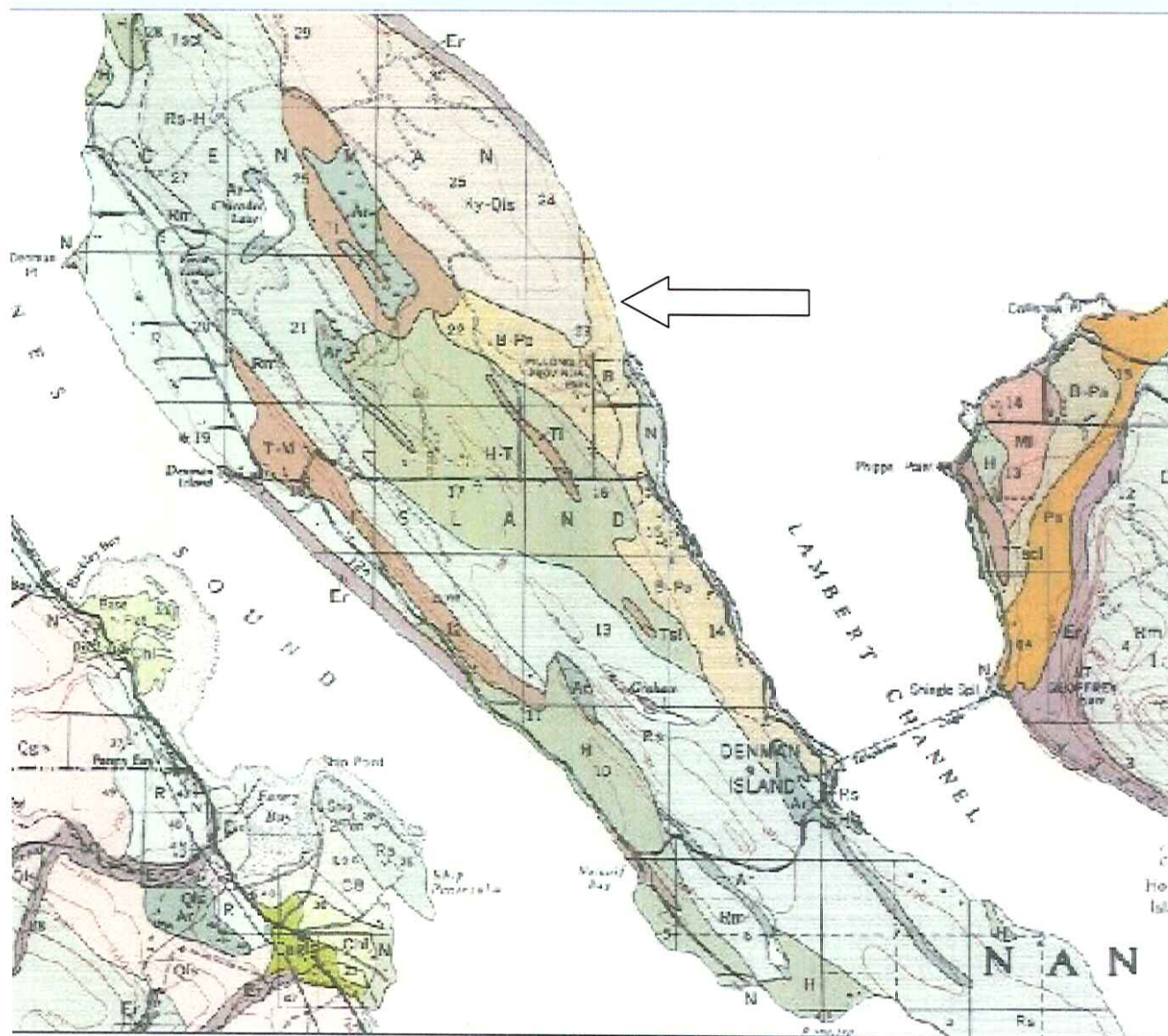
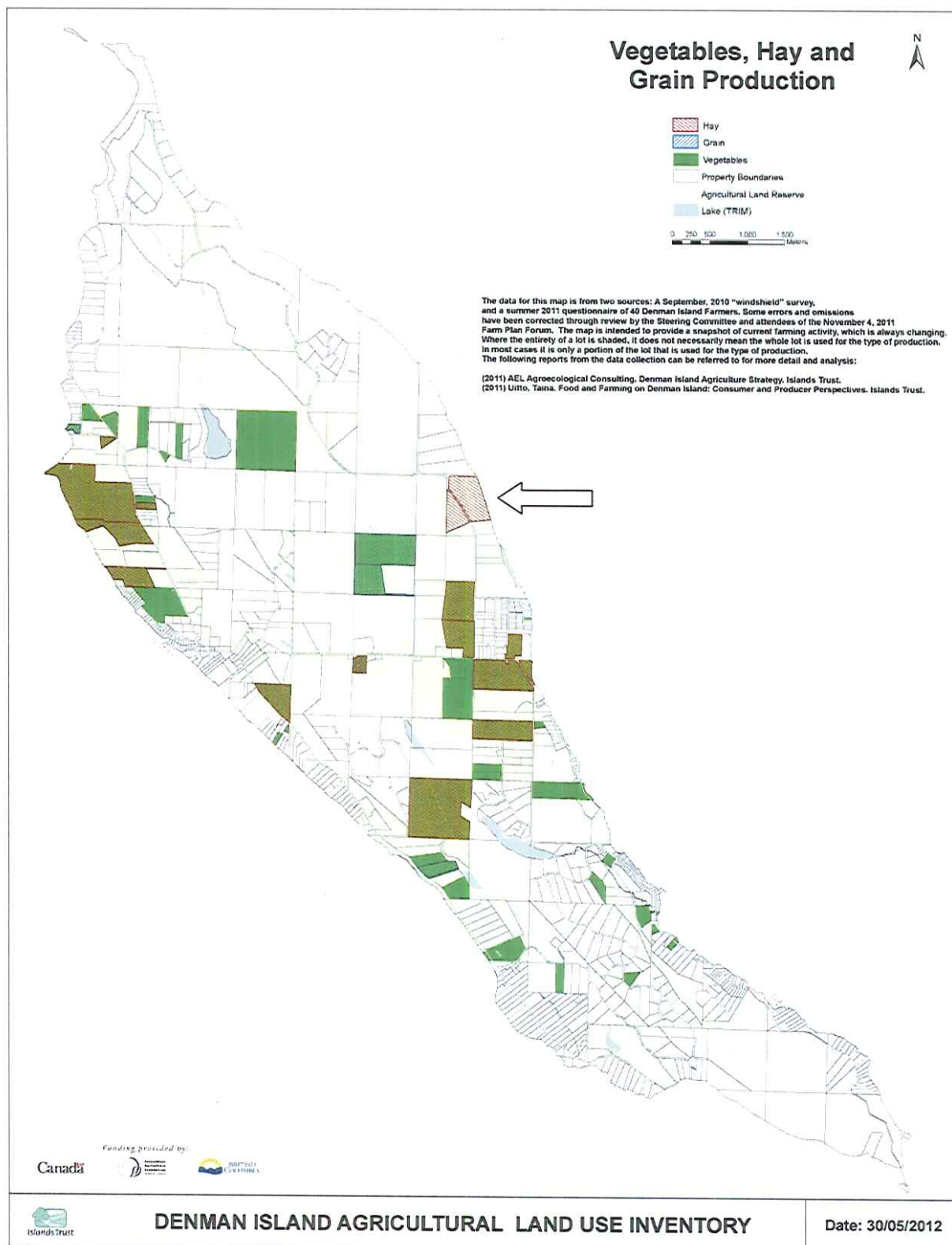


FIGURE 4. SOIL SERIES MAP OF DENMAN ISLAND (DAY ET AL, 1959)

Legend - Soil Series	
Code	Soil Series
Ar	Ar - Arrowsmith
E	E - Bowser
Er	Er - Eroded Land
H	H - Haslam
Ky	Ky - Rye
M	M - Merville
N	N - Nepture
Pa	Pa - Parkville
Q	Q - Qualicum
R	R - Royston
Rm	Rm - Rough Mountainous Land
Rs	Rs - Rough Stony Land
T	T - Talmie





4  
PLAN VP53299

RADCLIFFE ROAD

22' 362.675

105.0m

125.0m

128.5m

WELL

NORTH DISPOSAL FIELD

ENVIRONMENTAL HEALTH  
RECEIVED  
OCT 11 2005

PRESENT NATURAL BOUNDARY

LAMBERT CHANNEL

3% GRADE

SWAN ROAD

141' 288.475  
45' 287.525  
55' 22.153  
22.153

W 1/2  
NW 1/4

SEC 23

00' 25' 00' 259.810  
334.481

146' 284.708  
116' 242.865  
160.1m

WELL

SOUTH DISPOSAL FIELD

133.1m

117.5m

260.255  
83' 17' 30'

Pt A

Pt A

PLAN VP74719

40' (SEE PLAN VP53299)


344.485  
00' 00'

PROFESSIONAL  
PROVINCE OF  
S. M. CARBALLERA  
#27395  
BRITISH COLUMBIA  
GEO SCIENTIST

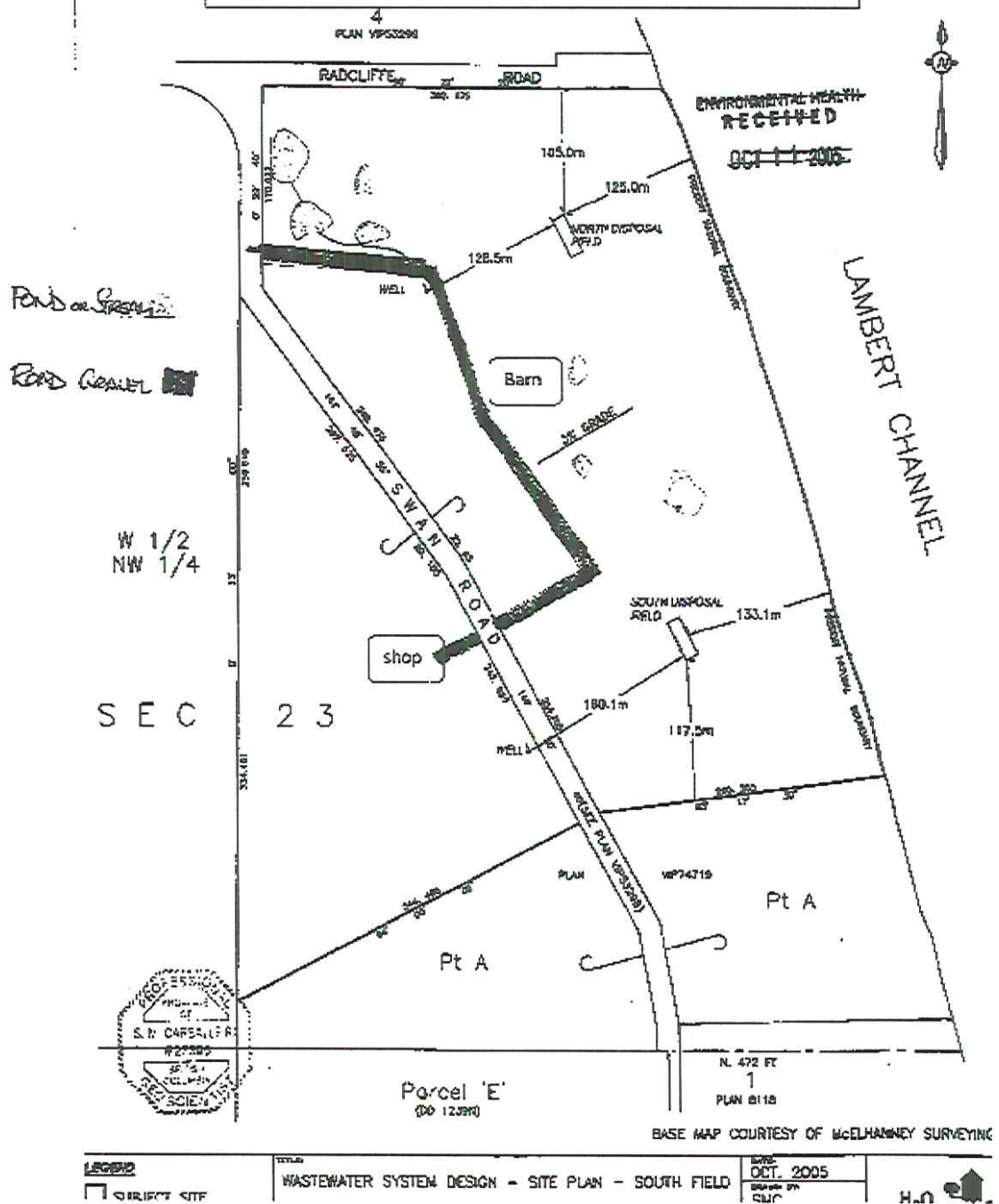
Parcel 'E'  
(DO 1239N)

N. 472 FT  
1  
PLAN 8118

BASE MAP COURTESY OF McELHANNEY SURVEYING

<b>LEGEND</b> <input type="checkbox"/> SUBJECT SITE	<b>TITLE</b> WASTEWATER SYSTEM DESIGN - SITE PLAN - SOUTH FIELD	<b>DATE</b> OCT. 2005	 <b>ENVIRONMENTAL</b> <small>STUDIOS</small>
	<b>PROJECT</b> WASTEWATER ENGINEERING SERVICES LOT B, SEC 23, PL VIP74719, DENMAN IS., NANAIMO LD ELLIS PROPERTY	<b>DRAWN BY</b> SMC	
		<b>SCALE</b> AS SHOWN	
		<b>PROJECT NO.</b> 05-44	
		<b>FILE NAME</b>	<b>DRAWING NO.</b> FIGURE_1

# Current Use of Land





**Local Government Report**  
**under the Agricultural Land Reserve**  
**Use, Subdivision and Procedure Regulation**

RECEIVED  
PROV. AGRICULTURAL LAND COMMISSION  
AUG 14 2013

R.D./Mun. File No. DE-ALR-2013.2 (Ellis)

Fee Receipt No. 2473

Fee Amount \$600

ALR Base Map No.

ALR Constituent Map No.

Air Photo No.

Information supplied by:

Denman Island Local Trust Committee (Islands Trust)

Local Government

In respect of the application of:

Francis Dean Ellis

Name of Applicant

**PLANS and BYLAWS** *(Attach relevant sections of bylaws)*

Community Plan or Rural Land Use Bylaw name and designation: Denman Island Official Community Plan Bylaw No. 185, 2008; Sustainable Resources designation

Zoning Bylaw name and designation: Denman Island Land Use Bylaw No. 186, 2008; Agriculture zone

Minimum Lot Size: 15.0 ha

Uses permitted: Residential, agriculture, horticulture, forest fubgi production, forestry, parks, utilities. See bylaw for accessory uses.

Are amendments to Plans or Bylaws required for the proposal to proceed?

Plan ☐ Yes

☒ No

Bylaw ☐ Yes

☒ No

Is authorization under Sec. 25 (3) or 30 (4) of the Agricultural Land Commission Act required?

☐ Yes *(If yes, please attach resolution or documentation)*

☒ No

**COMMENTS AND RECOMMENDATIONS** *(Include copies of resolutions)*

Board or Council:

Resolution Number DE-038-2013 passed at the July 16, 2013 Denman Island Local Trust Committee Business meeting

It was MOVED and SECONDED,

That the Denman Island Local Trust Committee instruct staff to forward this application, DE-ALR-2013.2 (Ellis), to the Agricultural Land Commission. - CARRIED

Advisory Planning Commission: N/A

Agriculture Advisory Committee: N/A

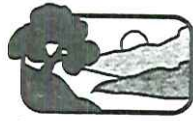
Planning staff: See attached application and staff report

Others: N/A

  
Signature of Responsible Local Government Officer

July 30/13  
Date





Islands Trust .

RECEIVED  
PROV. AGRICULTURAL  
LAND COMMISSION AUG 14 2013

# STAFF REPORT

**Date:** June 11, 2013

**File No.:** DE-ALR-2013.1 (Francis  
Dean Ellis)

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

**From:** Linda Prowse, Planner

**CC:** Rob Milne, Island Planner

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**Re:** Agricultural Land Reserve Application for Subdivision

**Owner:** Francis Dean Ellis

**Applicant:** Same as owner

**Location:** 2626 Swan Road, Denman Island, BC

Lot B, Section 23, Denman Island, Nanaimo District, Plan VIP74719  
PID 025-563-254

## 1. THE PROPOSAL:

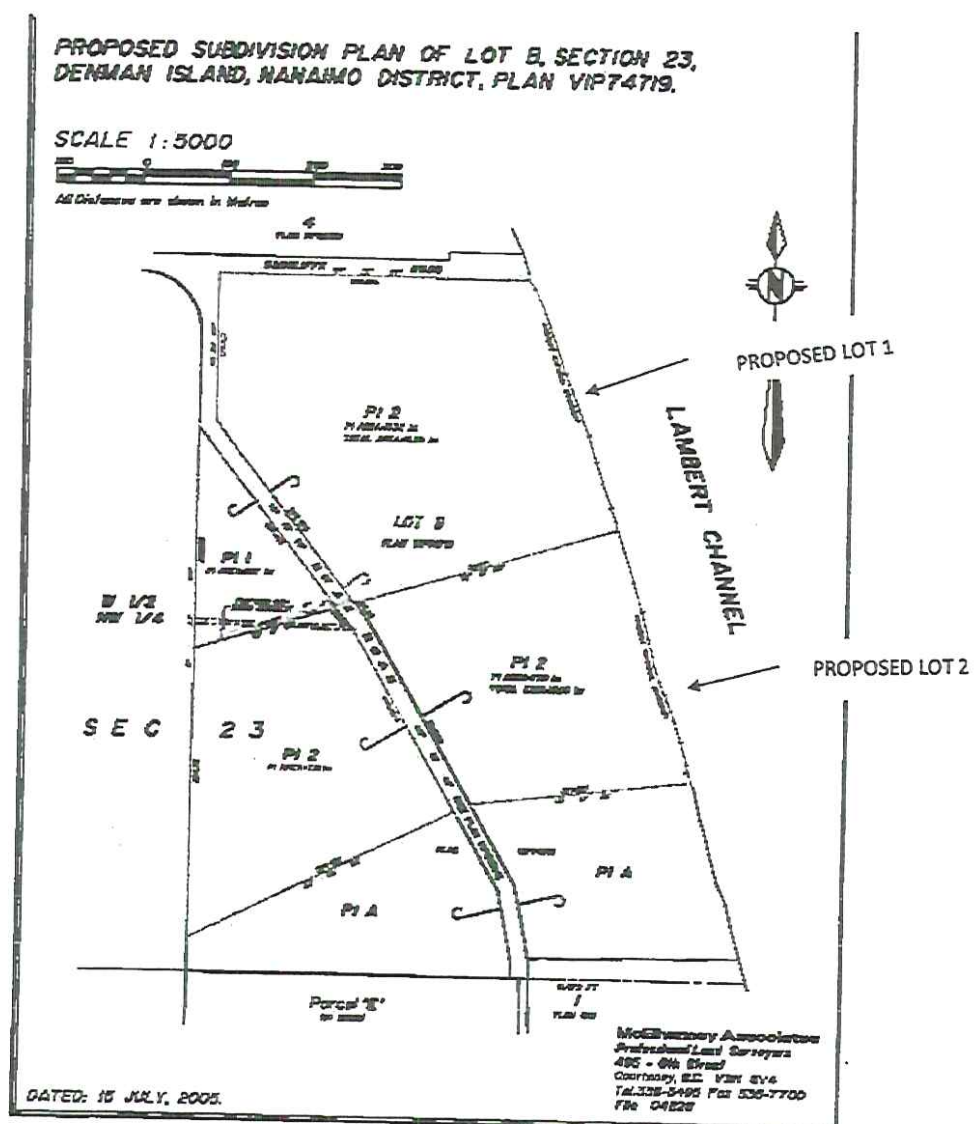
The applicant seeks the approval of the Agricultural Land Commission (ALC) for the subdivision of an approximately 31 ha (76.5 acre) parcel into two lots of 15.5 ha (38.3 acres) under Section 21, 25, 34 of the *Agricultural Land Commission Act* (see Attachment 1 for ALC application).

The subject property is in the Agricultural Land Reserve (ALR) and subdivision requires Agricultural Land Commission (ALC) approval. The Denman Island Local Trust Committee (LTC) has the discretion to decide whether or not to forward this application to the ALC. The LTC must pass a resolution to forward this application to the ALC for it to proceed. The LTC can forward the application with or without additional comments or resolve that the application proceed no further, which is a denial of the proposal.

If this ALR application is successful, the applicants may apply to the Ministry of Transportation and Infrastructure for subdivision. Islands Trust planning staff would receive a referral, and at that stage a more detailed, technical analysis of the specific lot configuration of the subdivision would be completed by staff. For this ALR application, the subdivision proposal should be considered at a conceptual level.

See below for subject property location and proposed subdivision plan.

# LAND UNDER APPLICATION



## **SITE CONTEXT**

The subject property is approximately 31 ha in size, and is a "hooked lot" with Swan Road running through it. According to the applicant's application, the following are located on the property:

- 1000 square foot barn,
- 400 square foot equipment storage/shop
- 40 foot trailer,
- Hay field
- Gravel road
- A stream traverses the property and there are several ponds

Uses on lots adjacent to the subject property include:

- 40 acre hobby farm the North;
- Ocean to the East
- 23 acre hobby farm to the South; and
- 60 acre Christmas tree farm to the West.

## **2. CURRENT PLANNING STATUS OF SUBJECT LANDS:**

### **2.1 Trust Policy Statement:**

This proposal is not at variance with the Trust Policy Statement. Relevant policies include:

- 4.1.4 Local trust committees....shall, in their official community plans and regulatory bylaws, address the identification and preservation of agricultural land for current and future use.
- 4.1.5 Local trust committees...shall, in their official community plans and regulatory bylaws, address the preservation, protection, and encouragement of farming, the sustainability of farming, and the relationship of farming to other land uses.
- 4.1.6 Local trust committees...shall, in their official community plans and regulatory bylaws, address the use of adjacent properties to minimize any adverse affects on agricultural lands.
- 4.1.8 Local trust committees...shall, in their official community plans and regulatory bylaws, address land uses and activities that support the economic viability of farms without compromising the agriculture capability of agricultural land.

### **2.2 Denman Island Official Community Plan, 2008:**

The subject properties are in the **Sustainable Resources designation**.



#### E.4 – Resources

- Policy 1            In the Sustainable Resource designation:
- the principal uses should be agriculture and silviculture; and
  - zoning regulations may permit small-scale local value-added wood working industries and the development of non-timber forest products on land with silviculture as a principal use.
- Policy 7            The Local Trust Committee should only support an application for non-farm use or subdivision on land in the Agricultural Land Reserve if the proposed non-farm use or subdivision is consistent with zoning regulations and either:
- allows an activity that supplements the farm income and does not decrease the farming capability of the property; or
  - protects the land for conservation purposes.
- Policy 9            The area designated Sustainable Resource in this Plan are designated to ensure that land uses involving renewable resources are sustainable and compatible with the small-scale rural character of the Island. The objectives of the designation of this area as an area within which development approval information may be required, include protecting the Agricultural Land Reserve; encouraging diverse agricultural activities; promoting employment through agricultural activities that have minimal negative environmental impact; promoting local employment through sustainable, ecologically sensitive silviculture; and fostering sustainable use of resources. Development approval information may be required to help the Local Trust Committee to determine appropriate uses, density and siting of development in the Sustainable Resource designation.

#### Development Permit Areas:

A portion of the subject property is within the Komas Bluff development permit area, Development Permit Area No. 1. Should this application achieve the appropriate approval from the ALC, a development permit application showing how the proposal meets the DP Area No. 1 Guidelines would be required at the time of subdivision.

A portion of the subject property (Danes Creek Headwaters) is within the Streams, Lakes and Wetlands development permit area, Development Permit Area No. 4. Should this application achieve the appropriate approval from the ALC, a development permit application would NOT be required for subdivision within Development Permit Area No. 4, as approval of a development permit is not a requirement for subdivision.

#### 2.3 Denman Island Land Use Bylaw, 2008:

The subject properties are in the **Agriculture (A) zone**.

The minimum lot area permitted by subdivision in this zone is 15.0 hectares.

The proposal would meet the minimum lot area permitted by subdivision in this zone.

#### 2.4 Sensitive Ecosystems and Hazard Areas:

There are no sensitive ecosystems mapped for this property. Hazard areas mapped include the Komas Bluff area.

#### 2.5 Archeological Sites:

There are no recorded archaeological sites on or within 50 metres of the subject property.

#### 2.6 Covenants:

There are no covenants registered on the subject property.

#### 2.7 Riparian Areas Regulation Designated Watershed

A portion of the subject property is within a designated Riparian Areas Regulation watershed. Should this proposal be forwarded to the Agricultural Land Commission and approved, a subdivision application would trigger the Riparian Areas Regulation, and the applicant would be required to retain a qualified environmental professional to prepare a riparian area assessment report.

#### 2.8 Denman Island Farm Plan

The *Denman Island Farm Plan* was initiated to enhance and preserve farming in the region and work towards increased farm production that is both sustainable and resilient. The Farm Plan is not a bylaw, but is meant to guide the Local Trust Committee when deciding on possible Official Community Plan/ Land Use Bylaw amendments to enhance farming on Denman Island.

The Farm Plan excerpt below gives specific soil information on the eastern part of Denman, including the Swan Road area where the subject property is located.

Location	Soil Type	Soil Series	Soil Texture	Topography	Drainage	Notes
Eastern part of the island, along Swan Rd., East Rd., Corrigan Rd., Jemima Rd., and Beaver Rd. Found mixed with Parksville Soils.	Brown Podzol*	**Bowser (B)	Loamy sand	Gently sloping	Imperfectly drained.	Coarse marine sediments underlain by glacial till or marine clay, stone-free.

\*Podzols: Podzols are found in forested areas on sandy glacio-fluvial deposits with high levels of annual precipitation. Typically they occur under coniferous, mixed, and deciduous forest vegetation, but may also occur under shrub and grass vegetation (AAFC, 1998). Brown Podzolic soils are characterized by a top layer that is 1 to 2 inches thick of dark grayish brown to nearly black moderately well-decomposed organic litter. The B horizon is yellowish-brown to strong brown and the color fades with depth. The parent materials are medium to medium high in base-saturation but non-calcareous. These soils are distributed over the area south of Campbell River exclusive of the Alberni Basin. The vegetation is second



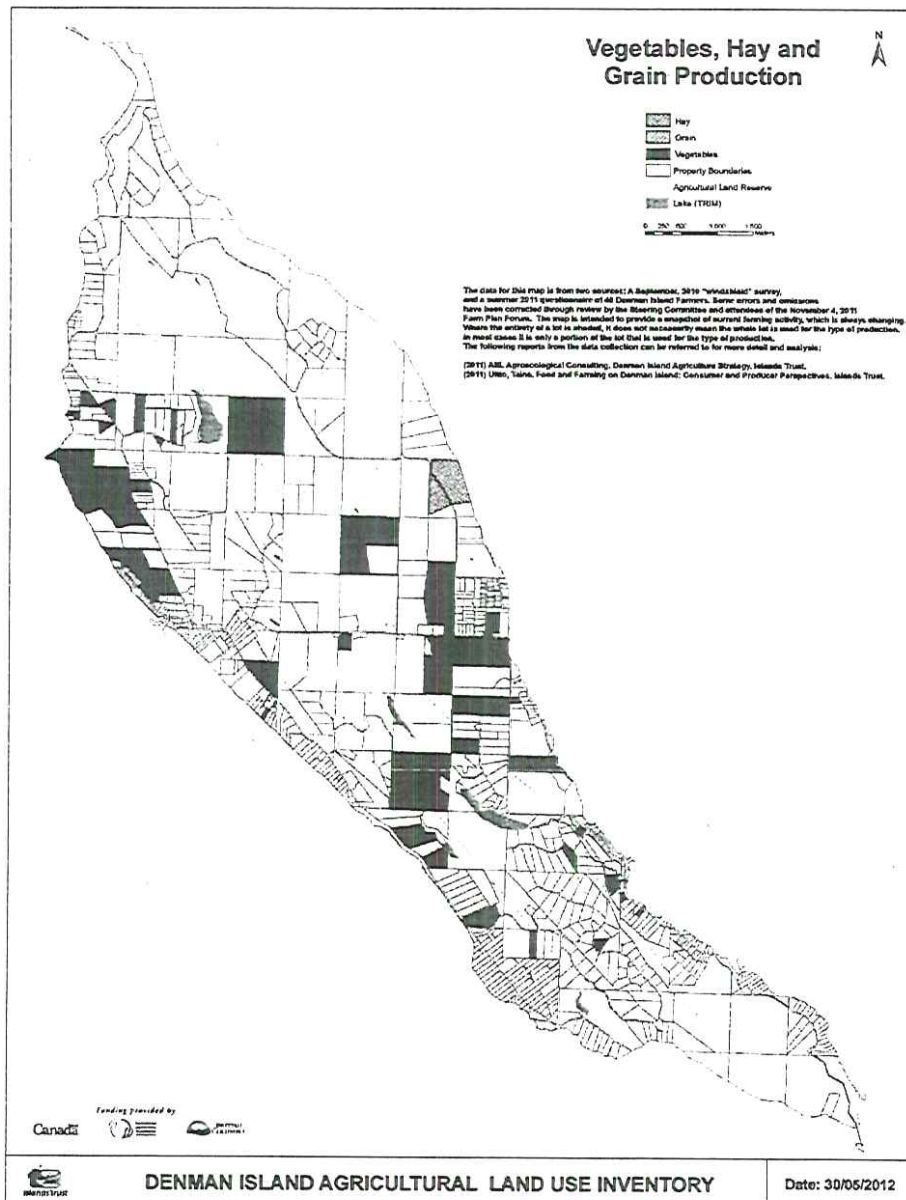
growth fir, hemlock, maple and red cedar. At one time there were many large fir and hemlock trees which provided excellent lumber.

**\*\*Bowser Soil Series** (Description is adapted from Day et al. (1959), Kenk and Sondeim (1987), and Keser and St. Pierre (1979)).

Only a small percentage of this soil is cultivated and it is used mainly for hay and pasture. Seepage water maintains the subsoil in a moist condition throughout most of the year. The moisture-holding capacity is moderately low, total phosphorus is low and the exchange complex is quite unsaturated. Generally Bowser soils are moderately suited for agriculture. On Denman Island Bowser soils are found in conjunction with Tolmie soils, which elevates their agricultural capability.

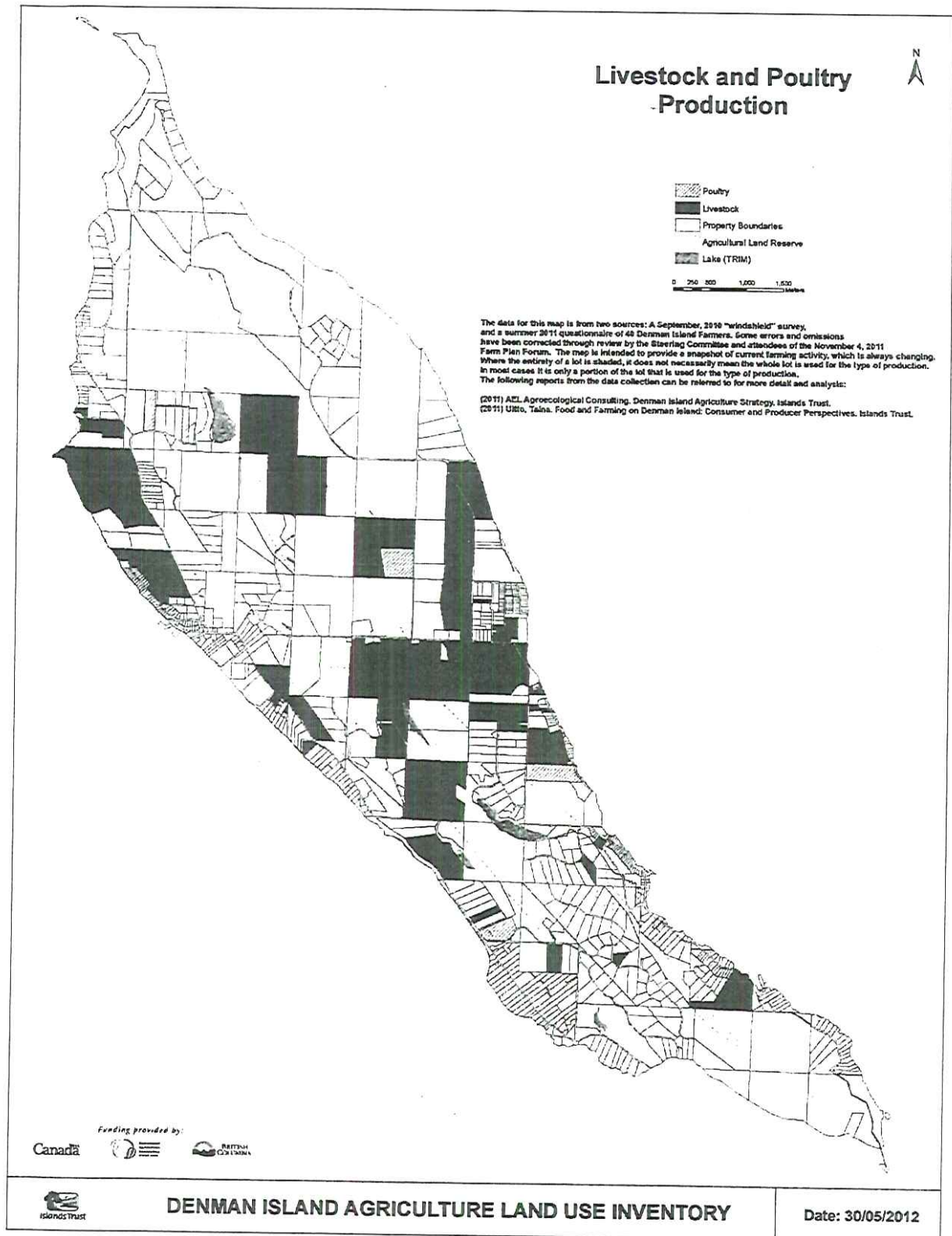
The two maps below are also excerpts from the Denman Farm Plan

#### Map 1 - Vegetables, Hay and Grain Production





Map 2 – Livestock and Poultry Production



#### 4. RESULTS OF CIRCULATION/COMMUNITY INFORMATION MEETING(S):

No public notice or community information meeting is required for an application to subdivide within the ALR.

#### 5. ISSUES SUMMARY:

- a) Conformity with land use designations and zoning
- b) Conformity with Official Community Plan agriculture policies
- c) Reduce negative impacts on Agriculture
- d) Conformity with the Provincial Riparian Areas Regulation

#### 6. STAFF COMMENTS:

##### a) **Conformity with land use designations and zoning:**

The proposed subdivision conforms to the land use designations and zoning. If the ALC approves this application, the applicant would be required to apply for subdivision with the Ministry of Transportation and Infrastructure, and the Islands Trust planning staff would receive a referral for comment on conformity with the LTC bylaws. The applicant would also be required to apply to the Denman Island Local Trust Committee for a Development Permit under Development Permit Area No. 1: Komas Bluff. .

##### b) **Conformity with Official Community Plan goals, objectives and policies:**

Policy 7 of OCP Section E.4 [Resources] states that subdivision in the ALR should only be supported if it allows an activity that supplements the farm income and does not decrease the farming capability of the property, or protects land for conservation purposes.

Supplementing farm income: The applicant has indicated that he wishes to continue using the northern portion of the lot as a hay producing operation, and that the southern portion of the lot could perhaps be utilized by a farmer for perhaps a small orchard, berry crops, poultry farming or market gardening.

The applicant has not submitted a farm plan with his application to indicate how subdividing the property would supplement farm income.

Large lots facilitating agricultural use: The OCP clearly indicates that the primary land use in the Sustainable Resources designation is to be agriculture and silvaculture, and that parcel sizes should be large to facilitate this use. There is a residential land use designation in other parts of the island. Clearly these separate designations provide a vision for large lots facilitating agricultural use in the Sustainable Resources designation, and smaller lots for primarily residential use are to be located in other areas.

Conservation: Part of Policy 7 in OCP section E.4 supports subdivision if the subdivision protects land for conservation, and that is not relevant in this case.

- c) **Impact on agriculture:** This property is currently being farmed for hay production and the applicant mentions that he wishes to keep the northern portion of the current lot to farm hay. In terms of whether the subdivision would decrease the farming capability of the property, the application does not provide enough information to judge this. The smaller lot sizes could limit the viability of the property as a farm into the future, or the approximately 15 ha size of each proposed lot may be a suitable farm size for Denman Island depending on the type of agriculture practiced. Islands Trust staff cannot make this assessment, and the Agricultural Land Commission will consider the impact of subdivision on farming capability, should the Local Trust Committee choose to forward this application.
- d) **Conformity with the Provincial Riparian Areas Regulation:** If the ALC approves the application for subdivision in the ALR and the Islands Trust receives a subdivision referral from the Ministry of Transportation and Infrastructure, part of the subdivision approval process would include the applicant obtaining an assessment from a Qualified Environmental Professional to determine possible impacts of subdivision and how they apply to the Riparian Areas Regulation.

With the information provided, there is no description of plans to undertake activities to supplement farm income and in the opinion of staff, there is not enough information to say that the proposal complies with OCP policy

## **7. SUMMARY OF OPTIONS:**

The LTC has several options:

- Defer consideration of this application;
- Refer this application to the Advisory Planning Commission;
- Pass a resolution to not forward this application to the ALC;
- Pass a resolution to forward this application to the ALC; or
- Pass a resolution to forward this application to the ALC with comment.

## **8. RECOMMENDATION:**

THAT the Denman Island Local Trust Committee instruct staff to forward this application DE-ALR-2013.2 (Ellis) to the Agricultural Land Commission.

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Respectfully submitted by:



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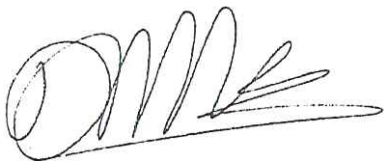
Linda Prowse, Planner

June 18, 2013

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Date of signature

Concurred in by:



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David Marlor, Director of Local Planning

*June 20, 2013*

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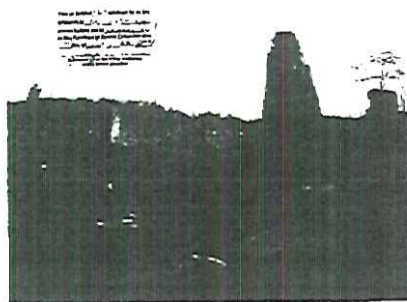
Date of signature

**Attachments:**

1. Application by Land Owner for Subdivision in the ALR

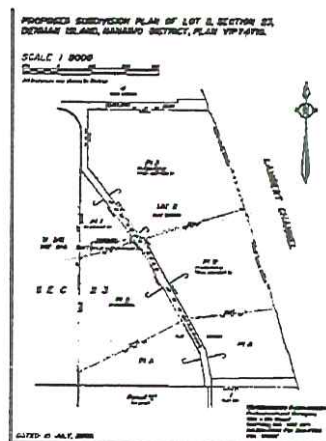
## HISTORY

I purchased the land after it had been clearcut in 2002. During the next 3 years I cleared the land and planted hay. This is before and after. The land is in the Komasa Bluff DP areas 111



In 2005 I wished to subdivide off 40 acres and to keep the north half to farm. I was stopped by litigation and liens from Islands trust. DILTC said I needed a geotek report to sign off on subdivision (I had produced 4 geotechnical reports and all were denied.) Now as a result of the Denman Island Farm Plan that has maps that show my property may not be in the DP area and the change of the former DILTC position that ALR lands should be preserved as forest or parkland, I am applying for subdivision. Also the court ordered a geotechnical report from Thurber Engineering, it stated once the Highways ditches were rerouted off my property, the land was now stable. This was agreed upon by all parties by consent order in 2009.

Denman Farm Plan <http://www.islandstrust.bc.ca/lrc/de/pdf/defarmplanfinalnov152012.pdf>

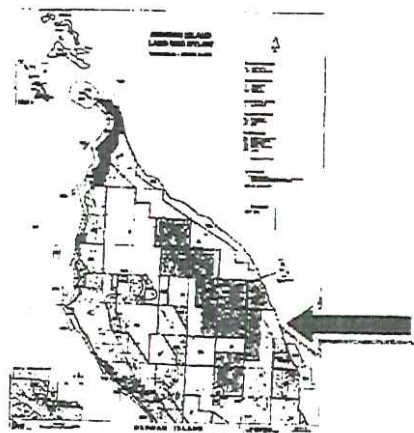


. In 2005 I had put in 2 approved septic fields and had McElhaney do a proposed subdivision proposal.

## Denman Islands Trust Zoning

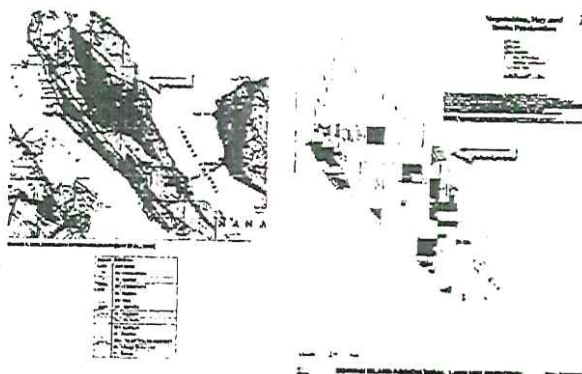
The land is 31 ha is in Agriculture and can be subdivided into 15 ha parcels.

Denman Land Use Bylaws page 26 Resource Zone Agriculture A 1 Minimum lot area permitted by subdivision, subject to the regulations in Section 2.8 15 ha



## SOILS and THE DENMAN ISLAND FARM PLAN

The soils are class 4 and 5, towards the water side of the property on the bluff plateau there is a 100m strip of loamy soil no doubt carried down the slope as sediment, that if drained can be productive. The rest of the soils on the property are gravelly and not very productive. The recent Farm plan identifies my soils and that the land is in hay production.



Application so Subdivide, 2626 Swan Road, Denman Island

Page 2



### Reasons to subdivide 31 ha to 2- 15.5 parcels as per zoning

- My intentions to subdivide (as shown by subdivision plan and septic fields) were before ALC disapproved of subdivision.
- The existing road network on the land services both pieces.
- The nature of the land would lend itself to more intensive localized use in the small front area rather than the very marginal hay usage on the not very productive gravelly soils above.
- Because this is an island with high transportation costs, smaller ALR parcels are more likely to attract farmers willing to in fact subsidize a small farm operation, a hobby along simply to enjoy a rural island lifestyle and produce food. The large ALR plots on Denman are all left dormant.
- Today the serious income dependent farmer simply isn't interested with ferry fares, ferry line-ups and off island machinery maintenance. It simply isn't economically feasible as there is more cost efficient cheaper ALR land elsewhere closer to markets and supplies. Lack of labour and costs of labour seriously constrain larger farms.
- On a large scale deer fencing becomes an expensive and difficult issue.
- The land is best suited for small scale orchard, berry crops, poultry farming or market gardening that can be sold locally.
- The Denman Farm Plan shows the only economic farms are the smaller localized ones
- 40 acres is still a very large farming parcel on Denman.
- In recent litigation 2 Judges have stated my land has subdivision potential.

#### *Judge Curtis states Stoneman v. Denman Island Local Trust Committee Page 6*

[7] "Development Permit Area No. 1: Komos Bluff

##### *Category:*

The area indicated on Schedule "E" as Development Permit Area No 1: Komos Bluff is designated a development permit area according to Section 879(1)(b) of the Municipal Act for the protection of development from hazardous conditions.

##### *Area:*

Development Permit Area No. 1: Komos Bluff shown on Schedule "E"

##### *Justification:*

In 1980 the Resource Analysis Branch of the Ministry of Environment conducted a reconnaissance study and identified bank instability in the area referred to as the Komos Bluff. Sloughing was confirmed by detailed site inspection. The majority of the area was classified as active or inactive, with relatively little classified as stable. Past logging and road construction have already demonstrated that this area is prone to landslides and other forms of erosion. The area has subdivision potential.

#### *Judge Saunders states Denman Island Local Trust Committee v. Ellis, 2007 BCCA 536*

[43] The purpose of ss. 919.1 and 920 of the Act is to empower local authorities to designate development permit areas to further particular objectives, including the protection of development from hazardous conditions. The inclusion of subdivision and alteration of land as activities that require permits indicates that one purpose of the power to designate permit areas is to protect development potential, and that a local authority may consider how any alteration of land may affect development potential. Thus, the term "development" in s. 919.1(1)(b) should be interpreted as including future development.

## RECENT LITIGATION

Islands Trust contends that my land is in the Komass Bluff Development Permit Area and has been the subject of 3 court cases all of which the DILTC has been successful in showing there is a 180m , forest top "buffer" zone where they can regulate farming. I have applied for 4 permits and provided 8 geotechnical reports to support of farming within 15m of the bluff. I have been unsuccessful. Islands Trust has continually stated any land alteration what so ever in this 180m zone requires a new development permit, this making it completely uneconomic to farm. DILTC has never issued a permit to farm. This is still the situation now but I am hoping it will end soon.

ALC is very familiar with this case, ALC states part of Komass Bluff DPA is contrary to ALC legislation. ALC has not taken any part of the litigation and have in fact repassed this bylaw under a promise DILTC will properly map the areas. ALC has let this unkept promise lapse since 2009. ALC is fully aware DILTC has no intention of defining hazard boundaries (which would remove my land from the DPA). These cases have been very expensive for me. I am hoping with the adoption of the Denman farm Plan, DILTC will not use this land to further other agendas rather than agriculture <sup>pg 69</sup>. The Denman Farm Plan map also shows my property to not be in erosive soils <sup>pg 91</sup>. I am also hoping ALC and AGRI become successful in applying provincial legislation as they have stated for some time now.

Farm Plan <http://www.islandstrust.bc.ca/itcd/de/pdf/defarmplanfinalnov152012.pdf>

1. January 2008, Erik Karlsen, chair ALC, to Bill Huot, Ministry of Community Affairs,

*"In particular DPA 1 Komass Bluffs and DPA 4 ...the Commission's position has changed and it now has concerns relating to these provisions, similar to those outlined in a letter dated 12 December 2006" (do not have)*

*"In this light the Commission is no longer able to condone the DPA provisions and considers that they may be contrary in whole or in part to the spirit of the Commission's legislation and inconsistent, of no force and effect".*

2. August 2008, ALC Staff Summary Report- Planning Issues <sup>1.107 1.99</sup>

*"Similar concerns to those expressed previously remain -That the extent of the DPAs can be justified having regard to their purpose"*

*"In respect of the Komass Bluff and Steep Slopes DPA this would involve justification from a geotechnical perspective for the extent of the areas included in the DPAs". Same as 4064 appeal courts asked for*

3. December 2009, Bert Van Dalfsen, AGRI to Chris Jackson, Islands Trust <sup>1.117</sup>

*"Likewise without details of the criteria that determined the boundaries of the Komass Bluff (DPA 1) it is difficult to assess the implications on agriculture of that DPA". <sup>206 132</sup>*

4. March 2009, Chris Jackson, Island Trust to Rodger Cheetham, ALC and Bert Van Dalfsen, AGRI,

Concerns in regard to Denman Bylaws 185 and 186 Chris Jackson states:

- mapping - hazard area is being extended to Denman in the 2009/2010 timeframe,
- Hazard Area Mapping is a component of the second phase of the OCP/LUB review, work expected completed by 2009

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Application so Subdivide, 2626 Swan Road, Denman Island

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- The above mapping products are essential before re-establishing DPA Boundaries. Staff commits to recommending to the DILTC to review and rewrite guidelines for the DPA's to bring them into compliance with RAR regulations and to address concerns raised by AGRI and ALC.
- We understand in exchange for Islands Trust Staff commitments listed above, the ALC and AGRI will advise their respective officials to remove objections to bylaw 185 and advise Bill Hout to forward bylaws for approval as soon as possible <sup>142</sup>

5. May 2009, ALC Staff Summary Report, Planning Issues,

"priority be given to raise issues resolving the issues relating to Komasa Bluff DPA" <sup>139 1.107</sup>

6. May 2009, Eric Karlsen, Chair, ALC to Linda Adams, Islands Trust, New Denman Island Official Plan and Land Use Bylaw

"documents recently provided to the Commission and to Jill Hatfield of the Ministry of Agriculture by Dean Ellis that call into question the delineation of the Komasa Bluff DPA. ...consideration be given to prioritizing the work relating to this DPA" <sup>1.108 137</sup>

7. October 09, Eric Karlsen, chair ALC to L. Pierce, Komasa Bluff DPA: Dan and Deb Stoneman,

"Specifically with regard to the Komasa Bluff DPA the Trust has indicated its willingness to review the boundaries of the DPA in the context of hazard area mapping to be undertaken by the Trust over the next year. Further it has agreed to review sections of the DPA .....having regard to the purpose of the DPA. <sup>140</sup>"

8. Rodger Cheetham to MacFraser, Director, Local Planning Services, Nov 2009<sup>140</sup>

"With regard to the Hazard Mapping we had expectations that the work would have progressed and now understand that it will only be getting under way in February of next year with an anticipated completion date in early 2011. As you are aware the Commission is particularly anxious to see a resolution of the issues relating to the Komasa Bluff DPA for which the hazard mapping is critical."

9. Feb 2010 Bert Van Dalfsen to Dan Stoneman, cc'd to R. Cheetham, ALR. Bill Huot, Ministry of Community affairs, Jill Hatfield, AGRI,

"the Ministry has requested the Islands Trust to carry out additional work to refine their hazardous area mapping particularly for Komasa Bluffs". The Islands Trust is being asked to better define these areas AGRI still not clear on the map and area

10. April 2010, Eric Karlsen to Mac Fraser, Islands Trust,

"provide an update in particular with regard to the Komasa Bluff DPA", cc'd to all participants

11. November 2011, Wes Shoemaker, Deputy Minister AGRI to Dan Stoneman,

"In 2008/09 AGRI staff, together with ALC received a commitment from DILTC to review the mapping of the Komasa Bluff DP boundaries. I am advised that the DILTC has not met their timeframes for reviewing the mapping of the Komasa Bluff DPA boundaries." <sup>212a</sup>



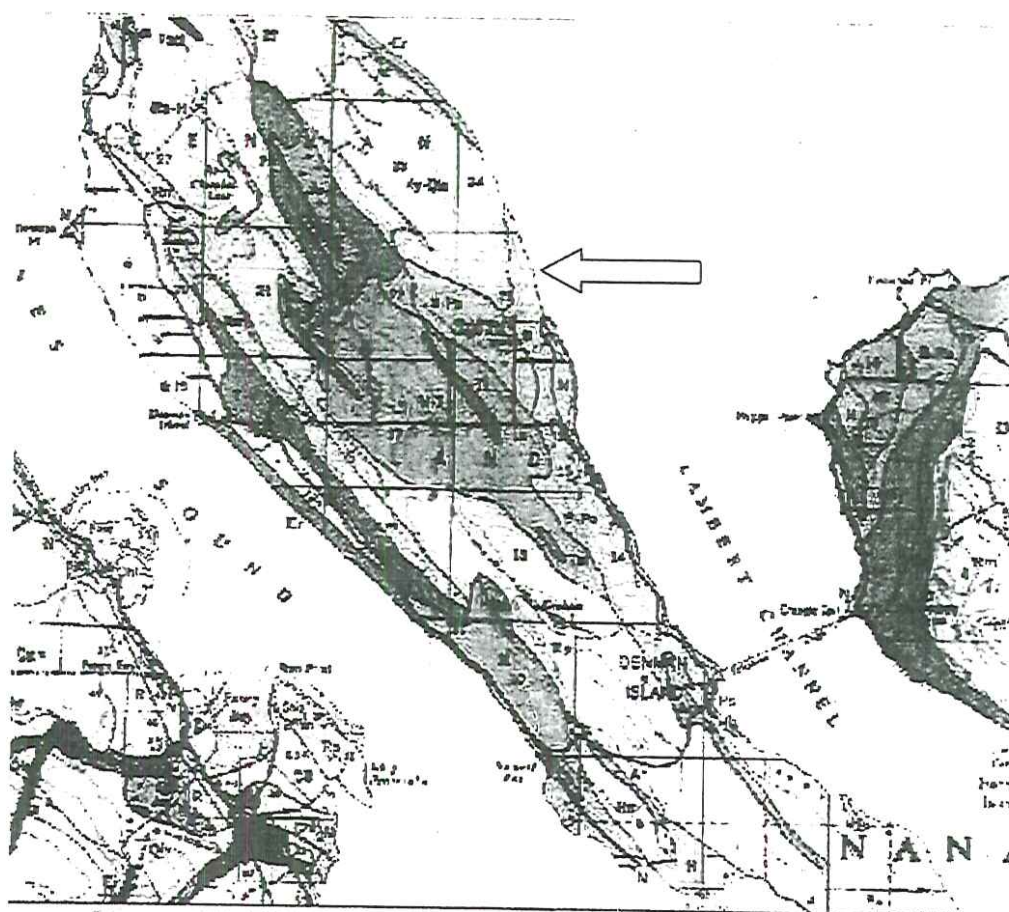
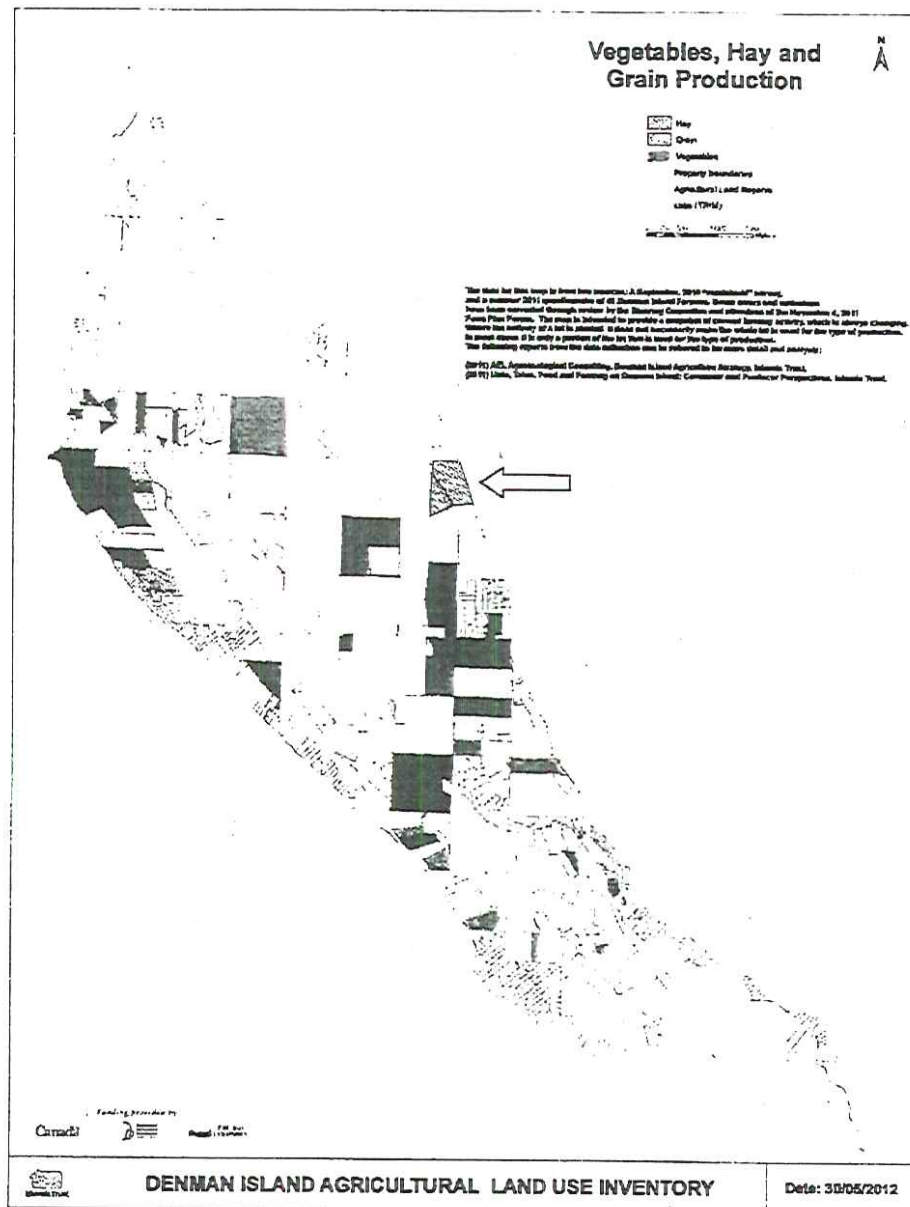
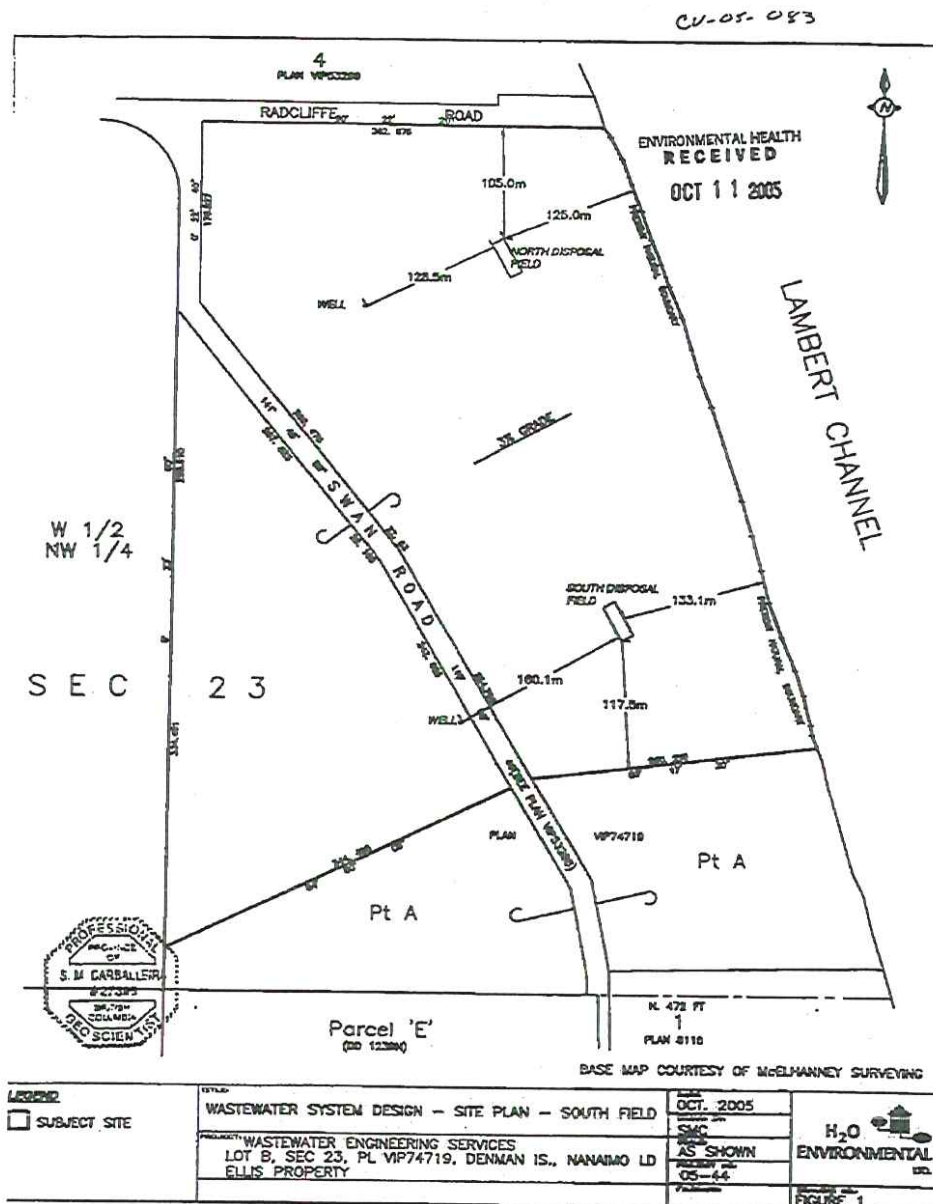


FIGURE 4. SOIL SERIES MAP OF DENMAN ISLAND (DAY ET AL., 1959)

Legend	Soil Series
Ar	Arrowsmith
B	Bowser
Er	Eroded Land
H	Hastara
Ky	Kye
M	Merville
N	Nesture
Pz	Parkville
Q	Qualicum
R	Royston
Rm	Rough Mountainous Land
S	Smooth Stony Land
T	Tobruk



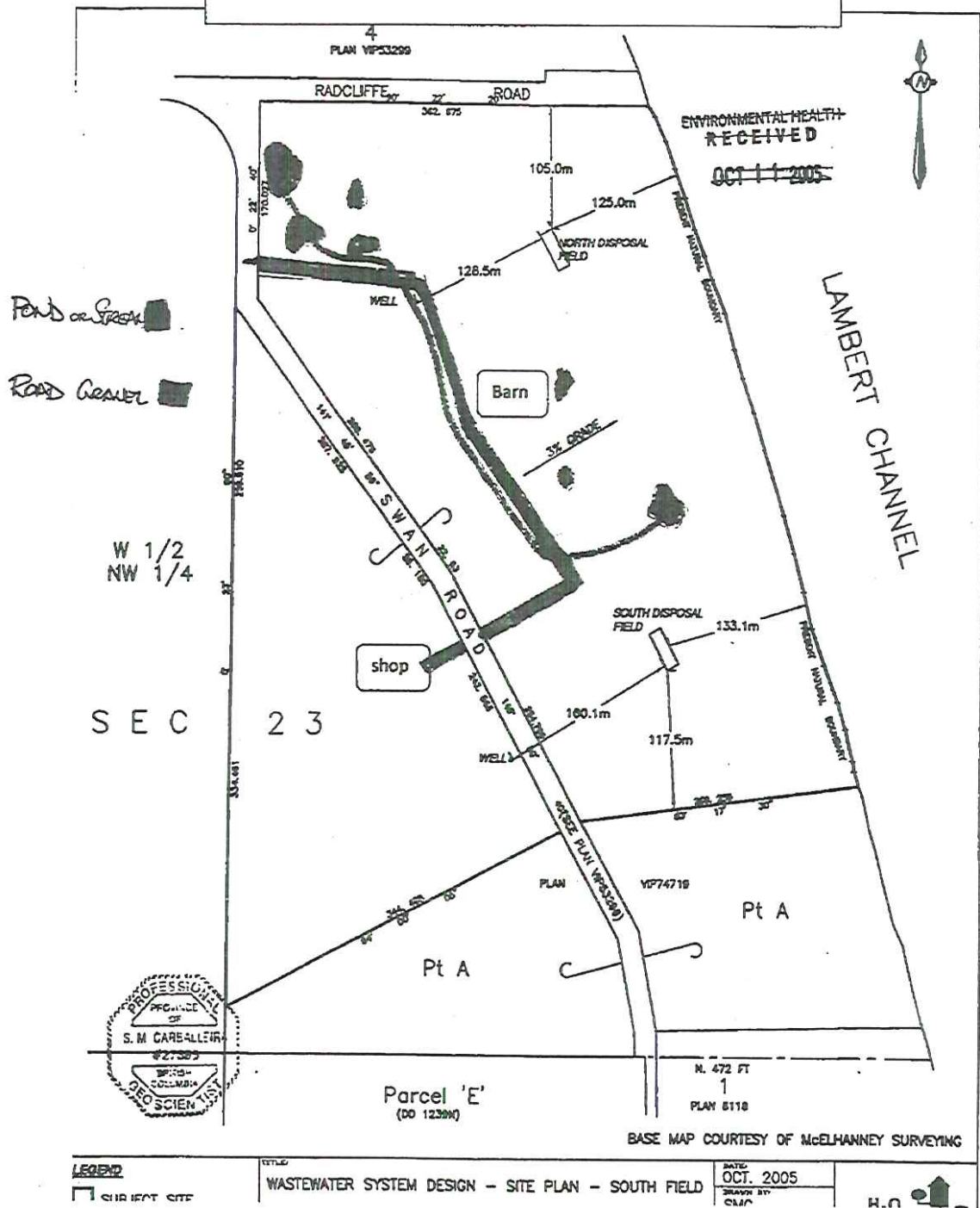


Application to Subdivide, 2020 Swan Road, Denman Island

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# Current Use of Land



## LEGEND

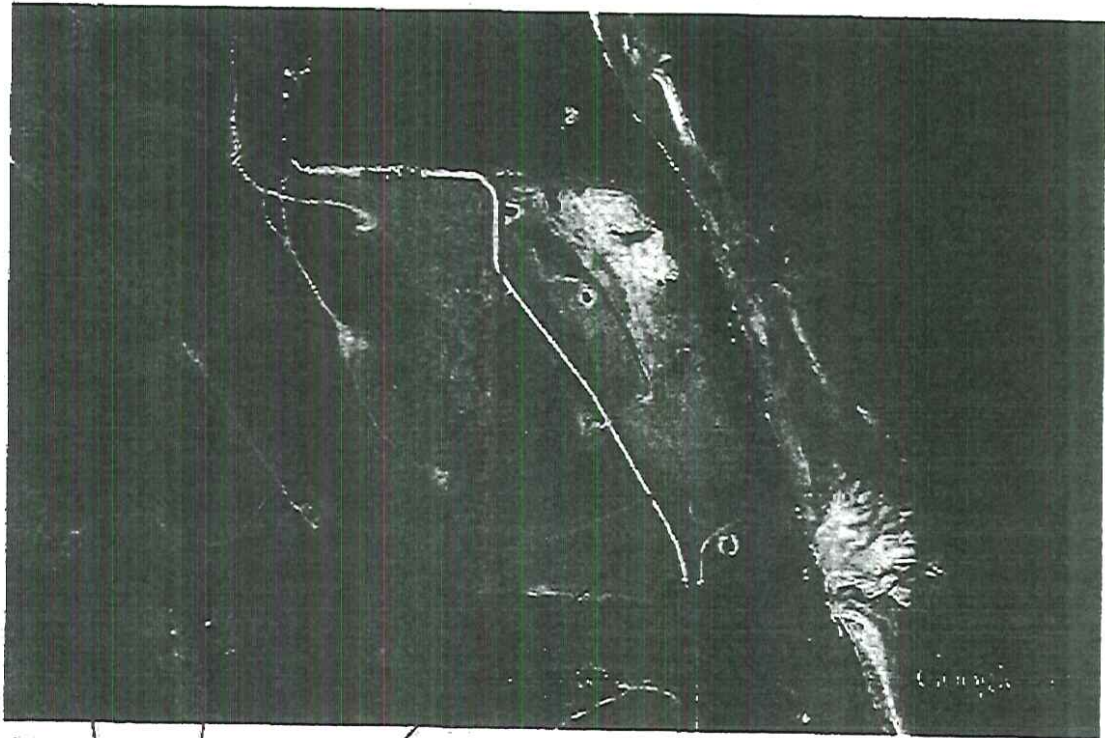
□ SURJECT SITE

## TITLE

WASTEWATER SYSTEM DESIGN - SITE PLAN - SOUTH FIELD

DATE:  
OCT. 2005  
DRAWN BY:  
C.M.C.

H.C.



Google earth

feet  
km

3000  
1



NORTH

40 ACRE FLR

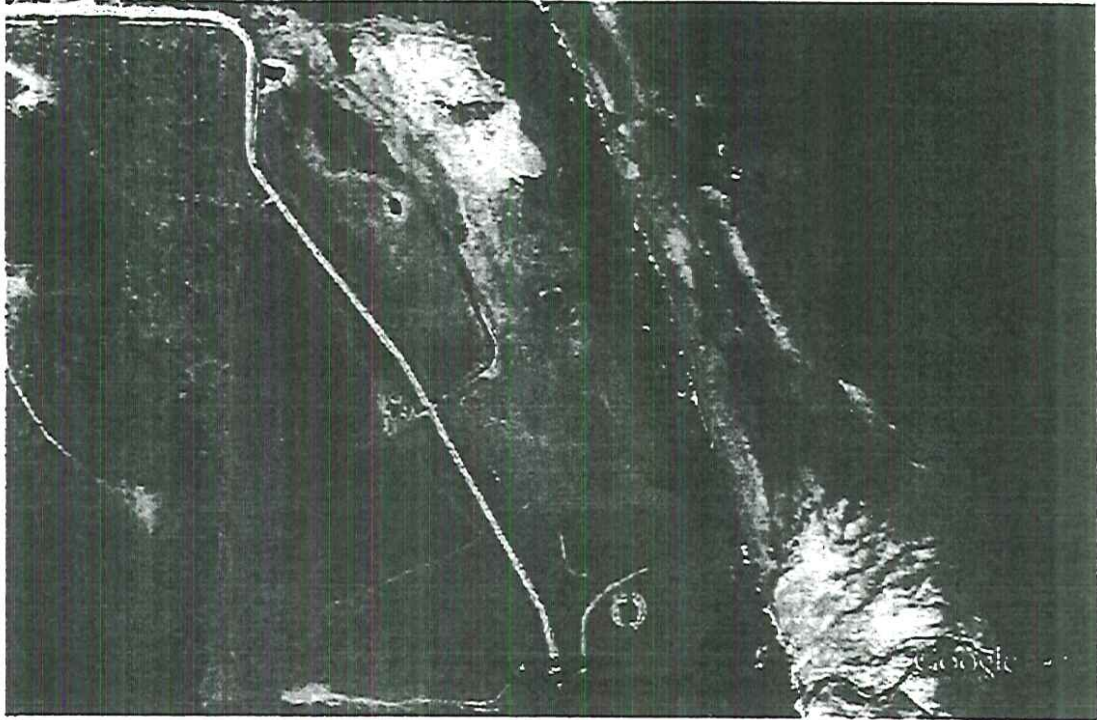
EAST

60 ACRE ALR CHRISTMASS TREES

SOUTH

22 ACRE ALR HOBBIE

ADJACENT LAND USE



Google earth

feet  
meters

2000  
600







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

Email [northinfo@islandstrust.bc.ca](mailto:northinfo@islandstrust.bc.ca)

Web [www.islandstrust.bc.ca](http://www.islandstrust.bc.ca)

August 27, 2013

File No. DE-ALR-2013.2  
ALC File 53376

To: Elizabeth Sutton, Agricultural Land Commission – Sent by e-mail –  
[Elizabeth.Sutton@gov.bc.ca](mailto:Elizabeth.Sutton@gov.bc.ca)

Further to the correspondence dated August 21, 2013 from the Agricultural Land Commission to Francis Ellis, below is the requested resolution that was passed at the Denman Island Local Trust Committee Business meeting of July 16, 2013. Our Deputy Secretary has certified the resolution.

**DE-038-2013**

**It was MOVED and SECONDED,**

that the Denman Island Local Trust Committee instruct staff to forward this application, DE-ALR-2013.2 (Ellis), to the Agricultural Land Commission.

**CARRIED**

**Certified a true and correct copy of Resolution No. DE-038-213 of the Denman Island Local Trust Committee passed at the business meeting of July 16, 2013.**

  
Lisa Webster-Gibson, Deputy Secretary

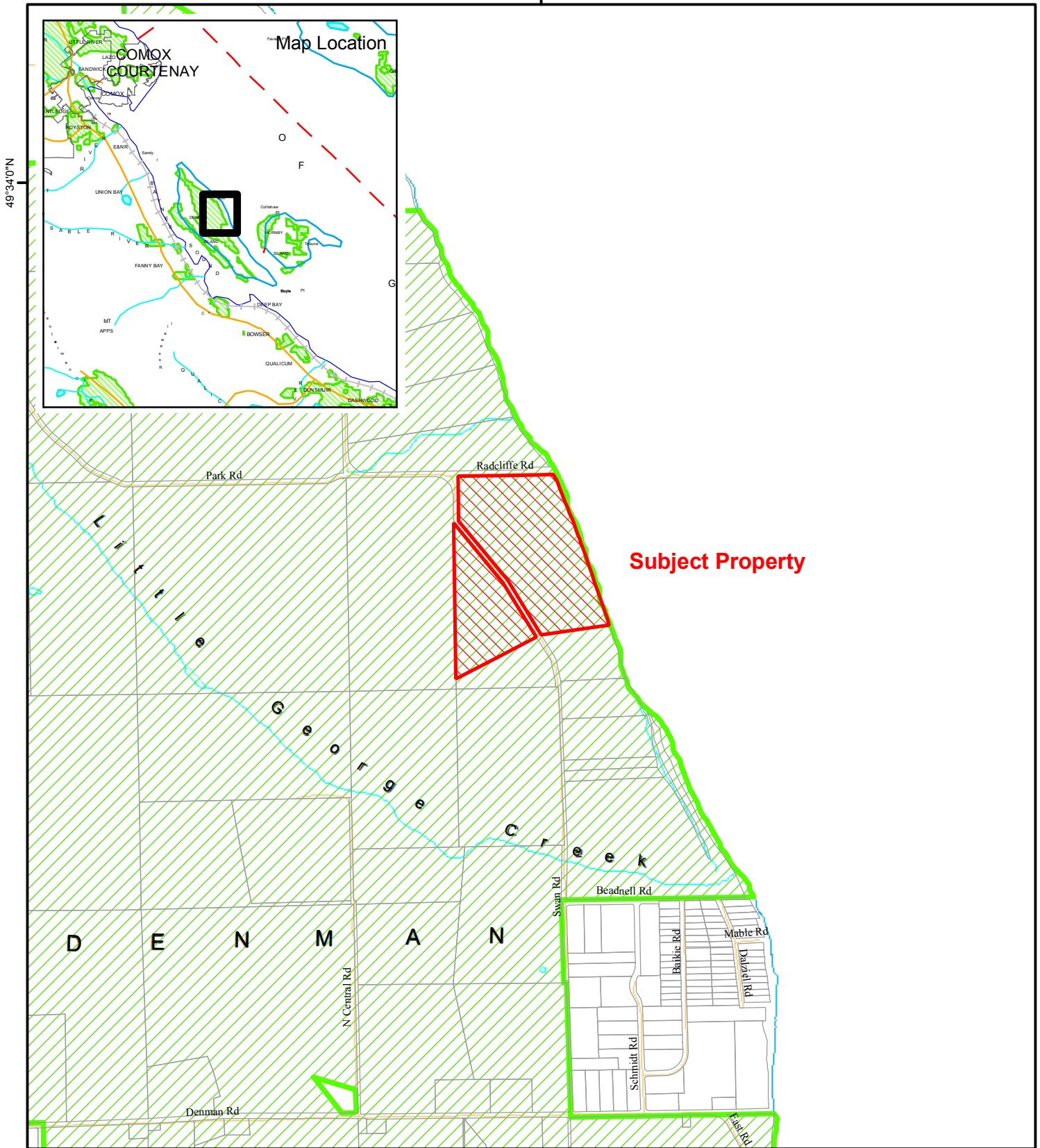
Sincerely,



Linda Prowse  
Planner

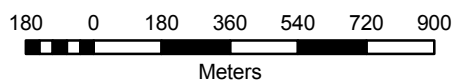
Cc: Francis Dean Ellis - Applicant

124°46'0"W

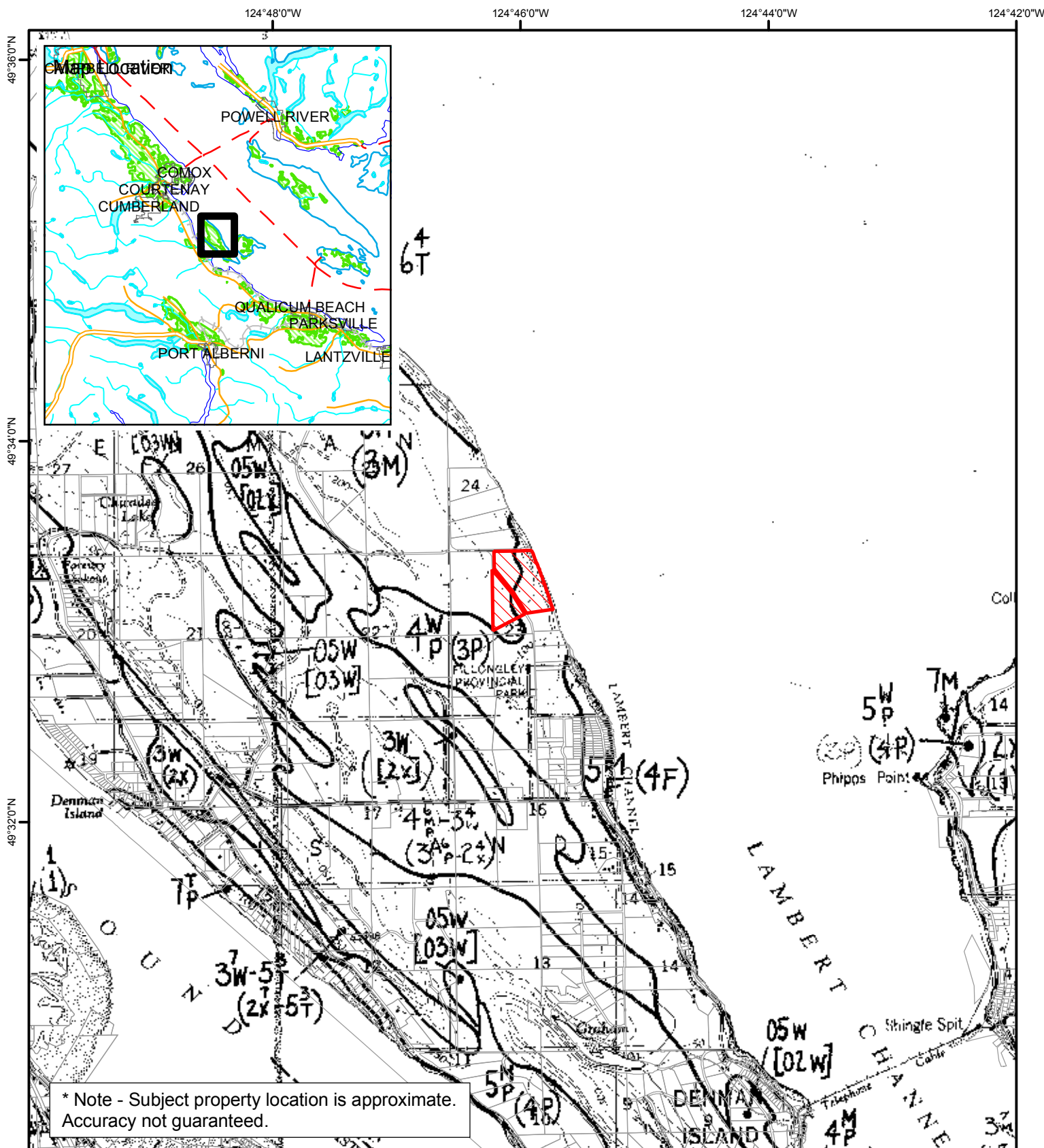


### ALC Context Map

Map Scale: 1:20,000

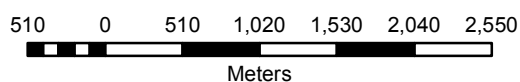


ALC File #: 53376  
Mapsheet #: 92F.057  
Map Produced: Oct 23, 2013  
Regional District: Comox Valley



## Agricultural Capability Map

Map Scale: 1:50,000



ALC File #:	53376
Mapsheet #:	92F/10
Map Produced:	Oct 23, 2013
Regional District:	Comox Valley



## Sutton, Elizabeth ALC:EX

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**From:** Dean Ellis [deanonrain@gmail.com]  
**Sent:** Monday, November 11, 2013 7:28 PM  
**To:** Sutton, Elizabeth ALC:EX  
**Subject:** Fwd: altering DE DR 03 99 to DP 2013.2 Stoneman/ Ellis lands and FLOODING  
**Attachments:** 2013-11-12 new DP 2013.2 and flooding.docx; 1 DE-DP-2013.2 Stoneman.docx; 2. DPA July 15m and stairs.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

This letter concerns the ALC because:

- it shows DILTC has applied DP permits to prohibit farming contrary to ALC act
- it shows DILTC will not issue DP permits even after Rodger Cheetham told the information meeting on this DP area that the process would be easy and quick and Rodger visited the land with Jill Hatfield and wrote all I needed was to get EBA (geotecks) to ammend my earlier report (2008)
- DILTC knows they are flooding farmland (and then suing the farmer for the resultant damage) -maybe this is a matter the Commission could look into

thanks

Dean Ellis

----- Forwarded message -----

**From:** **Dean Ellis** <deanonrain@gmail.com>  
**Date:** Mon, Nov 11, 2013 at 7:18 PM  
**Subject:** altering DE DR 03 99 to DP 2013.2 Stoneman/ Ellis lands and FLOODING  
**To:** Linda Adams <ladams@islandstrust.bc.ca>, David Marlor <dmarlor@islandstrust.bc.ca>, D Graham <dgraham@islandstrust.bc.ca>, Laura Busheikin <lbusheikin@islandstrust.bc.ca>, Peter Luckham <pluckham@islandstrust.bc.ca>, "Bob.O'Brien@gov.bc.ca" <Bob.O'Brien@gov.bc.ca>, Rob Milne <rmilne@islandstrust.bc.ca>

enclosed

November 12, 2013

TO: DILTC, Linda Adams, David Marlor and Bob O'Brien, Ministry of Highways

**Concerning amendment of development permit DE-DP-03-09 and flooding on Ellis properties.**


The Stonemans have provided me a copy<sup>1</sup> of the DILTC amendment to DE-DP- 03-99, a permit affecting their property on Lot A at 2600 Swan Road Denman Island. DE-DP- 03 -99 is also registered on title to Lot B, my adjacent property.

I believe the amendment is incomplete.

DE-DP- 03 -99 (Leaky permit)

Whereas all of the subject property lies within Development Permit Area No. 7: Forest Cover, and part of the subject property lies within Development Permit Area No. 1: Komas Bluff, Denman Island Land Use Bylaw No. 65, 1992 is varied and supplemented as follows:

1. This Development Permit is to allow for the harvesting of trees and/or clearing of land, and the farming of Christmas trees on the subject property, subject to the following conditions:

 (a) No harvesting of trees and/or clearing or alteration of land is permitted within 50 metres of the top edge of the bluff situated on the eastern side of the subject property.

Development Permit area No. 7: Forest Cover was struck down by Mr. Justice Bauman in 2000. Consequently continuing it is unlawful.

The boundary of Development Permit area No. 1: Komas Bluff is also unclear. Currently the Trust is in breach of two agreements, the first with the Appeal Court to define exactly which lands within the Komas Bluff DPA are designated as erosive as well as an agreement with the ALC to amend Komas Bluff DPA boundaries. The property might not even be within Komas Bluff DPA boundaries.

Clause 1 in its entirety relates to forest cover. Clauses 1(a) and (b) prohibit development in a development permit area.

**[56] The dominant feature of the development permit scheme, however, is regulation and not prohibition.**

**Mr. Justice Groberman**

Mr. Justice Groberman did not declare I violated this permit. Since DE-DP- 03 -99 does not allow any development in the 50m area, continuing this 50m area after the Groberman decision is unlawful. Also under the ALC act farming can only be regulated not prohibited.

The Trust claims that DE-DP- 03 -99 was written under authority of Bylaw 111. Had it been, Leaky would have been required to get a geotechnical report (Komas Bluff DPA guideline 2) for

any land alteration in the front 180m of his property. Had this happened, the fact that Highways and DILTC were flooding the property would have been discovered.

### **Flooding**

I have repeatedly asked for DILTC and Highways to stop flooding my farm. DILTC has an injunction to stop me from altering the front 50m of my property unless I get a development permit. I have repeatedly applied for and been denied development permits. My last application was 90 pages with 8 supporting geotechnical reports<sup>2</sup> but deemed incomplete by staff. I have a legal right to have my applications heard. Some staff members and Trustee's are denying this right. WHY?

I have an EBA geotechnical report that states the many overhanging hazard trees on the bluff should be removed or they will take large portions of the bluff with them. The Trusts geotechnical report by Thurber states *"with Trust staff concerning slump and erosion on the property caused by saturated soils and water breakout on the bluff slope"*.

Highways' admits to flooding my land. The Windthrow handbook of BC states that root adhesion is compromised by a factor of 3 when land is flooded. Besides not being able to use my land for agriculture, I am being forced to sit on my hands while the DILTC and Highways destroy my property.

Please remove DE-DP-03-99 from my and the Stonemans property as well as liens arising from the false OCP representation the buffer was a development permit area when DE-DP- 03 -99 clearly shows it was wrongly defined as a non-development permit area.

If not, to ensure there is no discrimination, please issue the necessary paperwork to confirm DE-DP-2013.2 which applies to the Stonemans similarly applies to my property. Please also show this change was done in a transparent public manner.

Please also stop flooding my land.

Yours truly

Dean Ellis

Cc'd Trustee's, ALC, AGRI, Don McRae, Land Titles





**DENMAN ISLAND LOCAL TRUST COMMITTEE  
DEVELOPMENT PERMIT NO. DE-DP-2013.2  
(AMENDMENT NO. 1 TO DE-DP-03-99)**

TO: Daniel Stoneman and Debra Stoneman

1. This Development Permit (the "Permit") applies to land described below and all buildings and structures and other developments therein:

PID: 025-563-246

Lot A Section 23 Denman Island Nanaimo District Plan VIP74719


2. This development permit varies and supplements Development Permit DE-DP-1999.3 as follows:

Remove Clause 1(c) as follows:

1. (c) Christmas trees are to be planted in accordance with B.C. Regulation 411/95 of the B.C. Assessment Act.

**AUTHORIZING RESOLUTION PASSED BY THE DENMAN ISLAND LOCAL TRUST  
COMMITTEE THIS 16<sup>TH</sup> DAY OF JULY, 2013.**

  
Deputy Secretary, Islands Trust

  
Date Issued

Dean Ellis

3830 Salal Drive, Hornby Island, V0R 1Z0 [dean@deanellis.ca](mailto:dean@deanellis.ca)

October 7, 2013

**Re: ALC and AGRI powers and agreements in Island Trust Areas.**

Dear Mr Underhill, Mr Fry and Ms Sutton

Recently I asked Mr Cheetham for the legislation for farming in the context of local governments specifically the Island Trust area of Denman Island. He pointed out:

46 ... (2) A local government in respect of its bylaws and a first nation government in respect of its laws must ensure consistency with this Act, the regulations and the orders of the commission.

We have since found legislation in the Trust Act that is more powerful for requiring ALC legislation to be adhered too.

**Coordination agreements with other government bodies**

9 (1) For the purpose of carrying out the object of the trust, the trust council may enter into, on its own behalf or on behalf of one or more local trust committees, agreements with one or more of the following respecting the coordination of activities in the trust area:

(a) the government of British Columbia;

(c) an agent of the government of British Columbia or Canada;

(2) An agreement under subsection (1) is subject to the approval of the minister.

(3) If there is a conflict between an agreement under subsection (1) and a bylaw or agreement of a local trust committee, the agreement under subsection (1) prevails.

**a·gree·ment**

[uh-gree-muhnt]

**noun**

1. the act of agreeing or of coming to a mutual arrangement.
2. the state of being in accord.
3. an arrangement that is accepted by all parties to a transaction.
4. a contract or other document delineating such an arrangement.

### **You have made 3 agreements with Denman Island LTC concerning Komass Bluff DPA, 111**

1. After more than 10 ALC letters and Commission memo's of concern *that Bylaw 111 may not be in compliance with Provincial Statutes and may be null and void* on March 4, 2009 Chris Jackson, DILTC Trust planner made an agreement with ALC and AGRI to remap the hazard mappings on Komass Bluffs<sup>1</sup>. This agreement was never honoured, in fact DILTC went on to say there was never an agreement and promptly dropped from the "to do" list.

Concerns in regard to Denman Bylaws 185 and 186 and hazard mapping, Chris Jackson states:

- *mapping - hazard area is being extended to Denman in the 2009/2010 timeframe,*
- *Hazard Area Mapping is a component of the second phase of the OCP/LUB review, work expected completed by 2009*
- *The above mapping products are essential before re-establishing DPA Boundaries*
- *Staff commits to recommending to the DILTC to review and rewrite guidelines for the DPA's to bring them into compliance with RAR regulations and to address concerns raised by AGRI and ALC.*
- *We understand in exchange for Islands Trust Staff commitments listed above, the ALC and AGRI will advise their respective officials to remove objections to bylaw 185 and advise Bill Hout to forward bylaws for approval as soon as possible*

There was a conflict with your opinion and that of Islands Trust.

**October 09, Eric Karlsen, chair ALC to L. Pierce, Komass Bluff DPA: Dan and Deb Stoneman,**

*"Specifically with regard to the Komass Bluff DPA the Trust has indicated its willingness to review the boundaries of the DPA in the context of hazard area mapping to be undertaken by the Trust over the next year. Further it has agreed to review sections of the DPA .....having regard to the purpose of the DPA. <sup>400</sup>"*

Rodger Cheetham to MacFraser, Director, Local Planning Services, Nov 2009<sup>149</sup>

*"With regard to the Hazard Mapping we had expectations that the work would have progressed and now understand that it will only be getting under way in February of next year with an anticipated completion date in early 2011. As you are aware the Commission is particularly anxious to see a resolution of the issues relating to the Komass Bluff DPA for which the hazard mapping is critical."*

Trust Act 9 (2) requires approval of the minister or agent therefore DILTC is required to live up to the March 4, 2009 agreement to remap Komass Bluffs as to what lands are actually hazardous for the protection of development.



## **2. Another agreement was made with DILTC concerning the Denman Island Farm Plan**

*. Feb 2006 Protocol Agreement with the Agricultural Land Reserve in the Trust Area,*

*to identify those issues that should be the subject of the consultation to enhance their respective abilities to achieve their mandates with the Trust area in a manner which is respectful of each agency's jurisdiction. The outcome of this agreement was the 2012 Denman Farm Plan*

- **Farm Plan 14. AMEND THE OFFICIAL COMMUNITY PLAN** 8. Review DPAs and amend where necessary to ensure that agricultural uses in the ALR are not effectively prohibited as a consequence of protecting other values. (this speaks specifically to Komas Bluffs where DILTC contends it is a "forest top buffer" with no development (farming) allowed, DILTC will not even allow one to apply for a DP permit to farm in the 50m zone no matter how many geotechnical reports or letters from your Ministry)
- **This has never been done.**

**3. Development Permit Applications to farm my land and protect from erosion.** In 2008 Rodger Cheetham and Jill Hatfield visited my land after 2 of my DP applications had been rejected. Rodger stated I required a new application .

**Aug 8 2008 e mail from R Cheetham to Marlor, Hatfield and myself. redevelopment Permit Komass Bluffs.**

*The application document does not need to be complicated and might only require a letter from a geotech engineer attached to the EBA report to indicate that the report is still valid given todays conditions.*

In March 2009, I had EBA submit **2626 Swan Road, Denman Island, BC, Geotechnical Re-Assessment of Intended Usage as Farmland.**

**Rodger Cheetham to MacFraser, Director, Local Planning Services, Nov 2009, Mr Cheetham understands DILTC position is:**

*Confirmation is required from the owner in the form of a letter from a geotechnical engineer that will comply with the geotechnical report relating to the proposed development. When this has been provided you will be in a position to issue the required permit.*

DILTC refuses to let me apply for a permit to farm and protect my property. In my April 2013 development permit application I submitted a 90 page application with the required report plus 8 other supportive geotechnical reports. This was returned as inadequate contrary to Mr. Cheethams' understanding and my right to apply to farm.

I hope you may find the Trust Act 9 (2)(1) useful in bringing DILTC Bylaw 111 in compliance with provincial agricultural statutes.

Thank-you

Dean Ellis

Dean Ellis

3830 Salal Drive, Hornby Island, BC, V0R 1Z0 [dean@deanellis.ca](mailto:dean@deanellis.ca)

Aug 27, 2013-08-25

file # DE-3160.25

Dear DILTC

Re: Development Permit Application for 2626 Swan Road, Denman Island

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My April 3 and July 22, 2013 DP application to farm to 15m from the bluff, manage hazard trees and built 2 walkways to the beach in defined notches has been rejected by R Milne. All documents and cheque have been returned.

Is this the position of the DILTC to reject this application?

R Milne did not understand:

- the difference between 919.1(1)(a) and (b). protection of development vs environment.
- Judge Grobormans directive in **DILTC v.Ellis, Supreme Court of BC S01190, Remediation Report, D.Smith, Thurber Engineering**, remediation to protect “existing and future development on and around the Lands from accelerated slope failure, erosion or other hazardous conditions” and the fulfillment of that requirement by  
*“Thurber Engineering Ltd. (TEL) is pleased to submit this report on appropriate remediation work on the Properties, defined by Lots A and B, Plan VIP74719, Section 23, Denman Island, Nanaimo District. The purpose of the remediation work is to restore the Komas Bluffs to a level of stability that will protect existing and future development on and around the Properties from accelerated slope failure, erosion or other hazardous conditions”* Mr Smith says Paragraph 84 of Mr. Justice Goberman's decision states that the remedial work should be aimed at enforcement of the Statute that has as its purpose the “protection of development from hazardous conditions”. Under the statute, development is understood to include farming activities.  
**A consent order was signed by all parties the lands were now stable for their present use – farming If this has changed which Mr Milne seems to indicate this is a breach of that court order.**
- The DILTC legal position as described in [44]. *The 2005 development permit application became largely moot after the consent order in the First Ellis/Stoneman Action, as the Denman Island LTC accepted that all that could be done to address the breach of the first development permit had been addressed. DILTC Response to Stoneman JR.*
- Mr Milne made references to detailed directions to complete my application, but Mr Milne disregarded the 8 professional site specific geotechnical reports by EBA and Thurber Engineering. Mr Milne quoted the Madrone Report which was a “protection of Environment” report done for a DILTC under an agreement that litigation would not proceed in 2003. Obviously this report has no bearing.
- In his August 1, 7 th and 12 letters, Mr Milne was unable to interpret guideline 3 in context with Judge Grobormans statement



*[82] The purpose of the bylaw was not preserve land in an unaltered state, nor even to protect the bluff. 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.* EBA Geotechnical Engineer Bob Patrick was also updated on guideline 3 and was available for consultation.

Guideline 3

*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. This is protection of environment not protection of farming.*

As a result of this rejection I am unable to farm the front 180m of my property, do a fall planting, upgrade my property for sale and protect my farm. I am holding DILTC responsible for any erosion or loss of land as a result of the 77 identified hazard trees. I have also shown Highways 2013 Project Initiation Sheet that states Highways and Islands trust continue to flood my land which increases the water load on the bluff edge, even though this area has been planted in long root fescue grasses the overhanging hazard trees still exist. As EBA geotechnical reports says "these trees may take large portions of the bluff and my farm with them". I have identified these hazards, had the appropriate professional reports on remediation and am now not allowed to protect my farm. I have tried.

Is Mr Milne's rejection just his opinion or is it the position of the DILTC ?? My 95 page application took months to prepare and had all information concerning this situation, it contained 10 geotechnical reports as well as DILTC and AGRI reports showing my land is stable farmland. It is unfortunate Mr Milne finds this of "little value or relevance"<sup>AUG 1</sup>.

Thank-you

Dean Ellis

Cc'd Don McRae, L. Prowse, Rodger Cheetham, Dan Burnett

This report of April 3, 2013 was reject by R Milne June 3, 2013 due to fees not paid. Ellis relied on the fact the fees for 2006 DP application had not been returned as David Marlor had rejected the findings of the court in dismissing the 3<sup>rd</sup> Ellis DP permit application. The format of this document has been changed to more suit DILTC Reports and information from Ministry of Highways have been added and hazard tree info has been clarified otherwise the information is similar to my April application, same disc as April application.

# **Development Permit Application to farm to 15m from the bluff and build 2 sets of stairs down the bluffs in areas called notches and deal with “hazard trees”.**

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**2626 Swan Road, Denman Island**

**Submitted by Dean Ellis July 2013**

Development Permit Application – Lot B, Section 23, Denman Island, Naniamo District, Plan VIP 74719

Owner; Francis Dean Ellis

Applicant: Francis Dean Ellis

Location: 2626 Swan Road

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### **PROPOSAL:**

For Agricultural Use of the property to within 15m of the bluff based on **EBA Recommendations November 2004, January 17, 2005 ,March 18, 2009** and the Farm Plan . **Note that Memorandum September 20, 2005** <sup>page 18</sup> **Mr Marlor** advised LTC that once remediation was complete, our 2005 application to farm within 15m was met. Remediation was complete 2009.

To build steps/stairs down the bluff in 2 places called notches in recent reports by Thurber. This construction is similar to that of the neighbours on the adjacent Komas Bluff DPA to the north (pictures enclosed <sup>page 67</sup>). This construction is supported by **March 3, 2009 EBA Report, 2626 Swan Road, Denman Island, BC, Proposed Stairway** and the fact that DILTC takes no action on these adjacent land alterations.

To remove identified hazard trees that are hazardous to development that overhang the bluff or are dead **EBA Report April 24, 2009, Removal of Hazardous Trees and pictures**. This is similar to the DP permit granted to the adjacent properties for tree control.

### **CURRENT PLANNING STATUS OF SUBJECT LANDS:**

The property is zoned Agricultural (A) in the Denman Use Bylaw 148. "Uses permitted by the Land Reserve Commission in the Agricultural Land Reserve should be permitted by zoning"

All farm uses defined in the ALC Act for land in the ALR shall be permitted"

"Local Government can regulate but not prohibit farming"

### **EXISTING DEVELOPMENT PERMITS:**

**DE-DP-03-99** was registered against the property under the authority of the Forest Cover DPA and was not removed after bylaw 114 was struck down by Judge Bauman.

The reason this bylaw was not under Bylaw 111 (Komas Bluff).



- No geoteck report was required for DP 99, Forest cover Bylaw did not require a geoteck report. Had this permit been contemplated under Bylaw 111 permitting alteration of land (clearcutting) would have required a geoteck report under guideline 2. Had no report been required it would have been discriminatory as previous DPA's (Radcliffe subdivision) and present DP's require fanatical numbers of Geotechnical Reports. Had this Permit required a geotechnical report it would have been clear that Islands Trust and Highways were dumping large amounts of water onto the land that was deemed subject to flooding etc. This investigation would have shown the Trust was in conflict with their own OCP. The 50m setback was not a geotechnical finding, it was a random number made up by staff. Staff had no geotechnical expertise and no report supports a 50m buffer. (the Hopwood report directly refers to the Holden Report which puts the DPA far to the north, as does Hatfield, Holm, Farm Plan, Denman Conservancy, Ministry of Forests, Ministry of the Environment, ALC, AGRI and Marzari) No geoteck would ever approve a clearcut edge on a saturated bluff plateau on erosive Quadra Sands in an area that was subject to flooding. (At the time this area was considered in the Komasa Bluff DP area, no detailed investigation of the soils, maps and reports had been done)
- Judge Groberman stated for Bylaw 111, the local government cannot prohibit farming, DP 99 prohibited tree cutting, Bylaw 114 allowed prohibiting tree cutting.
- DP 99 specifies what crops can be grown on the lands, Local Government cannot determine what crops a farmer can grow in the ALR. Forest cover was more specific about uses and the Christmas Tree crop was a part of Forest Cover designation.

**All vestiges of DP 99 and a 50m are required to be removed from the OCP.**

**DE-DP-2002.1** is the guiding development permit registered against this land.. This DP states that besides allowing subdivision *"this permit does not authorize construction on or alteration of land, including tree removal **without prior approval** from a geotechnical engineer based on site specific recommendations"*. Ellis has supplied **site specific recommendations** that satisfy this requirement. This guiding document is the registered Permit that satisfies the requirements of the Local Government Act concerning development permits. This permit satisfies guideline 2 of the Komasa Bluff DPA that geotechnical reports are required. Planners say this is only a subdivision permit but the Trust had 2 other geoteck reports as guidelines for this permit, -the geotechnical report for the adjacent Radcliff subdivision which stated a similar requirement – a geotechnical report was required for alterations and the Holden Report, (the geoteck report the Trust states is the Justification for Bylaw 111) also reiterates any alterations or moving of boundaries require a geotechnical report. Ellis has satisfied this permit with the 2004, 2005 and 2009 EBA Reports to farm up to 15m of the bluff.

## Court Proceedings

Judge Bauman overthrew all the forest bylaws including 111. (2000 BSC 1618)

The appeal court (2001 BCCA 736) found bylaw 114 invalid and remitted the remaining bylaws back to the courts for determination. Legal counsel for the Trust promised in court to do this but instead gave 4064 \$170,000 to withdraw their case. DILTC stated the Court Order no longer was valid as the case had settled. All the court decisions were concerned with “what lands were in the schedules”. (A problem that still persists with the lands especially in the view of ALC and AGRI) The validity of the specific location of bylaws is still in question from Judge Bauman’s and the Appeal Order. Islands Trust took Ellis to court (March 2003 just days after paying 4064 off) to primarily test the validity of their bylaws, Lousie Bell DILTC New Releases.

### **DILTC vs Ellis, 2005 BCSC 1238, Judge Groberman:**

- Found that Komas Bluff DPA was valid in a general sense and any specific areas or justifications were to be referred to Judicial Review.

**{52}The validity and enforceability of the Komas Bluff PDA depends on the language and context of the legislation itself, and not on any decisions that the plaintiff has made under the legislation. The validity or invalidity of individual decisions may be reviewed by this court by way of Judicial Review. If improper decisions have been made, they can be overturned by the court; such decisions do not form the basis for overturning the bylaw itself.**

- Found that Ellis did not have a permit for the land alterations, no rulings were made on any permit applications that had been made by Ellis, or that Island Trust would not give a permit, this was referred to {52} above
- Ordered no **more** alteration within the 50m without a permit.. (Ellis has done no more alteration within the 50m, the up to 15m farming application is the same land as was cleared pre court case.)
- Groberman found

**[29] The evidence also satisfies me that the removal of trees and stumps along the bluff crest and in the buffer zone has significantly destabilized the bluff. An expert report prepared for the plaintiff by Thurber Engineering estimates that an area of 5,660 m<sup>2</sup> or 18% of the slope of the bluff has been damaged directly by “incautious human activity.” The report estimates that the regression of the bluff crest has been accelerated by those activities, to the point where it is now 5 -10 times the natural rate.**

[29] has since been contradicted by the Thurber Remediation Consent report where the lands were found to be stable after Highways ditches were rerouted and the land was deemed stable for present and future development especially it’s zoned use of farming..

[29] has also been contradicted by Highways documents that state Highways flooded Ellis land and Islands Trust forced Ellis to further flood his own land by not being allowed to drain it. The Windthrow Report for BC shows the obvious outcome of this flooding.

- Ordered Ellis to remediate the property to protect the development already done without a permit..

**to undertake rehabilitative measures on the lands, limited to those measures necessary to fulfill the purposes of section 919.1(1)(b) of the *Local Government Act*.**

**As** a result a consent order was signed by Ellis, Stoneman and DILTC based on an Island Trust geotechnical report by Thurber Engineering. The report required Ellis to plant 250 ferns and let the alders regenerate –*this restored the stability of the land to protect present and future development*<sup>2013 Staff Report</sup>. This was completed in 2009 and signed off by Polster and recognized by David Marlor.<sup>Stoneman affidavit</sup> and Franchesca Marzari<sup>Stoneman JR</sup>. Both the Thurber reports identified water from the Highways ditches as the cause of erosion on the Ellis property. Ellis and Emcon rerouted the 2 southern ditches down Swan road which stopped the flow of water onto this DP area subject to flooding.

The ditch on the north end of the Ellis property was not identified by Thurber and has been since recognized by Highways as flooding the Ellis property. The Island Trust Thurber/Gerbath required that the ditch be blocked for 50m from the bluff. Highways recognizes this flooding and is making efforts to reroute this water down an adjacent easement and over the bluff.

Both Highways and DILTC are in violation of the Roads section of the OCP.

- Staff has obtained a letter from Dave Smith of Thurber Engineering clarifying and contradicting the Remediation Report that I signed. The Judge ordered the report to specify requirements to protect present and future development, the report said it protected present and future development, Mr Smiths letter said it only protected past development. Although in my case there has been no development since the Thurber Smith report, this is another example of the moving goalposts.

### **DISCUSSION of 919.1(1)(b)**

Planners say the objective of Komas Bluff DPA is to protect areas of unstable terrain from increased risk of slope failure and or/erosion this is incorrect once again I shall quote Groberman

**The purpose of the bylaw was not preserve land in an unaltered state, nor even to protect the bluff.**

***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 land has been (supposedly) identified *as subject to potential erosion of soil, land slip, rock fall, mud flow, sloughing or water degradation*. The geotechnical report is to protect the development from these elements not limit the development **causing** these factors. In essence cutting all the trees,



rounding the bank off and covering with cement would fulfill the requirements of the “protection of development”.

Most of the Komasa Bluff guidelines are incorrect (see section on guidelines) Guideline 2 which requires a geotechnical report is correct under the local government act but the directions guideline 2 gives for a report are concerned with requiring reports on activities that **cause** land slip etc rather than reports on ways of protecting these activities from land slip etc. Protecting development from the environment not the other way around. As a result of this error EBA has had difficulty trying to satisfy David Marlor’s misinterpretation of guidelines.

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## **Discussion of this Application**

This DP application references Judge Groberman’s description of 919.1(1)(b) for Komasa Bluffs. It discusses the reports used by DILTC to Justify the DPA in context with OCP descriptions. It discusses the 3 geotechnical Reports submitted in Ellis’s previous applications for farming within 15m (EBA 2002, 2004, 2005, 2009, Madrone, Holden 1989) and reasons for rejections and cancellations. The Thurber/Smith/Polster remediation report, The Potter Geotechnical Report, 3 more EBA reports and the Denman Farm Plan are referenced for this application.

The land has been subject to drainage from Highways ditches which has had consequences on erosion and windthrow. 4 expert reports are discussed. Wollenheim, Scott, EBA and the BC Forest Manual on Windthrow and a report from Ministry of Highways

The ALR and Community Guidelines for local Governments guideline the ***Agricultural uses should not be effectively prohibited, as a consequence of protecting other values*** and ***Local Governments can apply regulations only if they do not prohibit farming*** but the bylaws must also ***be consistent with the ALC ACT*** are discussed with referenced letters from ALC and AGRI concerning promises DILTC Chris Jackson made to do hazard mapping of the Komasa DPA. The newly adopted DILTC and BC AGRI Farm Plan is included as a contradiction to the Komasa Bluff DPA.

12 maps local and Government describing Komasa Bluff are listed. A referenced discussion of soil composition and instability citing all expert reports is included.

The issue of discrimination as neighbours to the immediate north and south have altered land to the beach without any need for Development Permits is included. Pictures included.

The meaning and misuse of the word “Buffer is described.

A discussion of the incorrect “Guidelines for applications, recent communications with DILTC and a copy of the DP application.

Copy of the Mutual Agreement between 4064 and DILTC and a copy of Ministry of Highways documents

## 2 Very Important Documents

### 1. The Komasa Bluff DPA is under legislation **DP 919.1(1)(b)**

[82] Third, an order for the restoration of the lands would not be in keeping with the expressed purpose of the bylaw that established Komasa Bluff PDA. The purpose of the bylaw was not preserve land in an unaltered state, nor even to protect the bluff. 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.  
Judge Groberman

Legislative Requirement

A bylaw must be Justified Local Government Act s. 920.01 (2)

Justify-- show or prove to be right or reasonable:

### 2. OCP Description

Text in 1991 Amendment Bylaw 111 Justification

In 1980 the Resource Analysis Branch of the Ministry of Environment conducted a reconnaissance study and identified bank instability in the area referred to as the Komasa Bluff. Sloughing was confirmed by detailed site inspection. The majority of the area was classified as active or inactive, with relatively little classified as stable. Past logging and road construction have demonstrated that this area is prone to landslides and other forms of erosion. The area has subdivision potential.

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## **Geotechnical reports and Maps I shall be citing.**

DILTC has copies of all these reports they have also been included on disc

1. The Coastal Environment and Coastal Construction Paper Elevations and Setbacks for Flood and Erosion Prone Areas by B.J. Holden 1987
2. Geotechnical Report –Memo to file by B.J. Holden on the Komas Bluffs , March 15, 1989, commissioned by DILTC
3. An Ecosystem Based Assessment of Denman Island, May 1998 by Silva Ecosystem Consultants Ltd. Commissioned by Denman Island Forestry Management Group
  - Sensitive Ecosystems Inventory, East Vancouver Island and Gulf Islands, Conservation Manual, Technical Report Series 345
4. Agricultural Land Commission, ALR and Community Planning Guidelines for Local Governments
5. Preliminary Slope Stability Assessment, Swan Road Property, Denman Island, EBA Consulting, R. Patrick, June 2002
6. Planting Recommendations for Erosion Control for Ellis Property, Komas Bluffs, Denman Island, Harry Williams, *M.Sc. RPBio. Aag.m*, Gordon Butt, *M.Sc., P.Ag., P.Geo.* MADRONE ENVIRONMENTAL SERVICES LTD. 1081 Canada Avenue, Duncan, BC V9L 1V2 October 12, 2003
  - Professional Forester Report, Sofor Consultants, Grant Scott, February 22, 2004
7. Econ Consulting, W Wollenheit, R.P.F. to Robin Storkey, Highways, Water control proposal for Swan Road adjacent to Lot 4 , Plan 53299, Denman Island. September 2003
8. Windthrow Handbook for British Columbia Forests, Ministry of Forests, 1994
9. Thurber Engineering, Bob Gerath, landslides and erosion on Ellis property June 2004
10. EBA 2600 and 2626 Swan Road, Denman Island, Geotechnical Assessment for intended use as farmland Robert Patrick M.Sc.,P.En November 2004,
11. EBA 2600 and 2626 Swan Road, Denman Island, Geotechnical Assessment for intended use as farmland Robert Patrick M.Sc.,P.En Jan 17, 2005, same copy as November 2004
12. Thurber/Smith/Polster, April 4, 2006 Court Ordered Geotechnical Report on the Ellis lands, agreed Report for Consent Order signed by DILTC, Ellis and Stoneman
13. Geotechnical Report 44211 on the Komas Bluffs for SBJ Properties by Robert Potter, P. Eng, 2006



14. **Assessment of Restoration of Damaged Notch Site Komas Bluffs, Denman Island, Polster Environmental Services Ltd. Duncan, B.C., April 2008, final remediation report**
15. **EBA, April 2009, 2626 Swan Road, Denman Island, BC, Removal of “Hazardous Trees”**
16. **EBA, March 2009, 2626 Swan Road, Denman Island, BC, Proposed Stairway**
17. **EBA March 18, 2009, Geotechnical Re-Assessment of Intended Usage as Farmland, Regarding: 2626 Swan Road, Denman Island, Robert Patrick M.Sc.,P.En ,**
18. **EBA, 2600 and 2626 Swan Road, Denman Island, BC, Composition of Slope and regression of the crest. Sept 2012**
19. **Denman Island Farm Plan, produced for Islands Trust and BC AGRA, Dec 2012**
  - **The BC Ministry of Environment, Mapping Geographic Information System, Data entry and validation procedures for soil, agricultural capacity, surficial geology. Manual 10, E. Kenk and M.W. Sondheim,**
  - **1987 Soils of the Gulf Islands of British Columbia, Report 43, 1990, Kenny, van Vliet, Green**

#### **Maps and other reports**

20. **ALC Map 92F.057 farmland on Denman**
21. **I Map BC showing logging roads on Denman Island**
22. **Denman and Hornby Island Water Allocation Plans, July 1994, Regional Water Management Region –maps**
- 23 **Denman Island Conservancy Association submission to Pacific Marine Heratige Legacy for purchase of Komas Bluffs, 1995**
24. **Denman Island Forestry Committee Maps and description of Komas Bluffs**
25. **Ministry of Forests maps of Komas Bluffs 1981**
26. **Komas Bluff, Heritage or History, Denman Conservancy Association, description and maps**
27. **Harlene Holm letter to Ministry of agriculture showing area of Komas Bluff**
28. **Mutual Agreement DILTC and 4064, Jan 2003 (at end of this report)**
29. **Previous DP applications 2004 and 2005 and Staff rejection reports, court documents from DILTC vs 4064, DILTC vs Ellis, DILTC vs Stoneman, and Stoneman JR application**
30. **Discussion of the Green Report (at end of this report)**
31. **Report from Ministry of Highways 2013 concerning flooding and except from the OCP.**

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## Discussion of whether the Komas Bluff DPA is valid for this specific land

### Reports cited by Islands Trust as being the *Justification* for Komas Bluffs 111

#### 1. The Coastal Environment and Coastal Construction Paper Elevations and Setbacks for Flood and Erosion Prone Areas by B.J. Holden 1987 .

- In the DILTC vs Ellis appeal (L042564 Respondents Factum) and DILTC vs Stoneman (Chris Jackson affidavit), it was stated this report was the **Justification** for the bylaw 111.
- DILTC has contradicted itself about this report many times, F. Marzari states in court *it was a general report for the Gulf of Georgia* <sup>F. Marzari transcript</sup> David Marlor states in a July 2004 Staff Report <sup>25, 1.18</sup> *Holden Report is a general survey of conditions in the Strait of Georgia and not specific to the referenced property* <sup>21</sup>

It is unlikely this report would pass as it was not site specific and only has 1 mention of Komas Bluffs.

- It was construction setback report for all types of coastal bluffs.
- It did not confirm sloughing or identify logging on Komas Bluff as stated by the OCP
- It was not commissioned by the DILTC
- There is no delineation of area.
- DILTC says they do not need to be specific even though the OCP says the bylaw was based on a site specific report. If this report was used the DILTC could put boundaries anywhere.

14. The decision to designate land as a development permit area is a legislative decision, to which the courts accord great deference. The Denman Island LTC only required some reasonable basis to consider that the designated area might be subject to erosion, landslip, or other hazards. It is not necessary for a local government to obtain or rely on site specific reports in order to come to the conclusion that an area should be designated to protect development from hazardous conditions. DILTC response Stoneman JR

- In this report there is no professionally designated area. If it relies on the generic Komas Bluff area, it could not include the Ellis Property. Schedule E was extended beyond the generic and professionally defined Komas Bluff location on all maps, yet the bylaw was called Komas Bluff DPA.

### 1a. Geotek report –Memo to file by B.J. Holden on the Komass Bluffs , March 15, 1989

Another Report by BJ Holden done 2 years later would qualify as the Justification as it was

- site specific,
- recognized past logging and accurately delineated the area justified.
- This report also qualifies from statements from Jill Hatfield AGRA to Ellis and Rodger Cheetham ALR in an April 2009 email. . *"I was told at a meeting with ALC, Trustees and Islands trust Staff on January 14, 1999 that the boundary was based on a previous geotechnical report commissioned by the Trust"*.
- This report and locations are supported by 10 other maps and statements including the Farm Plan. (more later)
- This report shows the Komass Bluff DP area to be outside of the Ellis property. See section on Justification.

Up until 2006 we never realized this map was different than the Schedule E map, but drawing a line east of Chickadee Lake shows the Holden referenced area ends 2 km north of the Ellis property. This was never explained to Judge Groberman as we did not know this at the time.

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### 2. An Ecosystem Based Assessment of Denman Island, May 1998 by Silva Ecosystem Consultants Ltd. Commissioned by Denman Island Forestry Management Group

this report was cited in the 4064 vs DILTC Statement of Facts<sup>222</sup> and DILTC vs Ellis, as well a correspondence from D Marlor, Ed Pickard, Hopwood and Franchesca Marzari<sup>12 Sept 2003</sup> as being the Justification for the Komass Bluff DPA.

This is unlikely as it:

- is not defined as per Jill Hatfield's Statement *geotechnical report commissioned by the Trust*
- was commissioned for a private conservation group *"An island community organization working to establish ecoforestry on our island in the Strait of Georgia, BC, Canada"* *"Denman Forestry Initiative has been established to develop a plan to purchase the one third of Denman Island's land area that is held by Hancock Timber Resources Ltd. A private report with a specific purpose cannot be used by a public government no matter how close the Denman Conservation Assoc is associated with the DILTC.*
- was ecosystem based which falls under protection of environment and by the standards of **Sensitive Ecosystems Inventory, East Vancouver Island and Gulf Islands, Conservation Manual, Technical Report Series 345** cannot be used for ALR land



- Silva did not include a site inspection. It was based on low resolution aerial mapping. Hopwood Report . There was no groundtruthing on eastern Denman.
- ALC, AGRI, Islands Trust planners confirm that DPA's justified as hazardous must be based on hazardous mapping and not on staff mapping preferences. Ref Min of Ag or ALC agreement, <sup>142a</sup>, 19 letters from AGRI and ALC
- The Silva report itself recommends that the Protected Area Network (PAN) not be legislated on private property. <sup>pg55</sup> 15

**November 2003, Marzari to Ellis S.C.B.C. Naniamo S39125 F.** Marzari contradicts herself by now saying

We are also enclosing a copy of the Province of British Columbia report entitled "Coastal Environment and Coast Construction" prepared by the Ministry of Environment in 1987. We believe that that is the report referred to in the justification section of the Komasa Bluff development permit area. Pages 31 through 34 discuss recommended set backs on coastal bluffs.

- **David Marlor to J Hill email, April 09<sup>19</sup>** tells J. Hill he used Silva and added "polygons" to Silva mapping for the boundaries of Komasa Bluff DPA. This was also stated to Ed Pickard etc. **A Planner defining boundaries????**
- **Ed Pickard to DILTC, Dec 1999, Memorandum<sup>68, 1.27</sup>** Boundaries of the Komasa Bluff Development Permit Area , as pertain to land in the north half of Section 23, Denman Island, the boundaries of which are defined only on an eastern coastal strip this land lies also within the Komasa Bluff DPA, the boundaries of which are defined only as shown on the Komasa Bluff DPA map. This area as it appears on the map is larger than what was envisioned by the Local Trust Committee and the community
- **David Marlor to Ed Pickard, Oct 1999<sup>1.25</sup>** The 50m was determined by taking the Silva Report and adding 50 meters to the west side of the polygon. The rationale was that Silva would only ID the actual bluff, but we want to protect the top of the bluff also.
- **Silva** was a Sensitive Ecosystems study, not a hazardous mapping study. Silva identified areas for preservation of land. Silva advises "the maps may contain information which is unreliable or incorrect. Above all, GIS reflects the views, choices and assumptions of the users." <sup>1.178, 200</sup> 13

**F Marzari to Ellis 2003 DILTC vs Ellis S.C.B.C. Naniamo S39125**

*You will see from the map produced by Silva that Komasa Bluff area is designated as a ecologically sensitive area with shallow soils.....Furthermore, regardless of whether you accept this report as accurate, we are confident that a judge will.*

November 2003, Marzari to Ellis S.C.B.C. Naniamo S39125 F. Marzari contradicts herself by now saying, (she also said in the Ellis appeal Holden 1987 was the Justification )

We are also enclosing a copy of the Province of British Columbia report entitled "Coastal Environment and Coast Construction" prepared by the Ministry of Environment in 1987. We believe that that is the report referred to in the justification section of the Komass Bluff development permit area. Pages 31 through 34 discuss recommended set backs on coastal bluffs.

## Development Permits, Applications and Geotechnical Reports

### 3. DE DP 2002.1

- **EBA, Preliminary Slope Stability Assessment, Swan Road Property, Denman Island, EBA Consulting, R. Patrick, June 2002.** This report was done for a boundary change and general geotechnical report on the land for subdivision --to show land stable. (It was noted by Bob Patrick in this report the Highways ditches were diverted onto the Ellis lands and would cause slumps.)

In this registered permit DE-DP 2002.1 it states: This permit does not authorize construction on, or alteration of land including tree removal without prior approval of a geotechnical engineer based upon site specific recommendations.

Courtenay Simpson states<sup>Feb email</sup> this was just a permit to do a boundary change!! If it was a permit to do just that it why wouldn't it just say -it does not authorize any construction or tree removal. Instead it says I can do those activities with geotechnical approval.

### 4. DE DP 2004.2 farming application March 2004 with additional report supplied November EBA 2600 and 2626 Swan Road, Denman Island, Geotechnical Assessment for intended use as farmland Robert Patrick M.Sc.,P.En November 2004, Draft, January 17 2005

This application included:

- A. **The Coastal Environment and Coastal Construction Paper Elevations and Setbacks for Flood and Erosion Prone Areas by B.J. Holden 1987,**
- B. **Planting Recommendations for Erosion Control for Ellis Property, Komass Bluffs, Denman**

Island, Harry Williams, *M.Sc. RPBio. Aag.m*, Gordon Butt, *M.Sc., P.Ag., P.Geo.* MADRONE ENVIRONMENTAL SERVICES LTD

- C. **Geotechnical report –Memo to file by B.J. Holden on the Komass Bluffs , March 15, 1989**, commissioned by the DILTC.
- D. Later in 2004 Ellis supplied EBA November 2004 , 2600 and 2626 Swan Road, Denman Island, Geotechnical Assessment for intended use as farmland Robert Patrick M.Sc., P.En

## **Discussion of Reports with rejections**

- A. **The Coastal Environment and Coastal Construction Paper Elevations and Setbacks for Flood and Erosion Prone Areas by B.J. Holden 1987** with recommendations stating:

*a. thinning or enhancing ground cover and other management practices should be permitted page 15*

*agricultural practices be exempt from a 100m setback page 35 with recommendations from c. Hazard Lands Policy, 1 uses permitted in buffer area limited to agriculture see tab 1*

**Rejected because** David Marlor said this report was too old and was a general report not applicable to the lands even though F. Marzari in 2006 and Chris Jackson in 2013 says it is the Justification for Bylaw 111. This report was intended as a general construction setback document, it permitted agriculture without setbacks.

- B. **Planting Recommendations for Erosion Control for Ellis Property, Komass Bluffs, Denman Island, Harry Williams, *M.Sc. RPBio. Aag.m*, Gordon Butt, *M.Sc., P.Ag., P.Geo.* MADRONE ENVIRONMENTAL SERVICES LTD. 1081 Canada Avenue, Duncan, BC V9L 1V2 October 12, 2003** concerning enhancing ground cover in blow down areas and planting for forage crops. This report was requested by DILTC for a proposed settlement, on the recommendation of J Hatfield AGRA,

- This report was rejected because Mr Marlor said Gordon Butt P. Geo was not certified as professional engineer. This is just wrong.
- and because it was contrary to Guideline 3 and 6 which protect environment not development
- The other rejection reason was *More details on the provision of drainage facilities to divert drainage away from areas subject to sloughing or damage from sloughing (guideline 6)* Mr Marlor was aware of the “torrents of water” coming from highways ditches, the land slopes toward the bluff, this was an impossible request. Was I to pump Highways water back up to the road??? Or do I flood the neighbours property. Guideline 6 was incorrectly written (discussed later)
- b) to make a detailed assessment on any hazard or slope stability conditions caused by any existing or proposed land alteration with the buffer **contrary to Groberman 919.1(1)(b)**
- c) to make recommendations on vegetation and tree retention to protect hazardous conditions **contrary to Groberman 919.1(1)(b)**

- e) to make recommendations on the implementation plan to achieve the level of protection recommended **contrary to Groberman 919.1(1)(b)**
- In a later Thurber/Gerath report quotes the Madrone Report

*"There appears to be a deep-seated mass movement along the bluffs, but it is beyond the scope of this report to assess the contribution, if any, of changes in vegetative cover in the vicinity of the bluffs to this stability"* Thurber 1 page 13.

Thurber/Gerath tried to discredit this report

*"Thus was not adequate to address slope stability".*

In fact the later Thurber Report stated the lands were stable once Highways ditches were rerouted, water had compromised slope stability not Ellis.

- The Madrone Report was actually the most definitive report on the bluffs and it followed exactly with Ellis's plans to replant the whole bluff area in long root fescue grasses for hay production.
- DILTC has used the Madrone Report several times even though it was rejected in Ellis's 2004 application
  - As a requirement for Stoneman house permit DE DP 2006.2

*"a letter signed by Madrone Environmental Services Ltd stating that the planting recommended for the Property in the October 2003 Madrone Report has been completed;"*

This report had been rejected as not being a valid geoteck report then why was it being used here as a geotechnical requirement.

- F. Marzari notes the property was stable as a result of Highways ditches rerouted and Madrone planting completed

*A second geotechnical report was prepared by Thurber Engineering. At the time of the report, the only proposed use of the Property was agricultural use. The report noted the most immediate recommendation made in the first Thurber report had been completed the redirection of the drainage onto the Property, and the filling in of the excavated drainage ditches on the Property. In addition, the recommended planting of the plateau above the Bluff had also already been completed.* DILTC response Stoneman JR

- David Marlor makes a similar statement in an affidavit re Stoneman JR ....

- **The Sofor forestry report** was used to show 3 things –the bluffs had been replanted to Madrone specs, Thompson (the previous owner) had high graded the 50m "buffer" and the land was subject to erosions and windthrow due to the type of previous upslope logging and the increase of water to the bluff.



**C. Geotechnical Report –Memo to file by B.J. Holden on the Komass Bluffs , March 15, 1989**

The site specific report shows Komass Bluff hazards not on Ellis land, no reason given as why it was rejected (see previous assessment of this report)

**D. EBA 2600 and 2626 Swan Road, Denman Island, Geotechnical Assessment for intended use as farmland Robert Patrick M.Sc.,P.En November 2004,**

- This report was initially printed with draft on it and since B Patrick was away from the office it was submitted –the final report was the same copy.
- As noted by DILTC this report was submitted in 2004 (before DILTC vs Ellis court hearing) It was submitted in support of the 2004.2 DPA.
- Proof his report was received before January 17, 2005 by David Marlor **Letter to Ellis DE DP 2004.2, January 17, 2005, Denman Island DP permit application.**
- Jan 26, 27, 28 and Feb 1 was the hearing with Judge Groberman., the EBA report was not reviewed by the courts in the Groberman case. In fact F. Marzari told Judge Groberman there were no more reports <sup>transcripts</sup> even though they had a copy and were commenting on it.

**EBA pointed out**

- *The clearcutting of the upland areas accelerated the degradation due to increased overland flow and groundwater seepage to the bluffs* He blames this degradation on previous clearcutting sanctioned by the Trust
- Highways ditches redundant
- Land use as farming is acceptable
- In **Memorandum from David Marlor DE DP 2004.2** <sup>255</sup> **Feb 3, 2005** 1 day after court hearing, David Marlor recognizes this EBA report but rejects it because:
  - Marlor states  
*‘the geotechnical engineer address the trees and vegetation removal and other land alterations undertaken in violation of the existing in force development permit and the engineer provides recommendations for returning the geotechnical slope stability to state equal or greater than it was before the violation’*
  - There are a series of requirements that do not relate to 919(1)(b) such as his comment on stability and factors needed to implement a protection beyond the natural existing conditions. **See Groberman 919.1(1)(b).** David Marlor was in violation of the Groberman decision.
  - David Marlor requires another DP application.
  - David Marlor said EBA did not address the issues that he suggested should be included. **Did David Marlor have Geotechnical experience ???** This report was rejected

because Ellis had contravened the bylaw. This was punitive and ignored the purpose of the bylaw.

[43] Amended Petition DILTC made the statement that the Ellis/Stoneman application had no geotechnical report to farm within 15 m was submitted. This was wrong (as noted by the DILTC report in 2<sup>nd</sup> box) DILTC had a copy of the Nov 2004 EBA report and David Marlor replied Jan 15, 2004 concerning this report.

43. In early 2005, just after the hearing of the First Ellis/Stoneman Action but before Reasons for Judgment were delivered, the Petitioners applied for a development permit to permit farming up to 15 metres from the crest of the Komias Bluff within the 50 Metre Buffer. The application was not accompanied by a geotechnical report recommending the change from the required 50 metre treed buffer under the existing development permit to the proposed 15 metre buffer, or any conditions that would support such an amendment.

In support of their development permit application for construction of buildings within the Komias Bluff DPA in 2006, the Petitioners relied on a series of engineering reports with respect to the Property, including a June 11, 2002 engineering report from EBA Engineering Consultants Ltd. (I/EBA"), a November 9, 2004 draft geotechnical assessment of the Property from EBA, a March 9, 2006 geotechnical assessment of the Property from EBA, and the April 4, 2006 report from Thurber Engineering regarding remediation.

Had Judge Groberman seen this report he may have said at least all the requirements for a application were fulfilled. It was really about IT not issuing the permit, making decisions based on incorrect guidelines and making decisions beyond their level of expertise. Respectfully -Ellis should have been issued a permit at this point.

G. **March 2004 THURBER /Gerath** site visit pre litigation, This report was relevant to De DP 2004.2 as it was present before 2004.2 was rejected.

Islands Trust commissioned the Thurber/Gerath Report with site visits March 2004. This report was for litigation against Ellis, it was basically grandstanding and all of it has been contradicted by the later Thurber/Smith report. (See Thurber Smith discussion) Mr Gerath makes some observations about water that show DILTC had a clear understanding of the damage the highways ditches were doing.

*Page 5 "When saturated this soil has little strength and it deforms under gravitational soil movements, such as soil creep and sliding"*

*Page 6 Near-surface plateau groundwater is intercepted in ditches along Swan Road and some of it is redirected to the Bluff Crest in new ditches across the land.*

*Page 7 map shows seepage zone under surface till*

*Page 11 polygon 10 (forested) a ditch is excavated along the South property line and its water spills over the Bluff crest.. A large landslide has occurred below the uncontrolled ditch outfall. Page 15 higher rates are likely at the ditch outfalls. It may be difficult to secure permits to intercept Swan Road drainage from the head of the ditches so as to shunt the water southward to other discharge sites.*

*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. Buy time until more detailed plans are implemented. (Ellis complies with Thurber recommendations and in-fills ditches thus saturating the bluff and root systems potentiating more land slip.)*

5.7.1 Thurber/Gerath identifies the problem---the source of water

*" It may be difficult to secure permits to intercept Swan Road Drainage from the head of ditches so as to shunt water southward to other discharge sites."*

Why did DILTC continue with litigation when they now knew (2004) the source of the problem, Days after receiving this report DILTC contacted Ministry of Highways using the Ellis documents to discuss rerouting water down Swan Road rather than dumping on Ellis property.

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## 5. January 2005 DE DP 2005.1 (Ellis) and 2005.2(Stoneman) 3<sup>rd</sup> application

The report included:

- **Madrone Report** (discussed in first report)
- **The Coastal Environment and Coastal Construction Paper Elevations and Setbacks for Flood and Erosion Prone Areas by B.J. Holden 1987**
- **EBA 2600 and 2626 Swan Road, Denman Island, Geotechnical Assessment for intended use as farmland** Robert Patrick M.Sc., P.En (same as added to first application) Patrick notes:
  - The clearcutting of the upland areas accelerated the degradation due to increased overland flow and groundwater seepage to the bluffs blames previous clearcutting sanctioned by the Trust
  - Highways ditches redundant
  - Land use as farming is acceptable
  - In essence this report said everything that was later said in the Thurber/Smith Report. Land was stable for it's intended purpose. The biggest thing was the rerouting of water. Which EBA had addressed in this and a previous report DE DP 2002

There was also a letter from Doug Swift DFP talking about Ellis's inherited liability from the upslope clear cutting and the Highway Ditches.

The 2 southern Highways/Island Trust drainage ditches had now been rerouted down Swan Road instead of having been diverted onto the Ellis property.

**Memorandum September 20, 2005** Mr Marlor said application was incomplete and the file was closed and the application fee was to be refunded less \$50 (this was not done).

*"A report must address the geotechnical changes to the property as a result of remediation. You may wish to consider waiting until the remediation work that the BC Supreme Court has directed is done to your property, and then reapply for your permit. Once the remediation is complete, we expect that an application such as yours, that does not address the violations of the existing permits, is more likely to receive a favourable response from the DILTC".*

**November 9, 2005 Staff Report De DP 2005.1 and .2** Rejection reasons:

Judge Groberman's decision had been rendered so staff had no reason to use protecting environment yet that is all they did

1. not consistent with guideline 3 See guidelines section
2. alteration has already been completed contrary to existing permit
3. June 2002 is not relevant as vegetation has been cleared ??
4. June 2005 EBA does not address vegetation removal already completed in violation of in-force permits
5. By November of 2005 Mr Marlor was aware of the Thurber/Smith report (site visit Oct 2005) He knew that remediation was only posturing (250 ferns) yet permits were withheld (banning farming), As the Thurber/Smith report site visits had already taken place DILTC knew the lands were stable as a result of Highways ditches being rerouted

*"for returning the geotechnical slope stability to a state equal or greater that it was before the violation"*

Is this not impossible??? How can one determine past slope stability (especially with highways water), it is also contrary to Judge Groberman. This report was rejected because Ellis had contravened the bylaw. This was punitive and ignored the purpose of the bylaw. This is discriminatory as staff has a policy of accepting and requiring retroactive permits.(Ella Day, Chritchley)

As can be seen by the 2005 letter to Stoneman it was about *protecting the bluff* and getting *same or better stability*??? No mention of protecting farming.

Your application, like Mr. Ellis's, is to clear land and conduct farm activities within the 50 metre setback. The trees already cleared were done so in violation of the existing permit; therefore, before any new permit is issued, the impacts of the removal of the trees must be addressed in a geotechnical report. It is not sufficient to assume that, because the trees are no longer there, the geotechnical engineer needs only to be concerned with the impacts of farming the illegally cleared areas. The geotechnical engineer needs to assess the bluff stability with the trees and without the trees and make clear recommendations for returning the stability of the bluff where the trees were removed so it is the same or better than the stability of the bluff before the trees were removed. To date, we have not received a geotechnical report that addresses this.

**6. Thurber/Smith/Polster, April 4, 2006 court ordered Geotechnical Report on the Ellis lands site inspection October 05. Dave Smith, REMEDIATION REPORT,**



DILTC Geotechnical expert confirmed that once the ditches were blocked erosion was insignificant.

*"No surface water was being discharged over the crest due at least in part to changes made in ditch drainage along Swan Road and ditch infilling carried out by Mr. Ellis. 4.3 Rate of Erosion negligible 400m over 20 years, This is a small fraction of the 50m wide buffer established by bylaws."*

Smith recommends no remediation for Lot A. On Lot B he finds remediation is limited to 250 ferns. This is contrary to the earlier Thurber Report where Ellis was accused of

*"the total Bluff area damaged by incautious human activity on the subject portion of Komas Bluff is estimated 5,660 m<sup>2</sup>, or 18% of the total estimated slope area, As a check on this estimate, the total of length of Bluff damaged by incautious human activity is 143 m or, 17% of the total bluff length,"*

**It now becomes stable for existing and future development with 250 ferns. What would Judge Groberman think???**

#### 4.2 Rate of Bank Erosion

*Thurber Engineering Ltd. (TEL) is pleased to submit this report on appropriate remediation work on the Properties, defined by Lots A and B, Plan VIP74719, Section 23, Denman Island, Nanaimo District. The purpose of the remediation work is to restore the Komas Bluffs to a level of stability that will protect existing and future development on and around the Properties from accelerated slope failure, erosion or other hazardous conditions related to Mr. Ellis's land alteration within the 50 m buffer zone.*

*I rely on the facts found by Mr. Justice Groberman in his Reasons for Judgement dated August 31, 2005 and the fact that the BC Ministry of Transportation blocked the flow of water from Swan Road into the drainage ditches on the Properties. I also referred to the reports listed in Reference Documents during the course of any work but did not utilize my specific facts from those reports.*

*Paragraph 84 of Mr. Justice Groberman's decision states that the remedial work should be aimed at enforcement of the Statute that has as its purpose the "protection of development from hazardous conditions". Under the statute, development is understood to include farming activities. However, from a geotechnical prospective, buffers are established along the crest of slopes, such as the Komas Bluffs, to protect housing development from potential slope instability and crest regression. In engineering terms, those buffer zones are referred to as "building setbacks*

Mr Smith says the land was stable even for housing developments, I am only asking to *include farming*

In Section 5.6 of Mr. Smith's report, he suggests that the rate of crest retreat resulting from Mr. Ellis's activities in the buffer zone may be 5 to 10 times the natural rate, or 20 to 40 mm/year

*I do not disagree with this generalized assessment (Gerath's first report) but, considering the very dense nature of the glacial till which forms most of the slope between the crest and the foreshore, I consider the lower value to be more appropriate. Thus, over 20 years, the crest may recede about 400 mm over most, if not all of the Properties. This is a small fraction of the 50 m wide buffer established by bylaws*

So Smith (the court ordered expert) was saying Geraths Report was a wild exaggeration and the 50m bylaw was excessive (*a small fraction*) . Is Smith also saying the Komas Bluff DPA buffer is excessive.

The Thurber/Smith report now contradicts Groberman's decision as it now says the land is stable and contradicts the Gerath Report that Groberman quoted.

The evidence also satisfies me that the removal of trees and stumps along the bluff crest and in the buffer zone has significantly destabilized the bluff. A expert report prepared for the plaintiff by Thurber Engineering estimates that an area of 5,660 m<sup>2</sup> or 18% of the slope of the bluff has been damaged directly by "incautious human activity." The report estimates that the regression of the bluff crest has been accelerated by those activities, to the point where it is now 5-10 times the natural rate.

*Denman Island LTC v. Ellis et al.* 2005 BCSC 1238 at 29

Respectfully the permits should have of been given after Thurber Smith. Judge Groberman should have been made aware of this report

Judge Groberman's Order was that

*" Ellis undertake rehabilitative measures on the Lands to restore the Komas Bluffs to a level of stability sufficient to protect existing and future development on and around the lands from accelerated slope failure, erosion or other hazardous conditions".* This was done.

That solved the problem for present and future farming it's zoned use. Island Trust says as much

44. *The 2005 development permit application became largely moot after the consent order in the First Ellis/Stoneman Action, as the Denman Island LTC accepted that all that could be done to address the breach of the first development permit had been addressed.* DILTC Response to Stoneman JR. **Why was the permit not issued at this point. It is not the responsibility of DILTC be concerned with a breach they were guided by 919(1)(b) legislation.**

Unfortunately DILTC continues to interpret the Thurber/Smith report wrongly in 19. **DILTC response to Stoneman JR**

*19...the second Thurber report recommended that no further alterations of land occur within the 50m buffer FALSE, ...No other works were considered practical or advisable to address the stability of the Bluff and rate of erosion. other than allowing the bluff to re-stabilize at its own pace without human interference.* (Once again this is contrary to Groberman and ALC as it is basically covenanting the land.) **The purpose of the bylaw was not preserve land in an unaltered state, nor even to protect the bluff.** DILTC does not provide any reports to *"substantiate why no other works were considered practical or advisable".* **Was this more "planner geotechnical expertise".**

The Appeal Court in DILTC vs Ellis found

*The term "development" in s 919.1(1)(b) should be interpreted as including future development."*

Thurber/Smith said *"The purpose of the remediation work is to restore the Komas Bluffs to a level of stability that will protect existing and future development."*

Thurber's report satisfied these conditions, DILTC signed off on the consent order, AGREEING WITH Thurber — **Respectfully WHY WASN'T THE PERMIT ISSUED???**

## Affidavit from David Marlor Did DILTC alter the Thurber Report

*"After judgment was rendered in August 31, 2005, the Local Trust Committee considered that, if possible, and as contemplated in the Judgment, it would prefer to settle the terms of the remediation order without the expense of further litigation. The Local Trust Committee was advised that traditional geotechnical slope stabilization measures could be undertaken for Lot A, but they would likely be invasive and very costly due to the extensive nature of the slumps on that property. In addition, following the preparation of the March 2004 Thurber Report, the highways drainage ditches were blocked by the Ministry of Transportation and Highways to prevent water on Swan Road from entering the drainage ditches Mr. Ellis had dug and discharging over the Bluff on Lots A and B. As a result, the Local Trust Committee considered that focusing remediation works on the other major excavation on Lot B was reasonable. The Consent Order with respect to remediation reflects this compromise position"*

This is from a Marlor affidavit in a Stoneman JR.

- Why would costly slope stabilization measures even be necessary when Groberman had stated the bylaw was to protection of development and Smith indicated the development was farming and stated the land was now stable.
- It is clear Mr Marlor now realizes the erosive factors on the land were from the Highways/Island Trust drainage ditches.
- Was it the DILTC role to *focus remediation* or did the courts not ask a geotechnical professional to do so.
- Mr Marlor says they *were advised* that traditional geotechnical measures.....*would be invasive and costly*. Was Marlor just making this up as no such report exists?
- Did DILTC influence the Geotechnical Report?
- Was this *focused remediation* of any real meaning or just getting back at Ellis.

### 6. Assessment of Restoration of Damaged Notch Site Komas Bluffs, Denman Island, Polster Enviromental Services Ltd. Duncan, B.C., April 2008, Remediation

Mr. Polster notes my land is compact till, very hard and difficult to plant. This remediation report showed the planting of 250 ferns and some salmonberries had been completed and watched for 3 years. Mr Polster notes the alders naturally regrew at a vigorous rate and suggested thinning. It is truly amazing that all the accusations Thurber Gerarth said about my land

*"the total Bluff area damaged by incautious human activity on the subject portion of Komas Bluff is estimated 5,660 m<sup>2</sup>, or 18% of the total estimated slope area, As a check on this estimate, the total of length of Bluff damaged by incautious human activity is 143 m or, 17% of the total bluff length"*

and then it becomes stable. Also Marzar stated in court I had done millions of dollars of damage to my own property. **But now that was being rectified by a few ferns**

## 7. WATER AND DITCHES

QUESTION. WHY DID THE TRUST APPROVE HIGHWAYS DRAINAGE OF UP TO 3 MILLION GALLONS PER DAY ONTO THE ELLIS LANDS AND THEN SUE ELLIS FOR THE RESULTANT DAMAGE, DILTC REPRESENTED ELLIS'S FARM PREPARATION OF ALR LAND AS "INCAUTIOUS HUMAN ACTIVITY"? AND THEN SAID THE LAND WAS STABLE while knowing this discharge of water was contrary to the OCP as referenced by Highways document on page 100.

### ***Transportation and Utilities - Policies*** **ROADS**

*Policy 7 The Local Trust Committee should work with Ministry of Transportation and Infrastructure at the time of subdivision to promote road design that **reduces negative impacts on environmentally sensitive areas and resource lands** and preserves the scenic quality of the area.*

*Policy 11 The Local Trust Committee should oppose the construction or placement of new roads in areas **where road work may undermine cliff-sides or areas that could be damaged by slippage and erosion.***

Marlor <sup>JULY 2004 REJECTION</sup> said I needed

*"to make provisions of drainage faculties to divert drainage away from areas subject to sloughing<sup>j</sup>*

The land slopes toward the bluffs, all water flows in that direction **WAS ELLIS EXPECTED TO PUMP THE WATER BACK TO THE ROAD or FLOOD THE NEIGHBOURS OUT**

**1. Robin Storkey wrote Peter Wightman, Sandy Baird and Jerry Leet of MOTH in June 2004.** I quote from his letter.

- "To the south, there a two ditches that originate on the west side of Swan Road and cross in a culvert onto Pt.A & Pt. B, plan 74719."
- "In order for the water to drain from the upland properties the developer (Radcliffe) had to provide adequate drainage on the upland side of the new road grade and across it"

Actually there were 3 ditches, the north ditch, Highways has now agreed to reroute down the adjacent easement.

**2. In 2002 Bob Patrick warns the Trust of a potential problem. June 2002, EBA Report , Preliminary Slope Stability Assessment, Bob Patrick<sup>38</sup> , "**



- *Two drainage ditches have been excavated which run along proposed new lot boundaries from Swan Road to top of bank"*

Ditches were dug to facilitate Ellis farm operations, water was coming from Swan Road, not Ellis property

- Patrick warns  
*"water discharging from existing ditches will result in erosion".*

The **BC Forest Manual on Windthrow**<sup>808</sup> confirms windthrow damage as a result of saturated soils and puts this land as a high hazard to windthrow ,

- *" Wet soils not having shear strength to supply sufficient anchorage and soil factors that control rooting depth contribute most significantly to the risk of windthrow."*

The upslope land had been logged previous to Ellis farming, a compromised 50 meter leave strip had also been left.<sup>Scott, Thompson and Groberman</sup>

**Wollenheim RPF**<sup>805</sup>, in a letter to Highways regarding highways ditches discharging on adjacent land writes,

- *"The increase of the water table over the years is detrimentally affecting the site productivity and tree growth, and has made the stands susceptible to blowdown, which occurs now frequently"*

### 3. F. Marzari to Bob Gerath, Jan 2004, Expert Advice, DILTC vs Ellis, S011090<sup>43</sup>

Marzari states in her letter to Gerath

- *"water was discharging from two existing ditches from the road on the property out to the edge of the bluff".*

Marzari knew the probable cause for instability was changed hydrogeology not from farming but existing drainage ditches. She also knew the source of the erosion. **Did DILTC knowingly flood my land, knowing it could cause slumps so they could sue me to validate their bylaws??**

January 2004, Marzari to Ellis concerning ditches

If you are excavating outside of the 50-metre buffer zone, you should be aware that the Trust views this as potentially detrimental to the bluff itself, as the concentration of water flowing off the bluff from another ditch would appear to have contributed to a substantial slump on the southern portion of the bluff in December. Any further construction of the ditches on the Property can therefore be expected to exacerbate the contravention of the Development Permit in the buffer zone.

Was Marzari attempting to flood my property and use it a collection sink for highway drains. It is a bit like plugging the sink but forcing the tap to be left on. I am lucky a major slump did not occur.

**4. Feb 2004, Des Kennedy and Harlene Holm, Flagstone, Disaster at Komas Bluffs,**

Start a campaign against Ellis saying his farm clearing caused a landslide, DILTC had been in supposed negotiations to settle this issue on Ellis supplying the “Madrone Report” until the Hume Kennedy campaign began.

**5. March 2004, The Trusts geotechnical firm, Thurber Engineering, identified water problems . Their March 22 field visit ,**

*“with Trust staff concerning slump and erosion on the property **caused by saturated soils and water breakout on the bluff slope**”.*

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

Page 6 Near-surface plateau groundwater is intercepted in ditches along Swan Road and some of it is redirected to the Bluff Crest in new ditches across the land.

Page 7 map shows seepage zone under surface till

Page 11 polygon 10 (forested) a ditch is excavated along the South property line and its water spills over the Bluff crest.. A large landslide has occurred below the uncontrolled ditch outfall.

Page 15 higher rates are likely at the ditch outfalls. It may be difficult to secure permits to intercept Swan Road drainage from the head of the ditches so as to shunt the water southward to other discharge sites.

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. Buy time until more detailed plans are implemented. (Ellis complies with Thurber recommendations and in-fills ditches thus saturating the bluff and root systems potentiating more land slip.)

**6. March 2004, Ellis to Robin Storkey, Dept of Highways, Concerning Ditches 2600, 3636 Swan Road, Denman Island<sup>281</sup>.** Ellis writes Robin Storkey to reroute drainage water down Swan Road instead of it being diverted onto Ellis land

**7. March 2004 fax, F. Marzari to Larry Park, Dept of Highways,** Marzari asks for any plans for Ellis property. Larry Park states there is no drainage easements on title or road dedications for property. Marzari supplies Ellis maps to Robin Storkey (from Ellis’s earlier request to reroute the water). Marzari knows highways/Islands Trust water is being dumped on Ellis land.

**8. Denman Island Ratepayers identified the water problem to MOTH and Islands Trust. In June 2004, Dennis Forsyth, President Denman Island Ratepayers wrote to Peter Wrightman, Highways,** concerned *“about torrents of water from two culverts which direct runoff under Swan Road, disastrous to the Stability of Bluff”*

9. In July 2004 Ellis and neighbour, Luke Rumbolt, at the request of Robin Storkey, block highway culverts diverting water onto their land. The water is redirected to the natural low down Swan Road to a dedicated water way. **Why was the DILTC absent and suing Ellis, even though they were clearly aware and the cause of the problem.**

10. Thurber Engineering, the Trusts Geotechnical expert confirmed that once the ditches were blocked erosion was insignificant. **April 2006, Thurber 2 Report, Dave Smith, REMEDIATION REPORT,**

*“and the fact that the BC Ministry of Transportation blocked the flow of water from Swan Road into the drainage ditches on the Properties”.*

*“No surface water was being discharged over the crest due at least in part to changes made in ditch drainage along Swan Road and ditch infilling carried out by Mr. Ellis. 4.3 Rate of Erosion negligible 400m over 20 years, This is a small fraction of the 50m wide buffer established by bylaws.”*

Smith recommends no remediation for Lot A. On Lot B he finds remediation is limited to 250 ferns to repair. This is contrary to the earlier Thurber/Gerath Report where Ellis was accused of

*“the total Bluff area damaged by incautious human activity on the subject portion of Komas Bluff is estimated 5,660 m<sup>2</sup>, or 18% of the total estimated slope area, As a check on this estimate, the total of length of Bluff damaged by incautious human activity is 143 m or, 17% of the total bluff length,”*

The only change was Highways ditches rerouted and some ferns.

**Smith to Stoneman, Oct 2007.**<sup>1.91</sup> When asked by Stoneman about the area of the slide and outfalls he answers

*I was not directed to exclude remediation for lot A by any person, my recommendation are described in 4.3* (bluffs are stable after Highways ditches being blocked)

**11. Nov 2006, David Marlor Affidavit**<sup>131, 1.88</sup> concerning Stoneman JR application and remediation. At Page 3, para 9, Marlor states

*“After judgment was rendered in August 31, 2005, the Local Trust Committee considered that, if possible, and as contemplated in the Judgment, it would prefer to settle the terms of the remediation order without the expense of further litigation. The Local Trust Committee was advised that traditional geotechnical slope stabilization measures could be undertaken for Lot A, but they would likely be invasive and very costly due to the extensive nature of the slumps on that property. In addition, following the preparation of the March 2004 Thurber Report, the highways drainage ditches were blocked by the Ministry of Transportation and Highways to*

prevent water on Swan Road from entering the drainage ditches Mr. Ellis had dug and discharging over the Bluff on Lots A and B. As a result, the Local Trust Committee considered that focusing remediation works on the other major excavation on Lot B was reasonable. The Consent Order with respect to remediation reflects this compromise position"

Thus no meaningful remediation needed. The land is stable, just block Highways ditches. Becomes absurd, a joke, **Why were permits not issued**

## 12. Aug 2012 Elaine Malo, Development Technician, Highways to Dan Stoneman.

*"Road standards (Ditching) are set out in a letter of agreement between Ministry of Transportation and Islands Trust confirmed at time of final subdivision documents plans."*  
This extension of Swan Road that crosses the Ellis property was done for the Radcliffe Subdivision.

The DILTC and Islands Trust rely on section 540 Division 6 of the *Local Government Act* as their authority to regulate drainage under the Denman Island Official Community Plan

Section 543 2 (f) allows the installation of culverts to protect roads/highway from damage by water.

Section 543 (3)(4) requires that the board by bylaw define the channel bed or stream ( natural watercourse) into which the culverts flow and the watercourse plan be registered.

Jansen Contracting Ltd. v. North Cowichan (District of), 1998 CanLII 5099 (BC SC), <<http://canlii.ca/t/1f6qk>> is virtually an identical case.

Highways has admitted it was wrongly dumping water on the north end of my property and has contracted to block the discharge onto my land and run a ditch down the easement and over the bluff.

DILTC will not answer any of my letters concerning water.

13. Project Initiation Sheet from Ministry of Highways 2013 concerning the cross culvert that is draining on my land. Highways recognize the drainage is **pooling and flooding** my land and the reason is **The Trust has made him plug the end of the ditching to stop the outflow**. Again DILYC is forcing the sink to be plugged and Highways is forcing the tap to be left on.



## **8. Agricultural Land Commission, ALR and Community Planning Guidelines for Local Governments**

The third purpose directs the Commission to work with local governments and others to ensure that their plans and bylaws are compatible with provincial zoning – the ALR. The guidelines are designed to assist the Commission in meeting this purpose.

Under Section 46 of the Act, a local government must ensure that its bylaws and plans are consistent with the Act, the regulations and orders of the Commission. Where bylaws are deemed inconsistent, they are of no force or effect, to the extent of the inconsistency. A local government bylaw is defined as “a bylaw made by a local government that adopts a regional growth strategy, an official settlement plan, an official community plan, an official development plan or a zoning bylaw”.

**The Trust can apply regulations only if they do not prohibit farming but the bylaws must also be consistent with the ALC ACT.**

Many letters referenced by AGRA and ALC , extensive ALC Staff Reports Aug 08, Dec 08, May 09, Bert Van Dalfsen to Chris Jackson Oct 2009, Eric Karlsen to Bill Huot *if inconsistent the Komas Bluff may have no force and effect.*

F. Marzari has constantly tried to villainize Ellis and lately Stoneman as breaking the bylaw but at all times Ellis was being told by ALC and AGRI that they were allowed to farm and as Mr Karlsen says the DILTC Komas Bluff DP may have no force and effect. **Who does a farmer believe???**

AGRI and ALC are required to give bylaw referral approval

*‘ to ensure bylaws and plans are consistent with the act’.*

AGRI and ALC have said many times the delineation of Komas Bluff DPA “ *is not consistent with the act*”.

In 2009, DILTC planner Chris Jackson promised to Rodger Cheetham and Bert Van Dalfsen to remap hazard areas on Komas Bluff for ALC and AGRI signing off on bylaw 185 approval. DILTC now says they have no intention of remapping hazard mapping even after dozens of letters from ALC and AGRI.

Feb 2013 response from planner Courtenay Simpson, Ellis needs another geotechnical report ( no reasons or guidelines) and DILTC is not going to do any hazard mapping on Komias Bluff DPA (as outlined by Chris Jackson, March 4, 2009)

**Response DILTC Stoneman JR.** DILTC says there was no *2009 Jackson to Cheetham and Van Dalfsen agreement re 185*

The Denman Island Local Trust Committee did not enter into any agreement or contract with the Minister of Agriculture or the Agricultural Land Reserve in exchange for their approval of Bylaw 185.

The Denman Island LTC says that its staff consulted with staff at the Ministry of Agriculture and the Agricultural Land Reserve in relation to Bylaw 185. The ALC's and Ministry's primary concerns were with respect to Development Permit Area No. 4: Streams and Wetlands. Islands Trust staff agreed to raise the Provincial agriculture agencies' concerns with the Denman Island LTC after adoption of Bylaw 185, to recommend future amendments to the development permit area guidelines and designations in future bylaw amendments, and to improve communication between staff of the Islands Trust and the Provincial agencies in future.

**This is not quite what all 20 letters say.**

WHY DID THE TRUST PROMISE TO FIX THE PROBLEMS AGRI AND ALC HAD WITH THE BYLAW AND THEN RENEGE ON THEIR PROMISE. THESE ISSUES OF WHAT LANDS ARE ACTUALLY IN THE SCHEDULES ARE THE SAME AS THE PREVIOUS 4064 COURT'S REQUIRED

**1. Feb 2006 Protocol Agreement On Agricultural Land Reserve in the Trust Area**, to identify those issues that should be the subject of the consultation to enhance their respective abilities to achieve their mandates with the Trust area in a manner which is respectful of each agency's jurisdiction 50

**2. Dec 2008 ,Bert Van Dalfsen to Chris Jackson** wanting mapping information—never given

#### **BCMAL Concern #3**

To understand better the implications for various agricultural parcels, BCMAL requested that Islands Trust provide the GIS mapping data that was used to create various maps in both bylaws. We understand that, in the future, Islands Trust and/or other government agencies may re-evaluate habitat and geotechnical data. In the meantime, the existing mapping would not only help Ministry staff understand the bylaws, but it would assist Ministry staff in its discussions with existing and prospective farmers.

**3. January 2008, Erik Karlsen, chair ALC, to Bill Huot, Ministry of Community Affairs,**

*“in particular DPA 1 Komas Bluffs and DPA 4 ...the Commission’s position has changed and it now has concerns relating to these provisions, similar to those outlined in a letter dated 12 December 2006” (do not have)*

*“In this light the Commission is no longer able to condone the DPA provisions and considers that they may be contrary in whole or in part to the spirit of the Commission’s legislation and inconsistent, of no force and effect”.*

**4. August 2008, ALC Staff Summary Report- Planning Issues<sup>1.107 1.99</sup>**

*“Similar concerns to those expressed previously remain –That the extent of the DPAs can be justified having regard to their purpose”*

*“In respect of the Komas Bluff and Steep Slopes DPA this would involve justification from a geotechnical perspective for the extent of the areas included in the DPAs”. Same as courts asked for*

**5. December 2009, Bert Van Dalfsen, AGRI to Chris Jackson, Islands Trust<sup>1.117</sup>**

*“ Likewise without details of the criteria that determined the boundaries of the Komas Bluff (DPA 1) it is difficult to assess the implications on agriculture of that DPA”.<sup>206 132</sup>*

**6. December 2008, Letter of Understanding between AGRI and Islands Trust**

*asks for background maps for DPAs 1 and 2<sup>142a 1.10</sup>*

**7. March 2009, Chris Jackson, Island Trust to Rodger Cheetham, ALC and Bert Van Dalfsen, AGRI,**

Concerns in regard to Denman Bylaws 185 and 186 Chris Jackson states:

- *mapping - hazard area is being extended to Denman in the 2009/2010 timeframe,*
- *Hazard Area Mapping is a component of the second phase of the OCP/LUB review, work expected completed by 2009*
- *The above mapping products are essential before re-establishing DPA Boundaries*
- *Staff commits to recommending to the DILTC to review and rewrite guidelines for the DPA’s to bring them into compliance with RAR regulations and to address concerns raised by AGRI and ALC.*
- *We understand in exchange for Islands Trust Staff commitments listed above, the ALC and AGRI will advise their respective officials to remove objections to bylaw 185 and advise Bill Hout to forward bylaws for approval as soon as possible<sup>142</sup>*

**8. May 2009, ALC Staff Summary Report, Planning Issues,**

*“priority be given to raise issues resolving the issues relating to Komas Bluff DPA”<sup>139 1.107</sup>*

**9. May 2009, Eric Karlsen, Chair , ALC to Linda Adams, Islands Trust, New Denman Island Official Plan and Land Use Bylaw**

*“ documents recently provided to the Commission and to Jill Hatfield of the Ministry of Agriculture by Dean Ellis that call into question the delineation of the Komas Bluff DPA. ...consideration be given to prioritizing the work relating to this DPA”<sup>1.108 137</sup>*



**10. Sept 2009, Bill Hout, Ministry of Community and Rural Development to Dean Ellis,**

*"This ministry's review and advise of the Minister primarily focuses on whether a bylaw conflicts with any significant provincial government objectives, based on advise received from representatives of other provincial agencies. In this case, approval of the bylaw was delayed pending resolution of concerns identified by staff of AGRI and ALC. The Ministry was notified on March 32, 2009 that those agencies were no longer requesting that approval be withheld." 219*

**11. October 2009, Bert Van Dalfsen to Chris Jackson,**

*"The main remaining concerns relate to Development Permit boundaries, content and process. The hazard mapping proposed by Islands Trust to better define the boundaries on the steep slopes should be completed as soon as possible. It may be advisable to prioritize areas such as Komass Bluffs in order to refine the DPA setbacks that are not part of the Quadra Sands formation. The Ministry of Agriculture and Lands would like an opportunity to review the DPA criteria on steep slopes as applied to farm land. The current provision that a qualified professional must ensure that there will be no soil movement is not realistic or attainable for agriculture". Obvious concerns for Komass Bluffs in the OCP and LUB review not just Streams and Wetlands as DILTC says.*

**12. October 09, Eric Karlsen, chair ALC to L. Pierce, Komass Bluff DPA: Dan and Deb Stoneman,**

*"Specifically with regard to the Komass Bluff DPA the Trust has indicated its willingness to review the boundaries of the DPA in the context of hazard area mapping to be undertaken by the Trust over the next year. Further it has agreed to review sections of the DPA .....having regard to the purpose of the DPA. <sup>400</sup>"*

**13. Rodger Cheetham to MacFraser, Director, Local Planning Services, Nov 2009<sup>149</sup>**

*"With regard to the Hazard Mapping we had expectations that the work would have progressed and now understand that it will only be getting under way in February of next year with an anticipated completion date in early 2011. As you are aware the Commission is particularly anxious to see a resolution of the issues relating to the Komass Bluff DPA for which the hazard mapping is critical."*

**14. Feb 2010 Bert Van Dalfsen to Dan Stoneman, cc'd to R. Cheetham, ALR. Bill Huot, Ministry of Community affairs, Jill Hatfield, AGRI ,**

*" the Ministry has requested the Islands Trust to carry out additional work to refine their hazardous area mapping particularly for Komass Bluffs", The Islands Trust is being asked to better define these areas AGRI still not clear on the map and area 1.121*

**15. April 2010, Eric Karlsen to Mac Fraser, Islands Trust,**

*"provide an update in particular with regard to the Komass Bluff DPA" , cc'd to all participants 1.125  
144*

**16. May 2010, Staff Report, DESCRIPTION AND STATUS OF TARGETED REVIEW ITEMS<sup>148</sup>**

*“Development permit area mapping and guidelines re Agriculture STATUS Consider amending guidelines re agriculture as per Ministry of Ag and Lands referral response to bylaws 185 and 186”*

**17. July 2010, Ben Stewart, Minister of Agriculture to Dan Stoneman,**

Minister Stewart thinks DILTC has already undertaken remapping of Komass Bluff and intends to review the development permit area boundaries. Must have been given false info 218

**18. Aug 2010, Courtenay Campbell, planner Islands Trust to Dan Stoneman and Chris Jackson,** concerning the Ben Stewart letter, No new mapping has been undertaken on Komass Bluff 143

**19. April 2011, Chris Jackson to Dean Ellis, Rodger Cheetham and C. Campbell,**

*“the Komass Bluff is not under Review”* <sup>290</sup>

**20. November 2011, Wes Shoemaker, Deputy Minister AGRI to Dan Stoneman,**

*“In 2008/09 AGRI staff, together with ALC received a commitment from DILTC to review the mapping of the Komass Bluff DP boundaries. I am advised that the DILTC has not met their timeframes for reviewing the mapping of the Komass Bluff DPA boundaries.”*<sup>212a</sup>

**21. Denman Island Farm Plan 2012 recommendations, pg 71**

- **14. AMEND THE OFFICIAL COMMUNITY PLAN** 8. Review DPAs and amend where necessary to ensure that agricultural uses in the ALR are not effectively prohibited as a consequence of protecting other values.

## Local Governments

Local governments prepare plans and bylaws under the authority of Part 26 of the *Local Government Act*. They must also adhere to all other legislation of the provincial government including the *Agricultural Land Commission Act*.

It is the responsibility of local governments to ensure that all plans and bylaws related to lands in the ALR are consistent with the Act, the regulations and orders of the Commission.

These guidelines are intended to assist local governments in achieving this consistency.

unintended impacts on farming. Provisions in DPAs for purposes other than agriculture, should recognize that agriculture is the priority use in the ALR, and that agricultural uses should not be effectively prohibited, as a consequence of protecting other values. In addition, if conservation

***Agricultural uses should not be effectively prohibited, as a consequence of protecting other values*** as also recommended in the **Denman Farm Plan**.

- Why would DILTC stop Ellis from farming when he supplied the Madrone Report and the EBA report before they sued him ??
- Why would DILTC sue Ellis to reforest the 50m area (prohibit farming) then have Ellis reapply to farm it. (but cancel his applications –prohibit farming)??
- Why would DILTC flood Ellis's land than sue him saying he caused damages to his land??

**Is protecting development for future uses another value. Is it prohibiting farming??**

Because DILTC were trying to show the strengths of their bylaws, because they were wrongly trying to have a forest top buffer, because they were wrongly preserving sensitive land, because they were wrongly trying to protect hazards DILTC was effectively prohibited agriculture for other values.

Application were rejected because *"in violation of in force permits" "alteration has already been completed contrary to existing permits"*, Staff Report rejections Ellis application on policing grounds

- **June 2002 DP permit** is not relevant *"as vegetation has been cleared"*. The act does not protect vegetation.
- **Comox Valley Record, Nov 14, 07** Judge's Denman decision backs Island Trust

*"We are happy that the courts have once again upheld the bylaws on Denman Island that allow the community to address naturally the hazardous areas in a responsible manner"* said Kim Benson, chair of Islands trust council.

- **Flagstone, 07, Denman Sets Legal Precedent (Again), Des Kennedy DCA**

*"Local government has the power to use a development permit designation to regulate development in areas of natural hazard, such as the Quadra sands bluffs on Denman's northeast shore"*

*"On a more positive note, an important legal precedent has been established province-wide for protection of sensitive areas"*

*"As required by the OCP, no logging occurred on the bluff slope for fifty meters back from the crest"* Des Kennedy DCA (convicted criminal contempt Clayoquot)

- **Comox Valley Record, Sept 7, 2005, Denman land fight in court,**

“While the bluff won’t be completely restored, we have confirmed that our bylaws are valid and that further incursions into this sensitive area will be avoided” Louise Bell Trustee (convicted criminal contempt Clayoquot)

- **Island Trust Press Release**

*“We are extremely pleased that the courts have upheld the bylaws on Denman Island that preserve and protect this sensitive area” said David Essig , Chair of the Islands Trust. “While the case has been costly one for us to pursue, it really went to the heart of the work we do and I believe all of the Trust Council was behind it. We hope it sends a message to others who may ignore the bylaws that protect sensitive lands in the Islands Trust Area. I believe this case has demonstrated the strength of the Islands Trust Federation.*

**Did Essig forget he was prohibiting farming by his “sending a message” about the “strength of the DILTC” and “protecting sensitive areas.” Best quote**

*“It was a very important case for the Islands Trust because the validity of Development Permit Areas as land use planning tools were at stake.” Said Tom Babb one of two Local Trustees for Denman Island. Louise Bell says, “While the area affected by erosion of the bluff won’t be completely restored, we have confirmed that our bylaws are valid and that further incursions into sensitive areas will be avoided.” Relates to the reason to go after Ellis to make the bylaws valid after the Bauman Decision on 4064 that overturned all of them.*

### Islands Trust Press Release 2013

*David Graham, a Denman Island local trustee responded to the judgment saying, “I’m pleased that this judgment confirms and clarifies the options available to the landowners. They must now work with the local trust committee to comply with Denman bylaws both by remediating the land and fulfilling the conditions necessary to obtain the proper permits.”*

David Graham also worked on the Denman Farm Plan that states ***Agricultural uses should not be effectively prohibited, as a consequence of protecting other values.*** Has DILTC effectively stopped agriculture on these lands by not allowing geotechnical reports that fulfill the requirements of 919.1(1)(b).?? DILTC can subjectively control the issuance of permits. This application how many professional reports are rejected--- what if DILTC withholds the permit for the wrong reasons ie 919.1(1)(a) –the process is halted and farming prohibited.

**Recent Planners and Trustees do not answer letters nor have they ever visited these lands.**

### Protecting other values “hazardous conditions”



David Marlor's *The purpose of this development permit area is to protect the hazardous conditions along Komas Bluff*, (discovery)

### Protecting other values "environment"

**David Marlor to Ed Pickard, Oct 1999<sup>1,25</sup>** The 50m was determined by taking the Silva Report and adding 50 meters to the west side of the polygon. The rationale was that Silva would only ID the actual bluff, but we want to protect the top of the bluff also.

**Protecting other values untouched nature** (also contrary to Groberman *The purpose of the bylaw was not preserve land in an unaltered state, nor even to protect the bluff.*)

- **Island Trust News Release** Louise Bells states "protect forest top buffer"
- **Feb 04 News Release**

*'Restore the land to their previous condition prior to breach. Trust is exploring every option for Restoration of the bluff and surrounding environment "*
- **Comox Valley Record, Nov 14, 07**

"While the bluff cannot be completely restored, the requirement to remediate was upheld, which protects the area from further destabilization" Louise Bell
- **News Release, Islands Trust Settles Court Costs in Komas Bluff Case**

*"In recognition of the instability of the fine Quadra sand comprising the Bluff and the erosion that occurred earlier due to the logging operations along the edge of the cliff area. Expert technical analysis at the time recommended that the tree cover and groundwater regime be left in their natural state to minimize natural"*
- **Section 19 Response of DILTC** reinterpretation of the Thurber /Smith report "Allowing the bluff to re-stabilize at its own pace without human interference."
- **Marzari to Ellis January 2004** *In terms of the required terms for the report, the Trust's requirements are that the report address any and all works that would be recommended to restore the stability of the Bluff on the Properties to a level similar to undisturbed portions of the Komas Bluff on neighbouring properties, or alternatively to a level of stability that existed prior to any land alteration, including ditch construction, excavation, or tree or vegetation loss in the 50 meter buffer area on the Property. Prescriptive standards of remediation should be set out by professional or professionals retained to undertake this work upon investigating the condition of the Bluffs, and these standards should be reviewed and approved by the DILTC. Not only is this wrong from 919.1(1)(b), it is impossible to determine prior to land alteration, (remember the upslope 1000 acres had been clearcut by the previous owner in 2000 with Trust permission)*

**Cancelling permits and making the process of applying for a permit onerous are ways to prohibit farming**

Trying to protect the rights of the DILTC bylaws (or right to make bylaws based on regulation) against the ALC laws at the expense of prohibiting farming. Ultimately provincial regulations trump municipal regulations.

The Trusts use of the 50m “buffer” to imply it is a conservation zone is wrong.. (that would be a value other than farming) Actually the use of the word buffer illustrates this problem. A Buffer is an area of stable land to separate different occurrences. There is no need to use stable land to protect from a hazard, as Groberman said it is the other way around. Buffer is a loaded word and was ment to show Ellis infringed on some sacred area. See Buffer section

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## **9. Geotechnical Report 44211 on the Komas Bluffs for SBJ Properties by Robert Potter, P. Eng, 2006**

The land to the north of me (ex 4064) had a geotechnical report done for subdivision. This land coincides with the Holden “Memo to File, Harlene Holm definition of Komas Bluff DPA, various community maps and the Farm Plan maps etc. as the real location of the Komas Bluff DPA. In a Report by R Potter his findings state THAT THE LAND TO THE SOUTH COVERED WITH STIFF TILL HAS NO RECESSION.

*Shoreline erosion is concentrated within that sector of the property where the sand section is not protected by the basal unit of stiff till. A comparison with the recent survey of the natural shoreline boundary with that of the 1875 Crown Grant survey shows a shoreward recession of that line of up to 30 metres over the past 130 years (average of 0.23m per year). The same comparison along shoreline where the toe of the slope is protected by a stiff till shows no recession of the shoreline since 1875.*

Thurber/Smith, Polster, EBA Bob Patrick have all noted the compacted till nature of my land and have come up with low recession rates.

---

## **10. EBA March 18, 2009, Regarding: 2626 Swan Road, Denman Island, BC, Geotechnical Re-Assessment of Intended Usage as Farmland,**

This report was done as a result of Islands Trust still denied my permits in 2009. I wrote to the Premier who wrote to ALC and as a result Rodger Cheetham and Jill Hatfield visited my land. They suggested I get Bob Patrick to upgrade his report **EBA 2600 and 2626 Swan Road, Denman Island, Geotechnical Assessment for intended use as farmland Robert Patrick M.Sc.,P.En Jan 17, 2005**

*In his 5.0 Conclusions/Recommendations*

*"From a geotechnical perspective, based on the information provided and our observation of the current conditions, EBA concludes that the recommendations provided in our January 17, 2005 letter remain valid".*

---

At the time Mr Patrick did 2 other geoteck reports on the properties.

### **11. EBA, April 2009, 2626 Swan Road, Denman Island, BC, Removal of "Hazardous Trees"**

Mr Patrick noted that trees that fall over the bluff can take large parts of the bluff with them.

#### *"Conclusions*

*Trees provide benefits, from a geotechnical perspective, for slopes due to the reinforcement of the soil by the root system, the adsorption of groundwater and the interception of rainfall (which can reduce surface erosion). However, at the top of a slope they can result in a surcharge load on the slope and/or soil disturbance should they fall over.*

*During the assessment of the trees on this property, the above should be considered along with other factors.*

*From a geotechnical perspective, as long as the removal is carried out carefully and the appropriate revegetation is undertaken after tree removal, the adverse impact on the slope should be minimized and should not have an adverse impact on development at the site "*

Why would David Marlor want to protect trees (hazards) that take large parts of the bluff with them. Read in conjunction with the Windthrow Handbook of BC and Highways ditches. Did Marlor know he was setting up a sloughing situation especially with flooding from Highways ditches noted by Denman Rate payers Association, and in several cases Department of Highways.

### **2004 Sofor Report on Ellis property**

*"It is well known that the edge of forests adjacent to a clear cut are more susceptible to blow down as a continuous forest acts as a wind break,"*

---

### **12. EBA, March 2009, 2626 Swan Road, Denman Island, BC, Proposed Stairway**

this is in keeping with the steep to the beach done to the adjacent northern lots of Baxter, Radcliffe, Chritchley and Day (without permit). Even the steps down the real Komas Bluff have been built..

*"• Where the slope is steeper than 25°, the walkway/stairs should be supported above grade on posts; and*

*• Where the slope is flatter than 25°, the walkway can be at grade with proper support of steps."*

---

### 13. Denman Island Farm Plan, produced for Islands Trust and BC AGRA, adopted Dec 2012.

This report clearly puts DILTC and AGRA in conflict with the Komasa Bluff DPA mapping boundaries. This Farm map coincides with the Holden, Memo to File, Harlene Holm's definition of Komasa Bluff DPA, various community maps, Ministry of Environment water maps, Forestry maps etc.

The farm plan map was produced with vigorous ground truthing and is site specific .

- **The BC Ministry of Environment, Mapping Geographic Information System, Data entry and validation procedures for soil, agricultural capacity, surficial geology. Manual 10, E. Kenk and M.W. Sondheim, 1987**
- **Soils of the Gulf Islands of British Columbia, Report 43, 1990, Kenny, van Vliet, Green**

This Farm Plan map could qualify as the missing 1980 Min of Environment report based on site inspections as it seem to be the default Min of Environment map from the 70's and 80'. This map was commissioned by BC AGRI and DILTC as the de facto agreed location of Komasa Bluff erosive soils.

My property is outside of the area of erosive soils and as shown on this Min of Environment Farm Plan Map . As shown my property is on stable farmable Bowser soils.

Why does the DILTC say they used the **1987 Holden General report** that had 1 obscure mention of Komasa Bluffs and a 3<sup>rd</sup> party **SILVA ecosensitive report** to "add polygons" to get a location for a DP area that was contrary to extensive professional investigation when this map has always been available.

### From Trustee Laura Busheikin writing about the Farm Plan

*For governing bodies, the Plan includes recommendations for specific regulatory changes to support farming on Denman (pages 55 – 70). Specifically, for the Denman Island Local Trust Committee (DLTC), it provides a list of suggested amendments to the Land Use Bylaw and Official Community Plan.*

#### 14. AMEND THE OFFICIAL COMMUNITY PLAN

Action:

☐ Amend the Denman Island Bylaw No. 185 (Official Community Plan) to further support farming.

☐ Consider the following amendments to the Official Community Plan:

1. Elaborate on the current OCP policy 1 under E.4 Resources stating "In the Sustainable Resource designation: the principal uses should be agriculture and silviculture..." to include a general statement that further recognizes agriculture as the priority use for ALR and other agriculturally designed lands such as:

All uses and subdivision of Agricultural Land Reserve land, shall be in accordance with the provisions of the Agricultural Land Commission Act, regulations thereto or Orders and Policies of the Agricultural Land Commission.



8. Review DPAs and amend where necessary to ensure that agricultural uses in the ALR are not effectively prohibited as a consequence of protecting other values.

DILTC has to mesh the Farm Plan with the DP areas and their use. AGRI partially funded the farm plan.

---

## 14. EBA, 2600 and 2626 Swan Road, Denman Island, BC, Composition of Slope and regression of the crest. Sept 2012

This report shows our land is not in the “Quadra Sands” as depicted by Holden. The soil composition is compacted glacial till.

### 7.0 CONCLUSIONS

*Based on our current knowledge of the subsurface conditions at the Stoneman/Ellis properties, it is concluded that the bluff comprises a deposit much more resistant to erosion and regression than Quadra Sands, therefore the rate of erosion will be significantly less than the 0.3 m /year estimated for that material.*

- **October 2009, Bert Van Dalfsen to Chris Jackson,**

*“It may be advisable to prioritize areas such as Komas Bluffs in order to refine the DPA setbacks that are not part of the Quadra Sands formation. The Ministry of Agriculture and Lands would like an opportunity to review the DPA criteria on steep slopes as applied to farm land.”* The province is aware Komas Bluff is not sanctioned right.

- Louis Bell in a news release called our land Quadra Sands. As has Des Kennedy, Harlene Holm, F Marzari, David Marlor. This was wrong.
  - The OCP says Komas Bluff DPA is in Quadra Sands. More reasons the Komas Bluff Schedule E is in the wrong area.
- 

## 15. Maps and Descriptions, including Holden “Memo to File”

None of these 10 maps show Ellis lands as part of the Komas Bluff hazard area (similar to Holden 1989.)

**Reasons the location of Komas Bluff DPA can only be the area that coincides with the Holden 1989 Memo to File** The only documents commissioned by the Trust

specific to Komasa Bluff which fit the descriptions and criteria in the OCP are in Holden "Memo to file" documents relating to his actual site visits in 1982 and 1989. Holden 1989 states:

- Komasa Bluff as being Quadra Sands --- "*the Quadra Sands bluffs erode at the slowest natural rate when left undisturbed*"
- Logging --- Bluff was found to be largely clearcut logged
- Sloughing was confirmed by detailed site inspection. --- "It appears that parts of the bluff have now slumped, and the slope was less steep than in 1982".
- Land is very permeable and porous

### Maps and Descriptions supporting Holden's "Memo to File"

- "Boundary based on previous geotechnical report commissioned by the Trust"  
Jill Hatfield's understanding of the bylaw
- Holden 1989 "Memo to file" was directly identified and referenced in the Hopwood Report as the location of Komasa Bluff DPA
- Holden 1989 "Memo to file" documents are the only documents which meet the legal criteria for the justification of a DPA.  
**Local Government Act 920** (7.1)(a) For land designated under section 919.1(1)(b), a development permit may do one or more of the following:  
specify areas of land that may be subject to . . . erosion, land slip, is specified under section 919.1(1)(b)
- Holden correspondence regarding being asked for additions to Komasa Bluff DPA.  
**J. Bohlen, chair Special Area Committee to A Grey, Weldwood requested Dave Morris**, planner Islands Trust that lands to the south be included in DP area,  
**Dave Morris to B.J. Holden, Coastal Engineer, 1982**<sup>23</sup> asks for areas for a DP. B.J. Holden to Dave Morris, 1983 *if additional bluff areas are of the same sand composition*, Holden says areas can only be added if they are the same composition. (would need professional analysis not planners just moving boundaries) 22
- **Harlene Holm, Sept 97** a trustee, writes to Island Trust copied to AGRI, ALC, and other provincial authorities regarding a Komasa Bluff Development Permit based on Holden's "Memo to file"<sup>34</sup>, she defines section numbers of Komasa Bluff DPA, 24, 31 and 32, consistent with Holden map areas. Harlene Holm identifies logging, sloughing and Quadra Sands.<sup>23</sup> None of these were identified on the Ellis lands. Ellis/Stoneman lands are section 23 shown in map 12
- Harlene Holm also encloses another map and report **The Komasa Bluffs Heritage or History**<sup>30</sup>,  
<sup>map 9</sup>, prepared by the DCA in 1984 which identifies logging at the south end of Komasa Bluffs. In doing so Holm is confirming the southern boundary of the DPA. The map is similar to Holden, 1989, "Memo to File". see maps map 9

- **1995 Proposal to The Pacific Marine Heritage Legacy**<sup>1.5 map 4</sup> submitted by Denman Conservation Association. The DCA was trying to interest the Pacific Heritage Fund in purchasing the Komasa Bluff area – this proposal map corresponds to Holden’s 1989 “Memo to File” map. This proposal also confirms logging, sloughing, and Quadra sands formations. Map 4
- **Weldwood’s** forestry showing their logging locations define the area for Komasa Bluffs. **Denman Island : Weldwood Holdings and Sensitive Areas** shows the area logged in 1984, this map corresponds to the Holden 1989 “Memo to File” map 7
- **Denman Island Forestry Committee 1984 map**, similar to Holden, 1989, “Memo to file” identifies quadra sands map 5
- **Denman and Hornby Islands, Water Allocation Plan, July 1994, Province of BC, Ministry of Environment, Lands and Parks**, showing the location of Komasa Bluff consistent with Holden’s, 1989, “Memo to File”. **This map by the Ministry of Environment may well have been the lost 1980 map used for Resource Analysis Branch of the Ministry of Environment referred to in the bylaw. Ministry of Environment did not do any other work on Komasa Bluff so this could have been the default map from the 1890 study, or the Map from Holden Memo to file as the depicted area is the same map 6 This is also the Farm Plan Map.**
- **Imap BC map**<sup>map 8</sup> of Ministry of Forests logging roads supports the Weldwood Maps that logging was further north than the Ellis/Stoneman lands due to the network of logging roads. Map also identifies “Komasa Bluff”. map 8. The OCP states “*past logging had happened*”, this map show there were no logging roads that reached my property. From our experience on the land the only logging that occurred was Thompson in 2000. No previous logging in the Weldwood era (shown by Holden Report and Holm letter) happened on our property.
- **2013 Denman Farm Plan** Soil Series Map of Denman, identifies Quadra Sands area as erosive lands while Ellis/Stoneman’s are Bowser over glacial till, this map is the Denman Farm Plan 2012, It’s a 1959 soil survey study (Day et al) which shows that DILTC knows my land is not erosive Quadra sands but Bowser and Parksville soils underlain by Glacial Till 6a
- **2013 Denman Farm Plan** map showing Ellis land in forage crops map 6b  
**ALC Map 92F.057 ALR lands**<sup>map 10, 375</sup>, defines Komasa Bluffs far to the north, Agricultural land would not have been included in hazardous areas as it could not of been farmed. Map 10
- **In The First Community Meeting to Review the 2<sup>nd</sup> Draft of OCP, Sept 28, 2000**<sup>1.29</sup>, David Marlors states ‘*The Komasa Bluffs are not in the ALR*’. Was the Ellis/Stoneman ALR land added later because it was owned by a forest company.’ *A land grab land from forest companies*, doing what Hatfield speculated .
- **Islands Trust Removal Map**<sup>72</sup> Between bylaw 35 and 111 , the map changed, no reason was given, the land removed was private residences (it was the owner of this land who had asked

Marlor what land was in the ALR in the first meeting) Marlor said Komasa Bluff not in the ALR<sup>1.29</sup> yet the piece owned by Leaky logging was kept in the DPA.

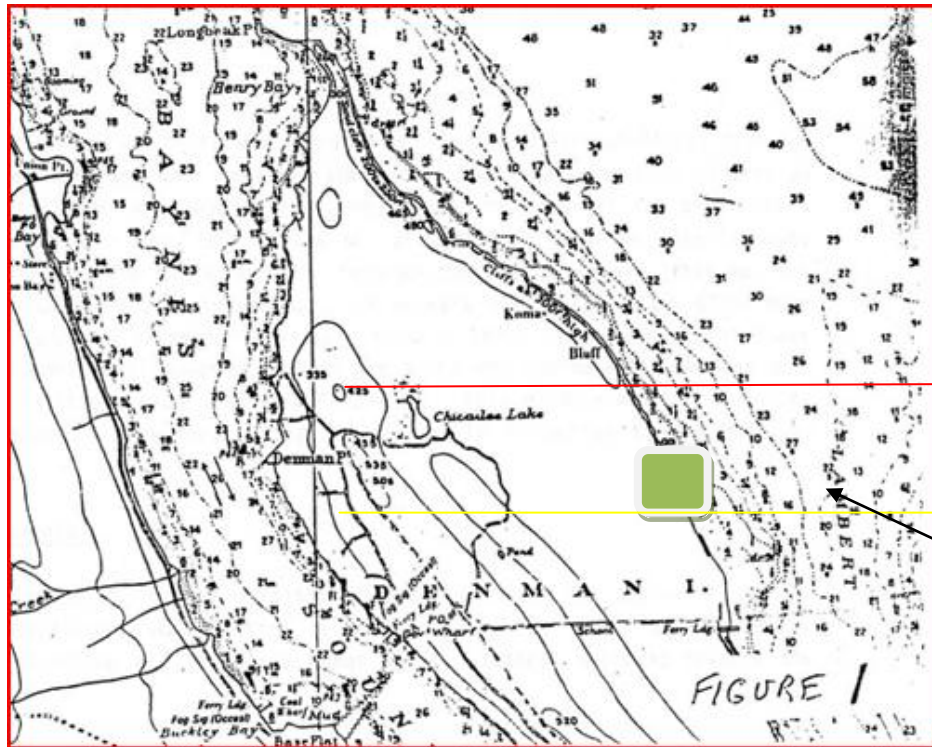
### **Ellis/Stoneman properties are outside of the area Holden justified as a hazard area because:**

- All maps that show Komasa Bluff and hazard areas are all far to the north of the Ellis/Stoneman lands.
- No Logging and road building has occurred. None of these characterize the Ellis/Stoneman properties. Logging on Ellis/Stoneman occurred in 2000. Weldwood logged in 1983/1984 on the south of Komasa Bluff. Weldwood never logged these properties. The Weldwood map does not include Ellis lands.
- Properties do not consist of Quadra sand. Ellis lands are not quadra sands as identified by DILTC reports, EBA engineering reports, the Holden file and drill logs. Gerath made a mention of Quadra sands in an unspecific *north lands*. The area Gerath walked on his site visit was an area Polster and Smith called compacted glacial till.
- No detailed site inspection was ever made when bylaw adopted in 1987. The only lands which ever received site inspection (1982 and 1989) were those specific to Holden's Memo to file Report –this area is 2km north of the Ellis properties. A DP would require some detailed site inspection to justify.
- No Sloughing was confirmed on the Ellis lands at the time of adoption in 1987. (The only sloughing that did occur in 2003/2004 was a result of highways drainage onto the properties.)
- The Ellis/Stoneman lands are not permeable and porous as confirmed by 2 Thurber, EBA, Potter and Polster expert reports. The Ellis land is compact glacial till. Well logs are also available.
- Harlene Holm description for the Komasa Bluff DPA is section 24,31 and 32 the Ellis/Stoneman lands are section 23





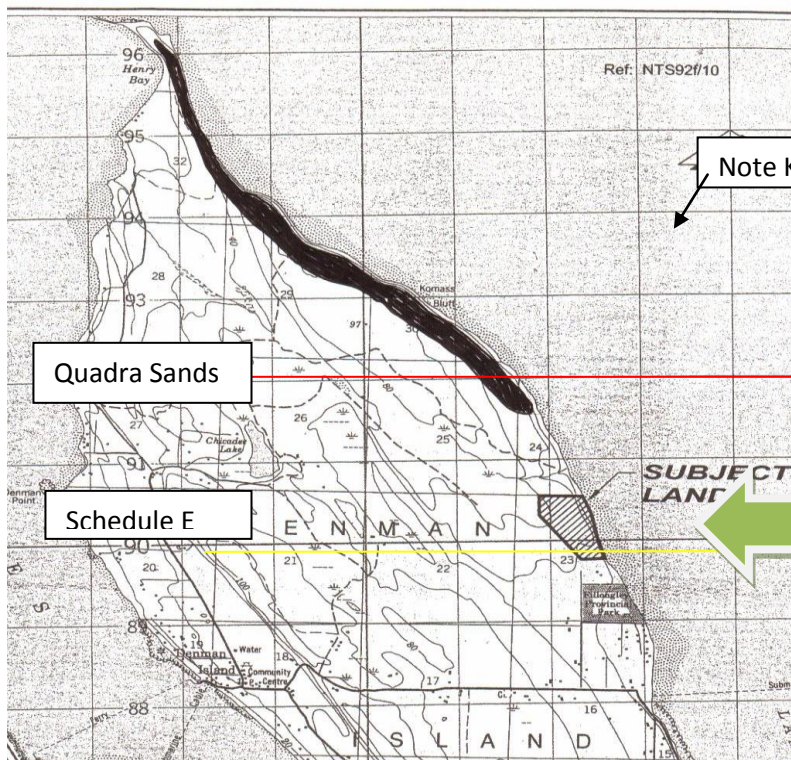
## MAPS



1

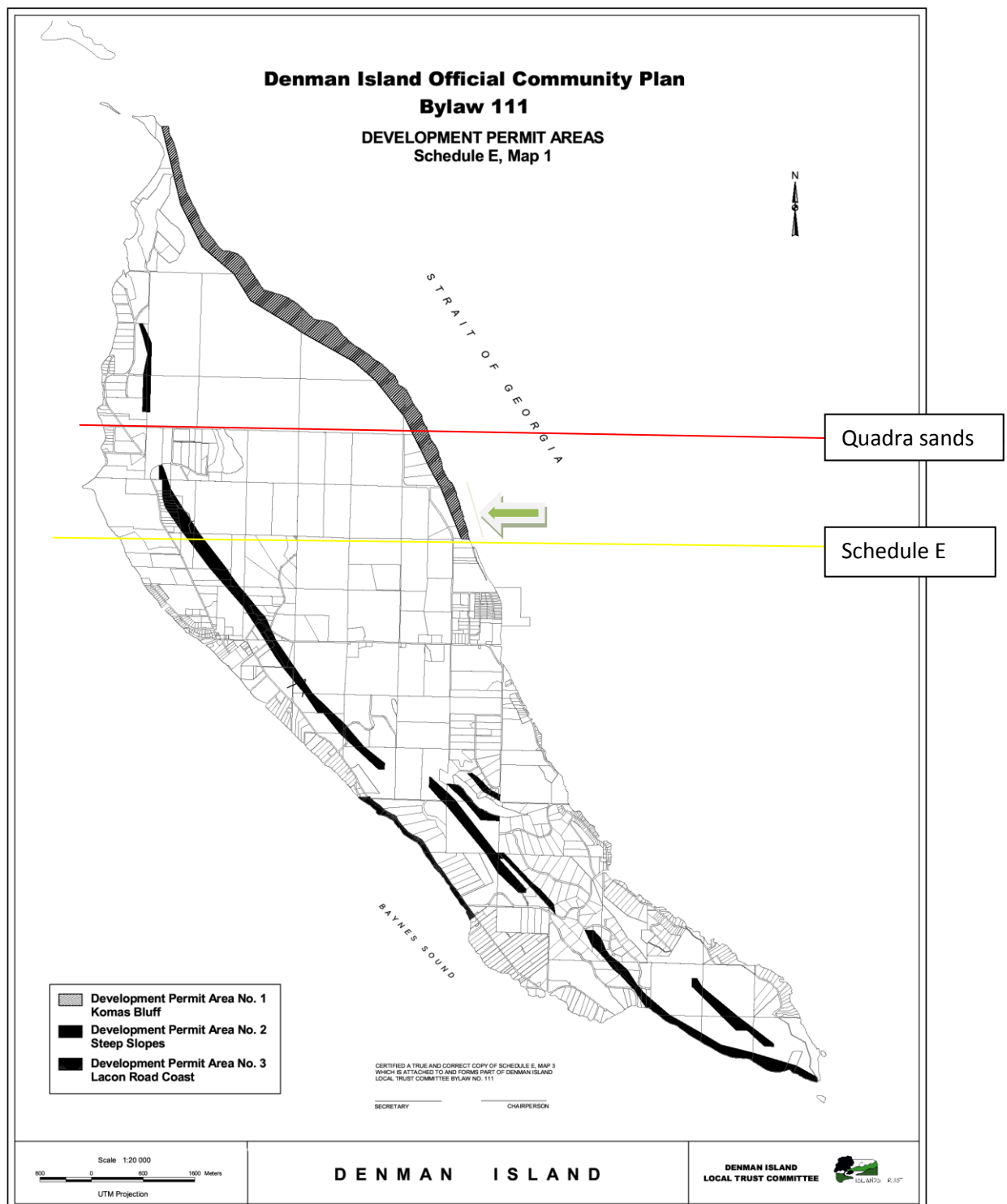
Horizontal red line, E  
West drawn through  
Chickadee Lake, southern  
boundary of Holden Mer  
to File, southern bounda  
of Quadra Sands  
Yellow line Southern end  
Schedule E

Map from Thurber Engineering showing Ellis /Stoneman lands **black** is Holden "Memo to File" Map

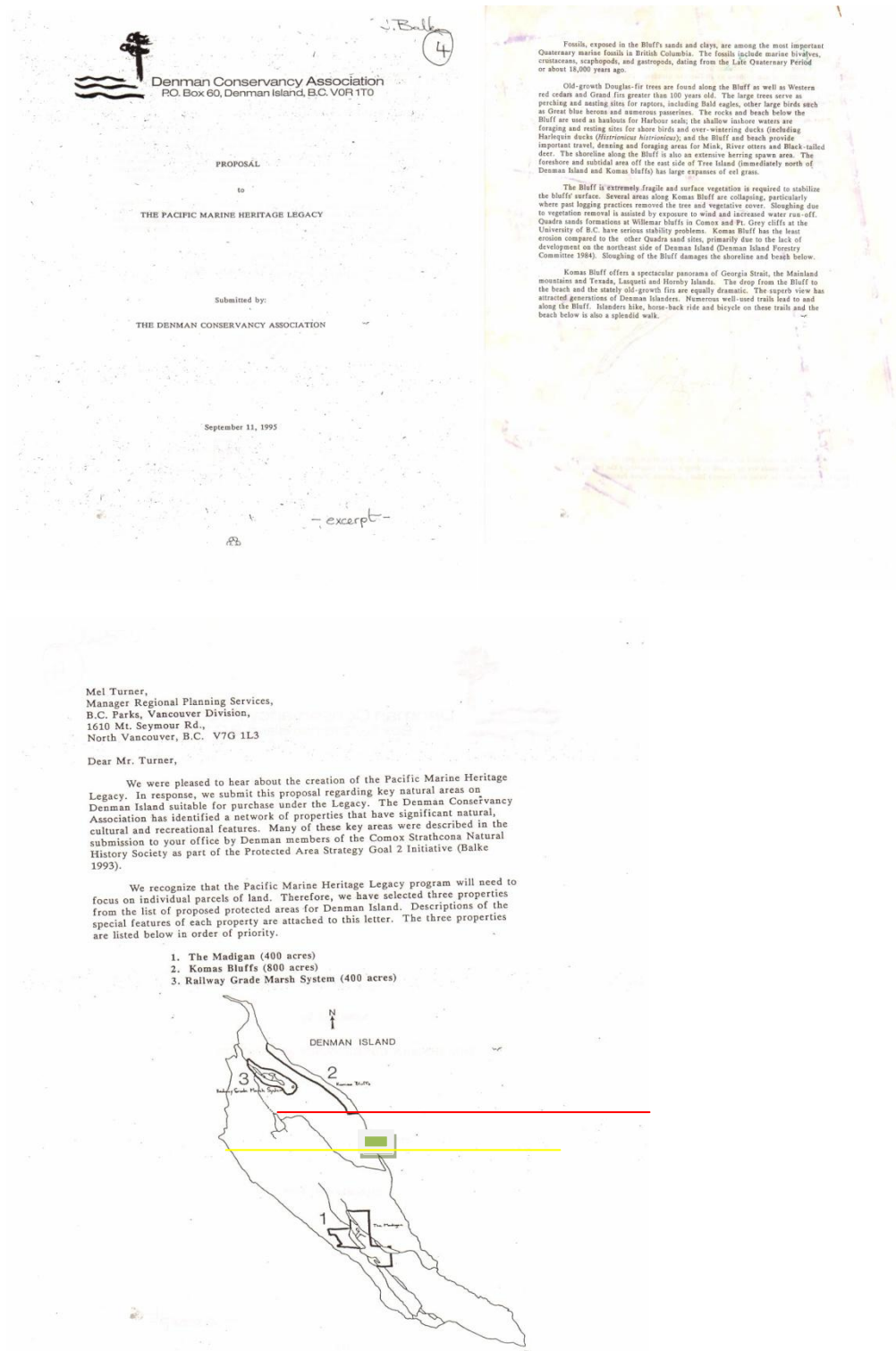


2

Bylaw map 111, Schedule E does not follow Holden Map and includes Ellis/Stoneman, this is the only map that does not follow all Komas Bluff maps



## Denman Conservancy's proposal to sell Komas Bluff (area similar to Holden)



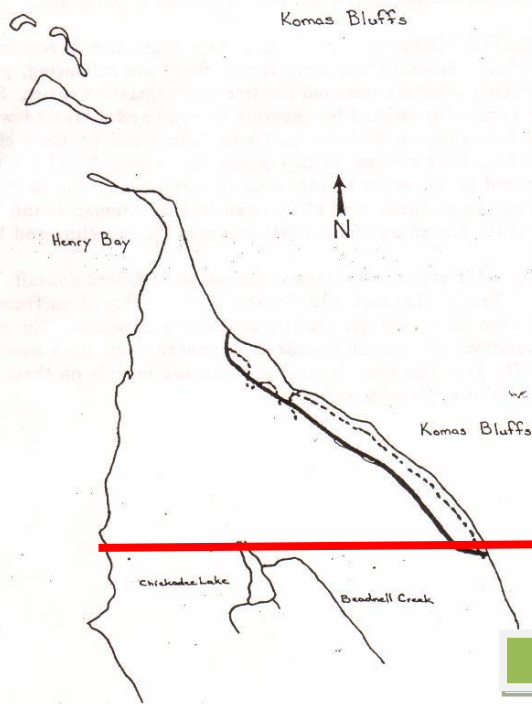
## Denman Island Forestry Committee Map 1984 similar to Holden



## KOMAS BLUFF

The Komas Bluff is a sand cliff which drops 35 to 100 m to the ocean for approximately four miles along northeast Denman Island. Views from the top of the Bluff are spectacular and enjoyed by all Denman islanders. The Bluff has many values and special features including:

- \* geological features
- \* paleontological features
- \* ecological value
  - wildlife
  - old-growth forests
  - fragility
- \* scenic value
- \* recreational value



— Boundary  
--- Trails

The Bluff is composed of a fine sand of glacial origin, part of the Quadra Sands Deposit. The sands are up to 100 m deep and are potentially the largest reservoir of subsurface water on Denman Island (Denman Island Forestry Committee 1984).

PROVINCE OF BRITISH COLUMBIA  
MINISTRY OF ENVIRONMENT, LANDS AND PARKS  
VANCOUVER ISLAND REGION

**DENMAN and HORNBY ISLANDS**  
WATER ALLOCATION PLAN

July 1994

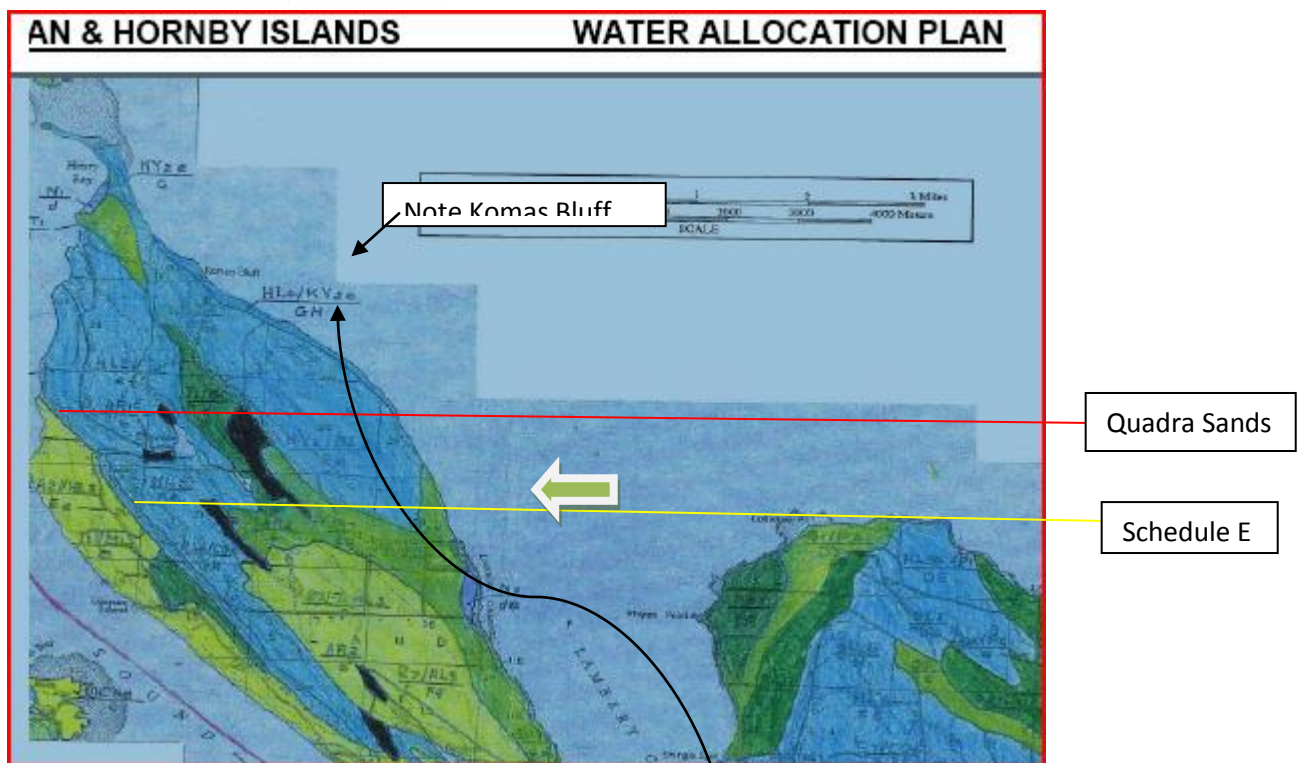
written by:

Sharon Pitt  
George Bryden

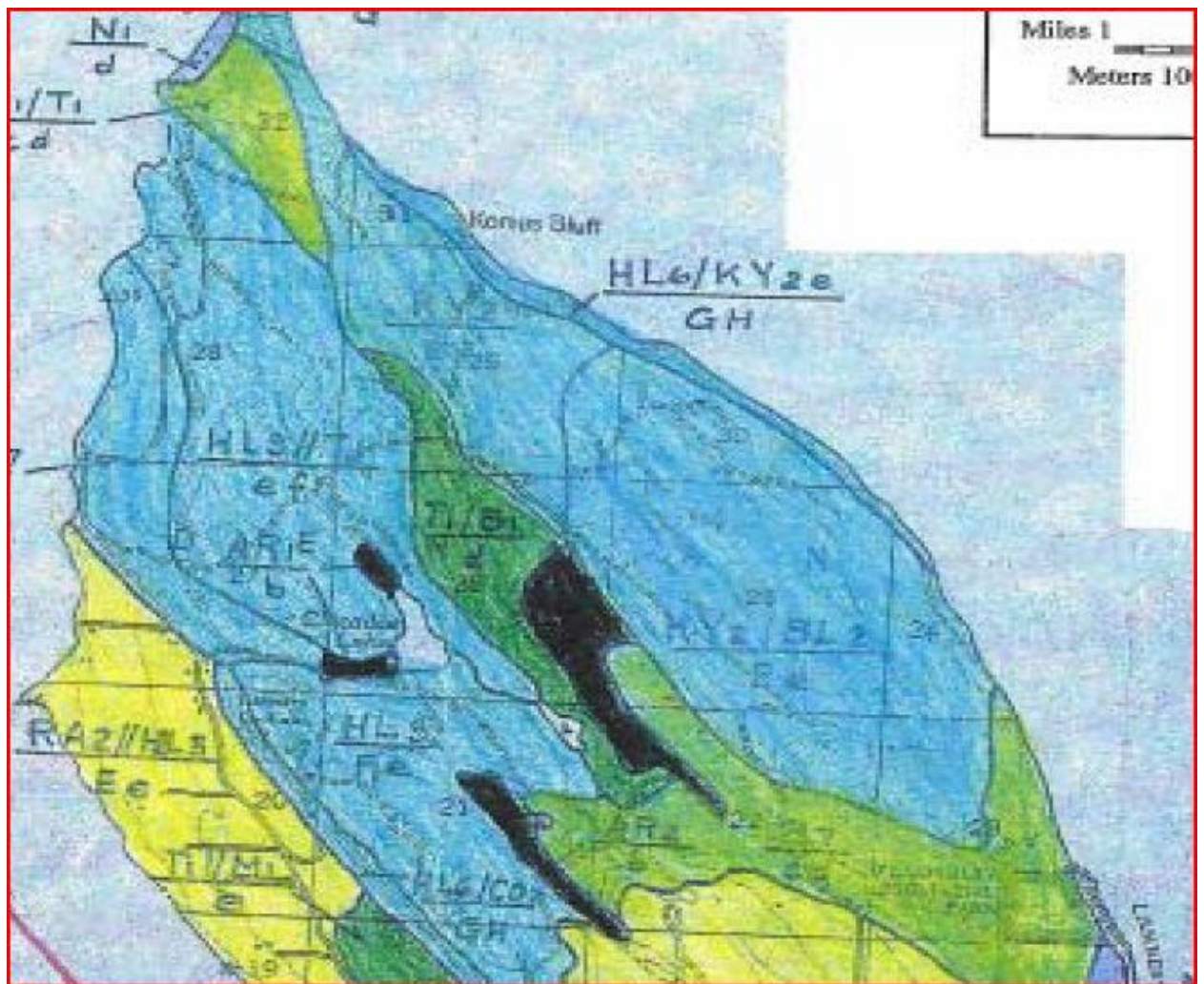
Regional Water Management  
Vancouver Island Region  
Nanaimo, B.C.

Approved:  
  
Regional Water Manager  
Vancouver Island Region

Date:  
15 September 1994



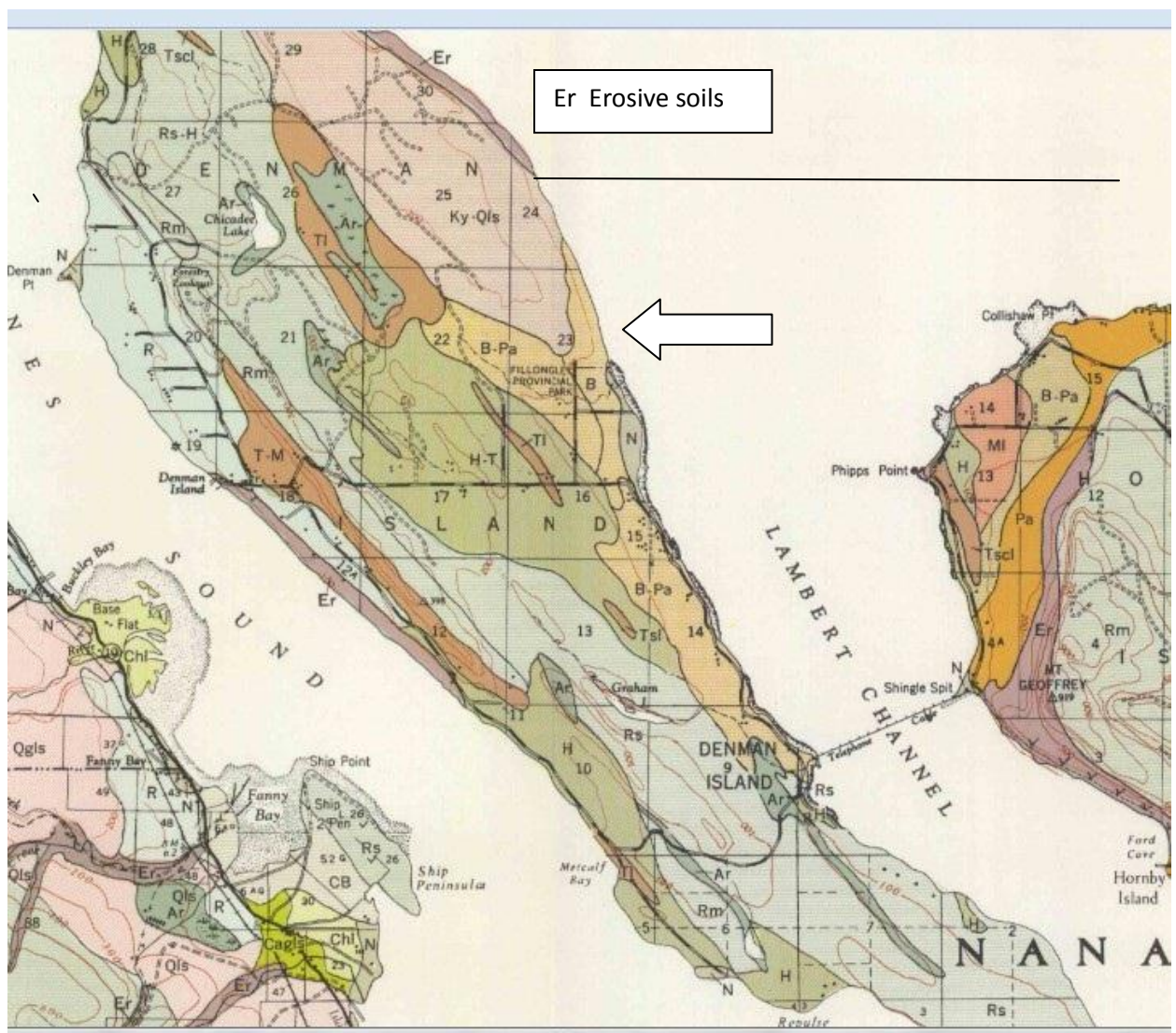
Ministry of Environment Study of Water, 1984, defines and names Komas Bluff with same map as Holden Memo to File, this could be Min of Environment default map of Komas Bluff,  
[www.env.gov.bc.ca/wsd/water\\_rights/wap/vi/denman/plan.pdf](http://www.env.gov.bc.ca/wsd/water_rights/wap/vi/denman/plan.pdf)



Note Komas Bluff is identified and it follows the same areas as Holden and the Farm map



Denman Farm Plan using maps from Day 1959 Identifies erosive lands that coincide with Holden





Location	Soil Type	Soil Series	Soil Texture	Topography	Drainage	Notes
Surrounding Chickadee Lake, in pockets east of Chickadee Lake and west of Swan Rd., wetland areas in the southern part of the island.	Peat	Arrowsmith (Ar)	Peat	Depressional	Poorly drained.	Deep undecomposed organic material (peat), stone-free
Eastern part of the island, along Swan Rd., East Rd., Corrigan Rd., Jemima Rd., and Beaver Rd. Found mixed with Parksville Soils.	Brown Podzol	Bowser (B)	Loamy sand	Gently sloping	Imperfectly drained.	Coarse marine sediments underlain by glacial till or marine clay, stone-free.
Bluffs along western island ridges (west of Lacon Rd. and south of Denman Rd.) and north eastern ridges.		Eroded land (Er)	N/A	Very steeply sloping	Variable drainage	Escarments, beach bluffs, etc.
Found mixed with Tolmie soils in central part of the island bisected by Denman Rd. and stretching north to end of N. Central Rd. Found also in southwestern portion of the island along Lacon Rd. between Woodham Rd. and Hilton Rd.	Brown Podzol	Haslam (H)	Shaly loam	Gently sloping to steeply sloping	Well drained	Glacial scoured consolidated shale and sandstone, few stones
Mixed with Qualicum soils in the northeastern portion of the island (east and north of Chickadee Lake).	Podzol	Kye (Ky)	Loamy sand	Level to gently sloping	Well drained	Stone free
Mixed with Tolmie soils in a narrow band running NW to SE just east of NW Rd. and Lacon Rd. from north of Piercy Rd. to Woodham Rd.	Podzol	Merville (M)	Loam	Gently sloping	Moderately well drained, saturated during winter months	Medium-fine marine sediments underlain by marine clay or glacial till
Found in small pockets along easter bluff (east of Fillongley Prov Park), at the southern end of Lacon Rd., and at Denman Point.	Rendzina	Neptune (N)	Gravelly loamy sand and sandy loam	Gently sloping	Well drained	Loose gravelly loam sand or sandy loam over gravel, sand, shells, and organic debris. Few stones.
Mixed with Bowser soils, see Bowser location description.	Dark Grey Gleysol mix	Parksville (Pa)	Sandy loam	Level	Poorly drained, receives seepage from higher elevations	Coarse marine sediments underlain by glacial till or marine clay, stone-free.

Vegetable, forage and grain production is significant on Denman Island. Production of these crops was largely located along the coastal sections of the island within the ALR (Figure 7).

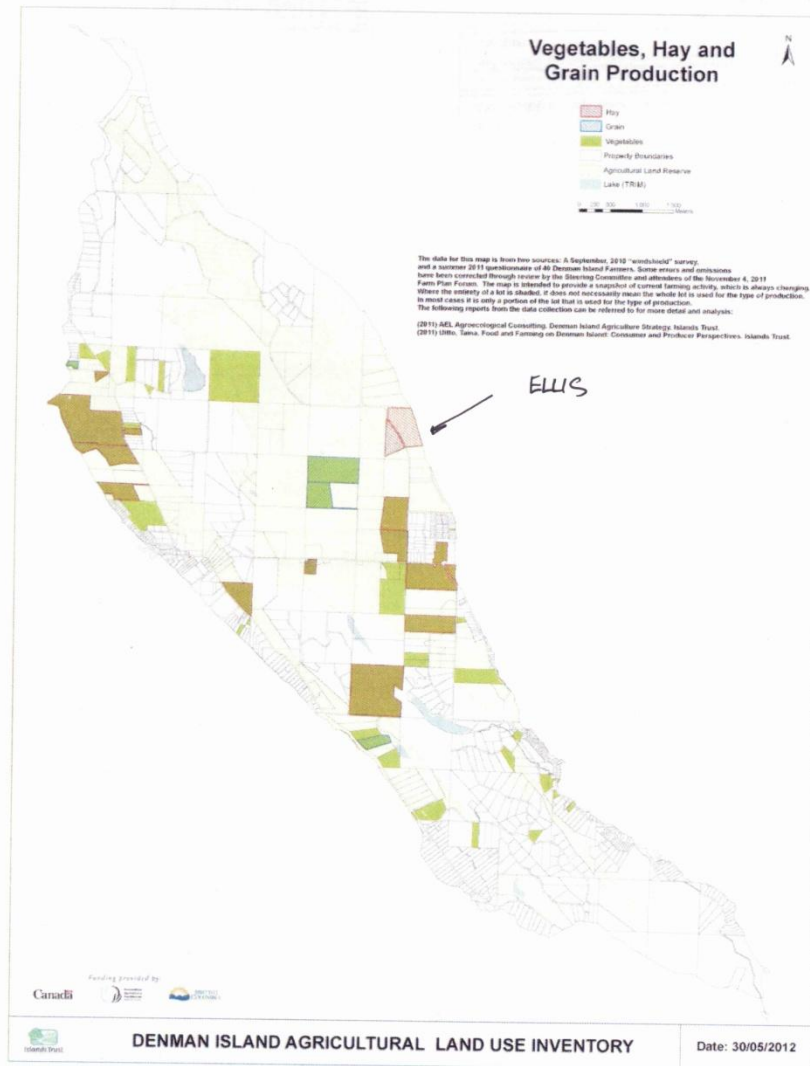
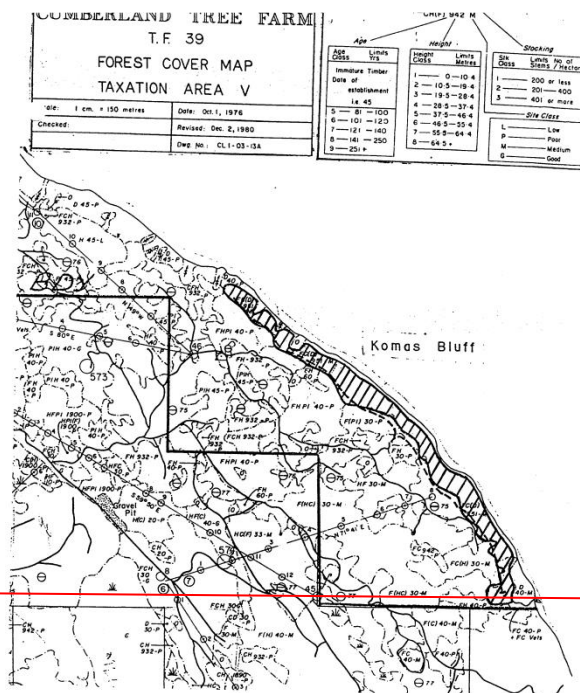
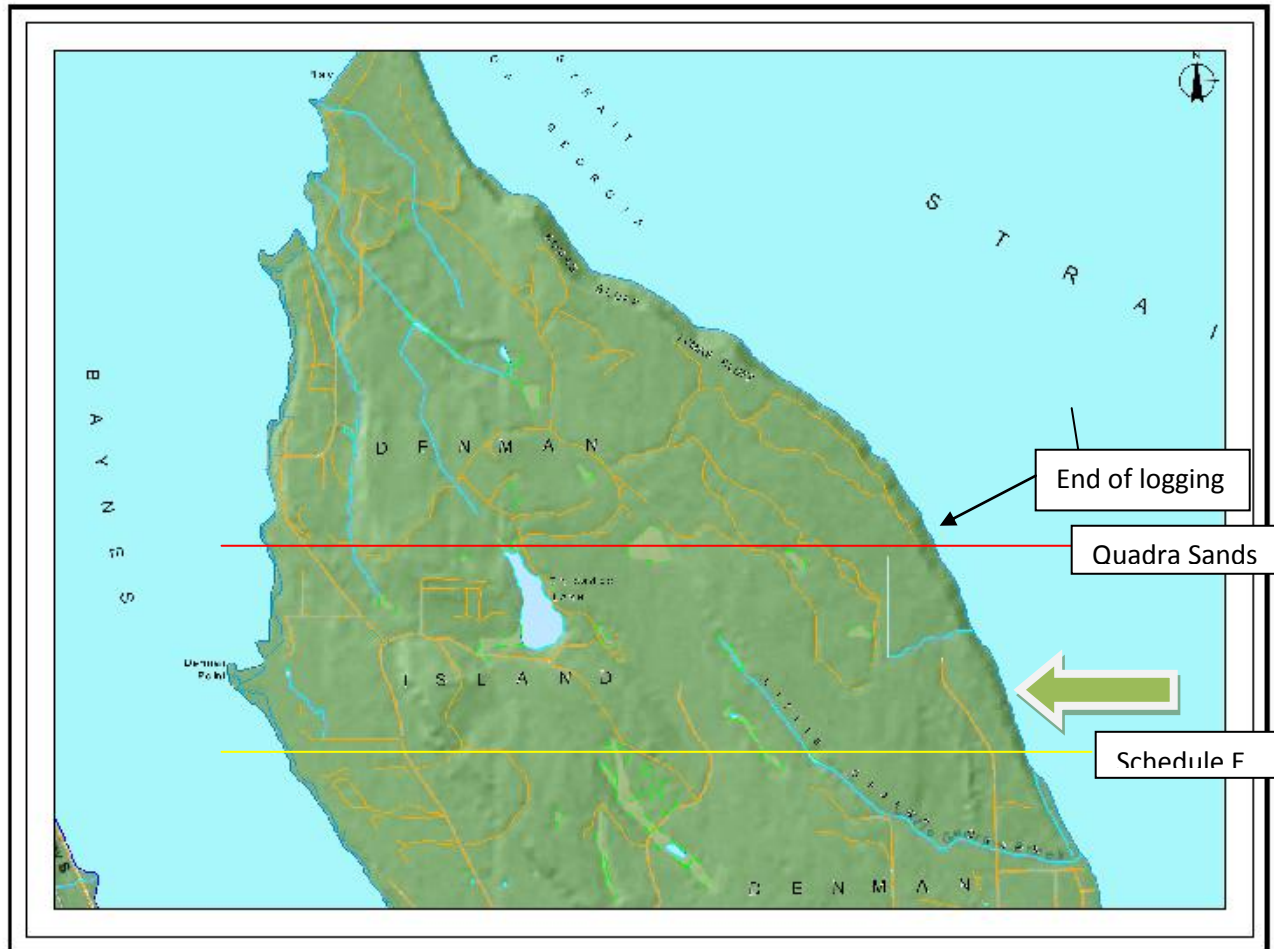


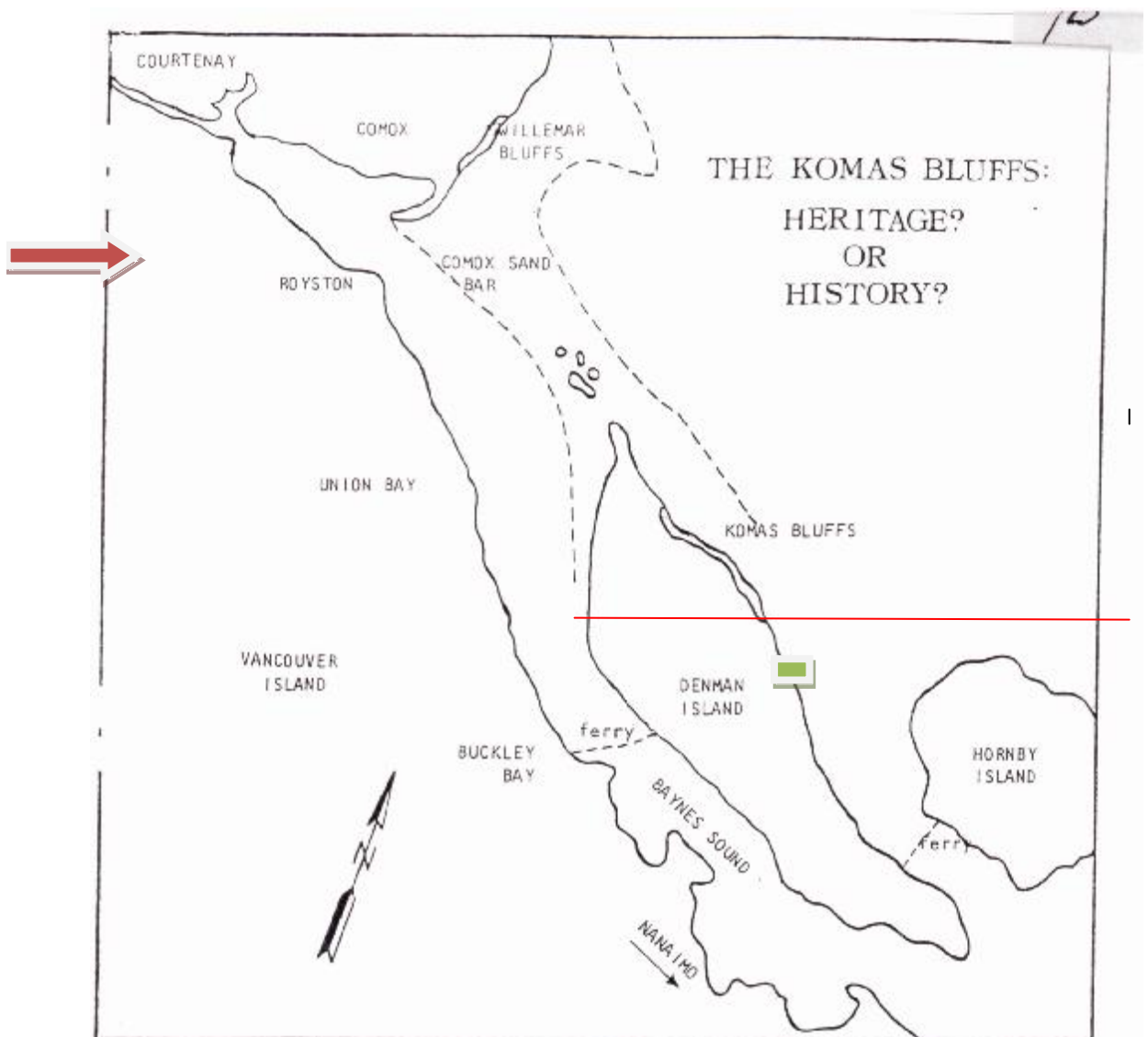
FIGURE 7. DISTRIBUTION OF FIELD CROP PRODUCTION ON DENMAN ISLAND





Imap BC showing logging roads on Denman Island and defining Komas Bluffs. Bylaw said area had been logged, Ellis/Stoneman and next ¼ section north had not been logged –no logging roads. Note identification of Komas Bluffs



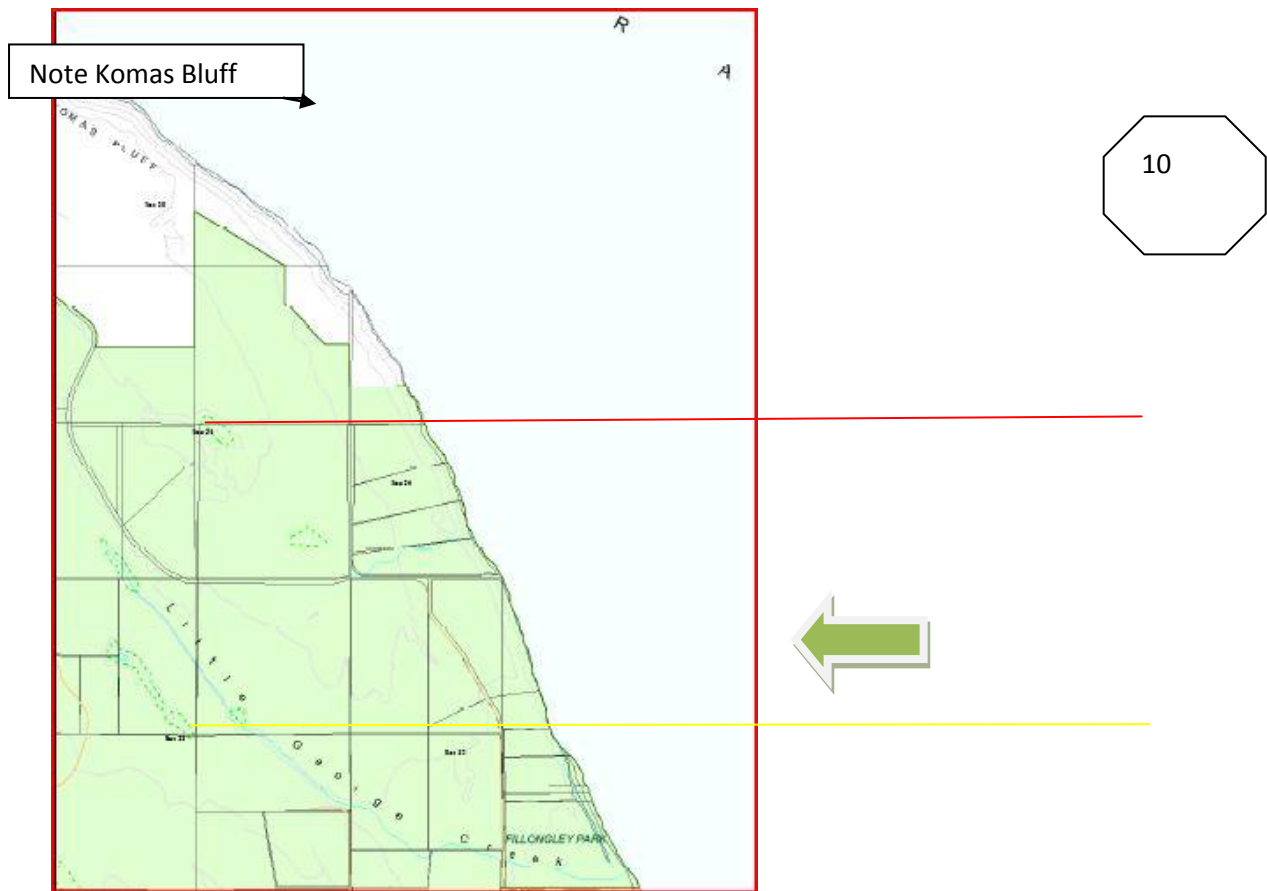


Denman Island is a rural community of approximately 600 permanent residents. It is situated south of Courtenay and Comox and east of Vancouver Island, confining a body of water known as Baynes Sound. East of Denman Island is Hornby Island.

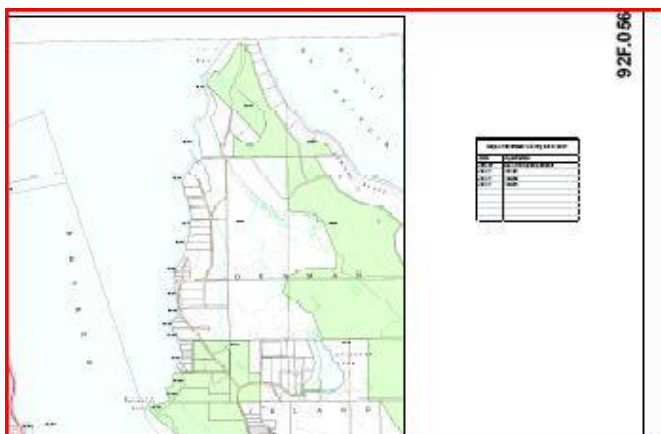
Denman Island is still mainly forest covered and a consistent practice of logging has occurred on the island for many years.

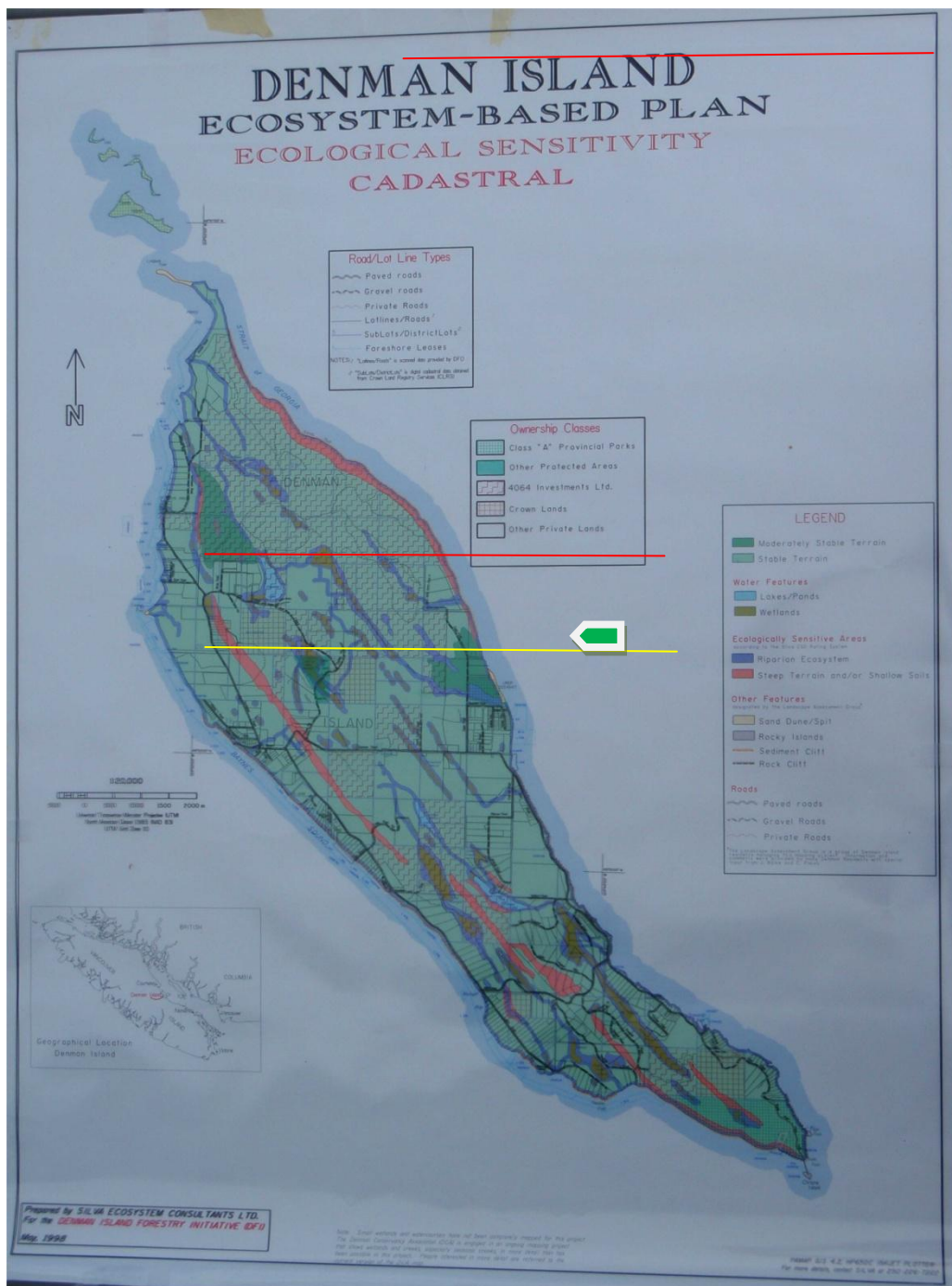
Weldwood's holdings comprise approximately 22% of the Island's land area.

This is the map that trustee Harlene Holm sent out to the Trust and all provincial authorities on the setup of the Komas Bluff DPA, **Komas Bluff, Heritage or History** and her description corresponds to the Holden Map, she also send the Holden Memo to File map figure 1 , Note identification of Komas Bluffs

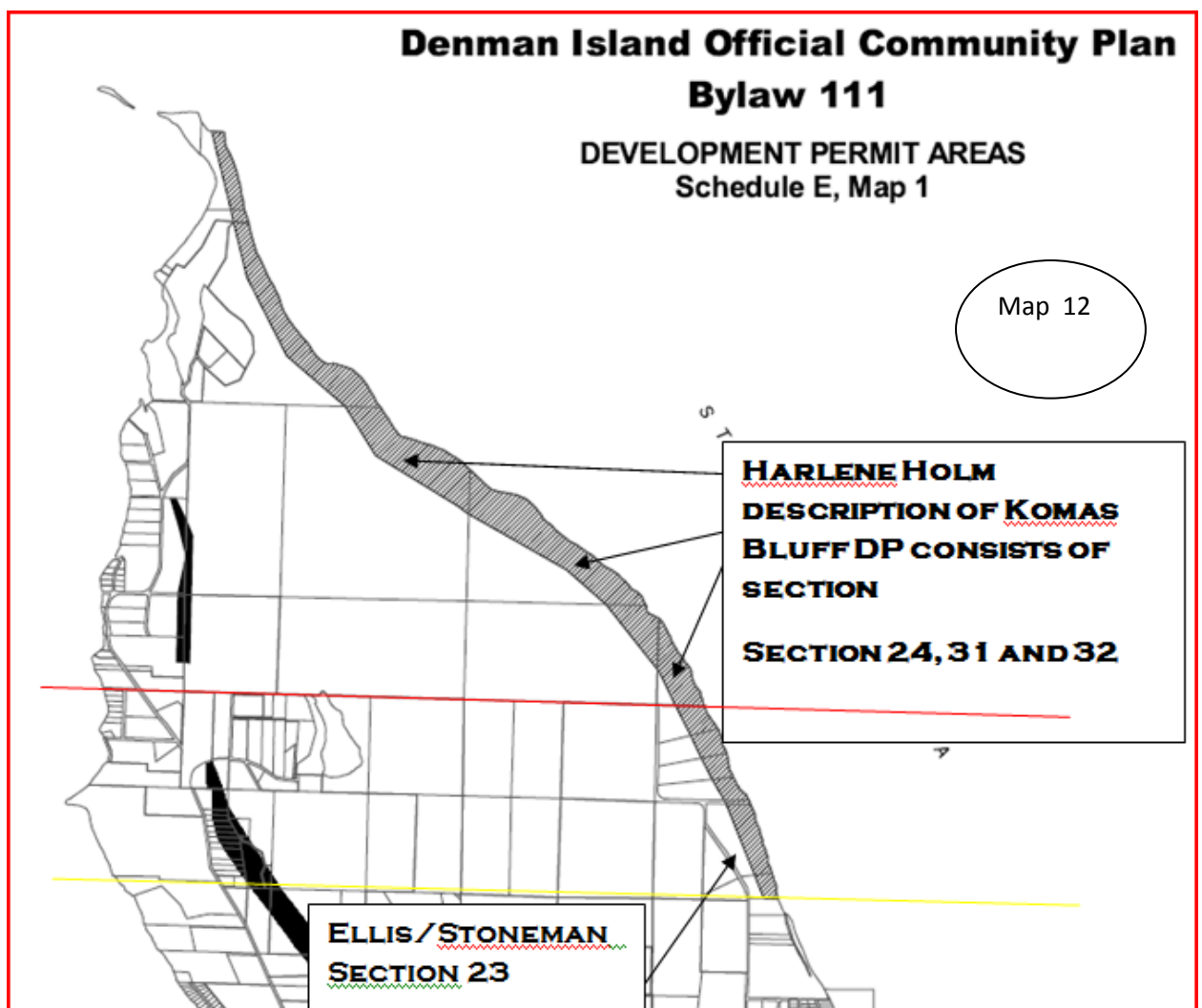


ALC Map 92F.057 showing ALR land in green, showing that farm land would not have been included in hazardous area of Komas Bluff , the “Komas Bluff” area depicted is similar to Holden. Note Komas Bluff area identified.





Silva Map which DILTC represented as the map used for the bylaw, it was ecosystem not hazard, does not apply on ALR and does not comply with any of the definitions in the OCP





**16. DOCUMENTS COMPARING SOIL COMPOSITION AND INSTABILITY OF QUADRA SANDS ON KOMAS BLUFF TO COMPACTED GLACIAL TILL OF ELLIS/STONEMAN LANDS. This is a chronology of reports –some have been used elsewhere.**

**Documents Relating To Bluff Instability Of Quadra Sands.**

1. **1982 Holden** <sup>#1.2</sup> Ministry of Lands, Parks and Housing Request to assess Lands adjacent to the Bluffs because of sloughing.
2. **1982 Holden** <sup>#1.3</sup> Holden To Islands Trust Planner Site Visit, Reports on erosion.
3. **1983 Holden** <sup>#23</sup> Holden To Islands Trust Planner “if additional bluff areas are of the same sand composition (Quadra Sand)” similar regulation.
4. **1985** <sup>#1.187</sup> **Komas Bluffs: Heritage or History** shows instability of Quadra sands as an area to be protected
5. **1984 Bohlen** <sup>#22 a</sup> Reference proposal to extend Komas Bluff hazard area to Fillongley on studies of Paul Brudnell re quadra sands and to acquire for conservation.( not accredited)
6. **1987 Holden** <sup>#24</sup> **Holden Report Ministry of Environment Coastal Environment and Construction. Komas Bluff** mentioned as example only, no map of the general area, no site visit to confirm sloughing.
7. **1989 Holden** “**Memo to file**” commissioned by DILTC identifies Quadra Sands and delineates hazardous conditions relating to sloughing. Ellis not on map
8. **1995 DCA** <sup>#1.5</sup> **DCA Proposal to Pacific Marine Heritage Legacy** to sell Komas Bluffs “Several areas along Komas Bluff are collapsing . . .”
8. 1999 – 2008 DENMAN ISLAND OCP re Komas Bluff

OCP Bylaw 60, 1999 excerpts re soil composition, location, drainage

Glacial deposits Pg 3, Schedule A – Part A

“Sand and gravel were also deposited, as the ice melted back and torrents of meltwater flowed out from under the wilting icefront. Thus originated the ‘Quadra Sands’ which form Komas Bluff, Longbeak Point, Sandy Island and the Seal Islets.”

C.1 - LANDS AND FOREST Pg 17, Schedule A – Part C

“The Island has a long coastline and a few sites have been recognized as vital habitat for rare plant species and nesting seabirds. These significant coastal areas occur north of the Komas Bluff, at Denman Point, at Whalebone Point, at Repulse Point, at Chrome Island, and along the south and southwestern coast of the Island.”

D.4 - WASTE MANAGEMENT Pg 35, Schedule A – Part D

“Because the thick quaternary sediments in the Komasa Bluff area are very permeable and porous, extra attention would be required to prevent contamination of the ground water by any household septic systems in that area.”

Same in OCP Bylaw 185, 2008 Pg 3 Glacial, Pg 20 Lands and Forests, Pg 43 Waste Management,

9. . Documents Relating To Stability Of Ellis Stoneman Land

**1989 Holden** <sup>#1.4</sup>, **Memo to file and Map**, *Land to the south of different composition* (this coincides with Potter)

, <sup>#1.26</sup> **Excerpt from staff report for Leaky DP farm permit** “The steeper slope is well treed indicating that is probably quite stable.”

10. 2002 EBA <sup>#1.32</sup> Expert Report on Bluff Stability on Ellis Stoneman lands.

*“No subsurface investigation was undertaken during this study.”*

*“There are no indications of large scale block movements evident along this portion of the slope.”*

*“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.”*

11. 2004 Thurber Report <sup>#1.57</sup>,

*“The Bluff has a comparatively robust geologic architecture that will tend to resist deep-seated landslide activity” (page 15)*

*“The gravelly soil covers a much thicker, very dense, till-like soil (hereinafter identified as till), This material was directly deposited by glacier ice during the last Ice Age, It is comprised of a mixture of silt, sand and lesser amounts clay as well as coarser fragments. The clayey to sandy soils form a matrix that holds scattered cobbles and boulders. Cobbles and boulders mantle the beach below the Bluff, probably resulting from thousands of years of till erosion on the Bluff. The till is very dense and relatively impermeable in an undisturbed condition. It is resistant to surface water erosion and is difficult to excavate by machine. It can form very steep natural slopes (in excess of 45°). Near-surface till appears to maintain very steep slopes on the upper half of the bluff,” (page 4)*

4.3 Hydrogeology (page 6)

*“Near-surface plateau groundwater is intercepted in ditches along Swan Road and some of it is redirected to the Bluff crest.”*

*“Excess groundwater discharge may have adverse impacts on Bluff slope stability.”*

*“It may be difficult to secure permits to intercept Swan Road drainage from the head of the ditches so as to shunt the water southward to other discharge sites.” (Page 15)*

"In your opinion, is the Disturbance the natural result of wind, drainage or other weather conditions?"(page 14)

*"I do not have forestry expertise needed to evaluate the possibility that natural wind occurrences caused specific damage, My opinion regarding adverse impacts of uncontrolled discharges of ditch water over the Bluff crest are noted above, as have probable adverse effects of increased groundwater discharge along the crest."*

12. **2006 Thurber/Smith** <sup>#1.82</sup>,

*"I rely on the facts found by Mr. Justice Groberman in his Reasons for Judgment dated August 31, 2005 and the fact that the Be Ministry of Transportation blocked the flow of water from Swan Road into the drainage ditches on the Properties."*

In truth Dean and Luke blocked the ditches and Emcon dug the ditches with no record of direction from Highways. Thurber is relying on Ellis fixing the problem.

*"In Section 5.6 of Mr. Gerath's report, he suggests that the rate of crest retreat resulting from Mr. Ellis's activities in the buffer zone may be 5 to 10 times the natural rate, or 20 to 40 mm/year. I do not disagree with this generalized assessment but, considering the very dense nature of the glacial till which forms most of the slope between the crest and the foreshore, I consider the lower value to be more appropriate. Thus, over 20 years, the crest may recede about 400 mm over most, if not all of the Properties. This is a small fraction of the 50 m wide buffer established by bylaws."*

13. **2006 Polster Assessment of Restoration of Damaged Notch Site Komas Bluffs, Denman Island, Polster Enviromental Services Ltd. Duncan, B.C., April 2008,**

"Landslides along the Ellis property consist primarily of weathered colluvial materials sliding on a dense till material with the till material forming the surface that requires restoration. Vegetation can not establish on the dense till material as the roots can not readily penetrate this material, hence hydroseeding this material is not an effective solution. However, as the materials weather and loose talus-like materials collect, plants can begin to establish. Once established, the vegetation can help to hold the loose materials and deeper soils result, supporting deeper rooting species, including trees. Unaided, this is a very slow process as for the most part, the weathered till simply washes from the slopes with the winter rains and fails to provide sufficient materials for plants to establish."

14 **2006 Potter** <sup># 221</sup> **Geotechnical Report 44211 on the Komas Bluffs for SBJ Properties by Robert Potter, P. Eng, 2006**

Shoreline erosion is concentrated within that sector of the property where the sand section is not protected by the basal unit of stiff till. A comparison with the recent survey of the natural shoreline boundary with that of the 1875 Crown Grant survey shows a shoreward recession of that line of up to 30 meters over the past 130 years (average of 0.23 m per year). The same

comparison along shoreline where the toe of the slope is protected by a stiff till shows no recession of the shoreline since 1875.

15. **2007 Well Drill log # 63** Affidavit 1 Ellis Exhibit "L" Till to bedrock
16. 2012 EBA EBA March 18, 2009, Regarding: 2626 Swan Road, Denman Island, BC

**Geotechnical Re-Assessment of Intended Usage as Farmland,** see item 12

**7.0 CONCLUSIONS** Based on our current knowledge of the subsurface conditions at the Stoneman/Ellis properties, it is concluded that the bluff comprises a deposit much more resistant to erosion / regression than Quadra Sands, therefore the rate of erosion will be significantly less than the 0.3 m /year estimated for that material.

17. **2013 Denman Farm Plan** Soil Series Map of Denman, identifies Quadra Sands area as erosive lands while Ellis/Stoneman's are Bowser over glacial till, this map is the Denman Farm Plan 2012, map 6a It's a 1959 soil survey study (Day et Al) which shows DILTC knows my land is not erosive Quadra sands but Bowser and Parksville soils underlain by Glacial Till 6a

#### REFERENCE INFORMATION

18. 1994 Ministry of Environment #14 Water Allocation Plan Denman Hornby Islands

Shows the volume of water discharging from the local watershed. Before clear cutting and farm preparation volume of water at its height is 1,973 litres per second. Identifies a 3.3.11 Unnamed (Komass Bluff) Brook (Radcliffe property) This map would have been seriously ground-truthed to get these creek flows. The map identifies Komass Bluffs the same as Holden and the Farm Plan.

#### DENMAN & HORNBY ISLANDS WATER ALLOCATION PLAN

The mean monthly discharge and mean annual discharge (MAD) flow estimates is in the following table:  
Unnamed (Komas Bluff) Brook Mean Monthly and Mean Annual Discharge

litres/sec												
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	MAD
38	38	39	11	2	1	0	1	1	4	67	90	27

#### 3.3.12 Fillongley Creek

The Fillongley Creek drainage area is the largest drainage area within the plan area at 12.81 km<sup>2</sup> (4.95 mi<sup>2</sup>).

The mean monthly discharge and mean annual discharge (MAD) flow estimates is in the following table:

#### Fillongley Creek Mean Monthly and Mean Annual Discharge litres/sec

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	MAD
1,191	794	820	231	38	13	0	13	13	90	1,396	1,883	564



Upstream on Fillongly Creek is the largest marsh area on Denman Island, known locally as The Swale, with a surface area of 56.87 ha (140.5 acres). The Swale has evidence of drainage improvements for cultivation.

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From a side channel a large swamp, known locally as Pickels Swamp, with a surface area of 17.21 ha (42.53 acres), flows into The Swale.

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There are seven other significant swamps identified within this drainage, including Johanson Swamp and Cramer Swamp, with a total surface area of 10.34 ha (25.6 acres)

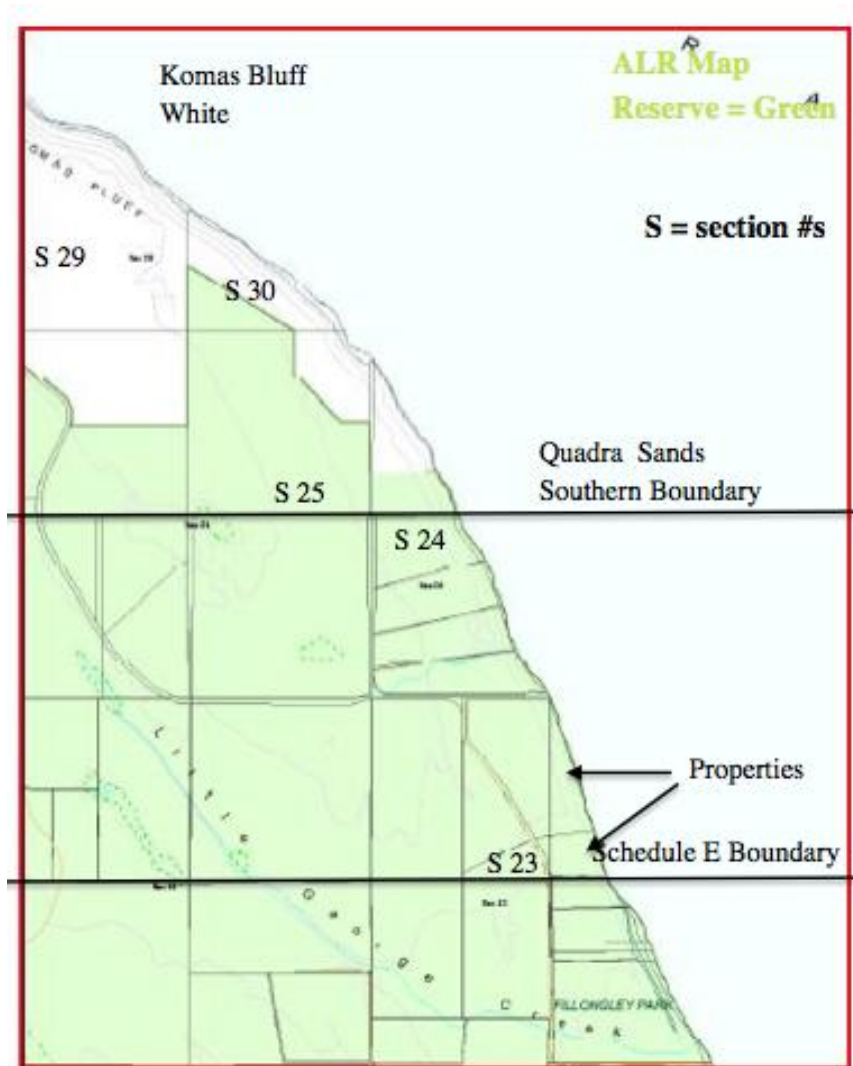
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**Note this water map identifies “Komas Bluff “ as per Holden 1989, Holm, and the Farm Plan**

## 17. Discrimination

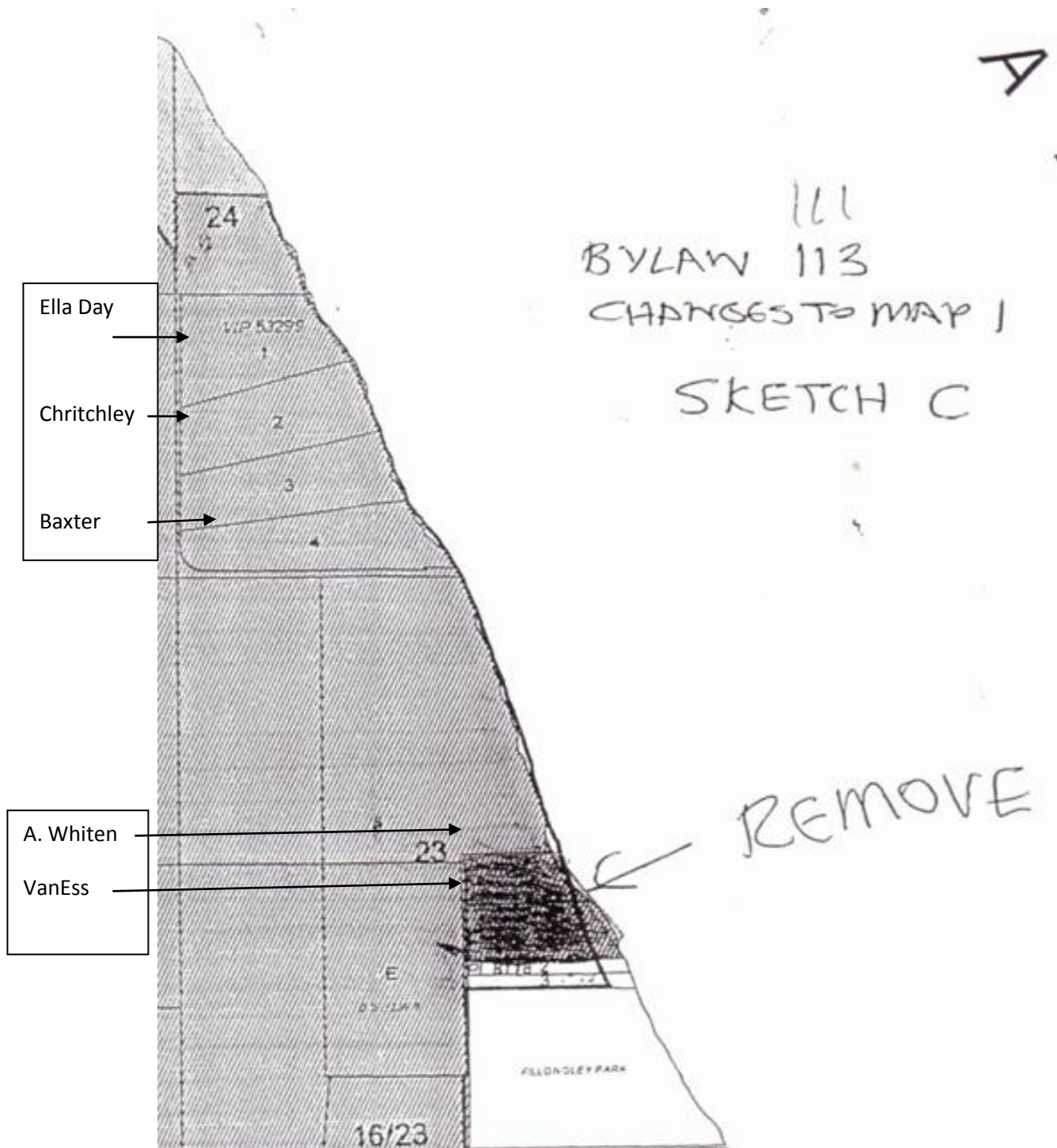
Mr. Ellis and the Stonemans were treated differently than their neighbours on adjoining properties.

Below is a map showing the location of their ALR properties and a summary of activities.



Stoneman and Ellis are on in section 23, not on Quadra Sands justified by Holden Memo March 1989 and in the ALR . Three sources say Ellis/Stoneman land was not within the Schedule E boundary. Harlene Holm (Komas Bluff not in section 23), Holden's Memo to file map <sup>1.184</sup> is far to the north, and David Marlor stated *Komas Bluffs are not on ALR* <sup>1.29</sup>

In amendment Bylaw 111 all properties in section 23 were removed from the Schedule maps of Bylaw 111 and 113 except the Ellis Stoneman properties. No reasons can be found.



Neighbours to the north, Section 24 and neighbours to the south section 23

- **Neighbours Chritchley' In 1998**<sup>509</sup> Chritchley was issued an SUP permit DE-SUP-05-98 relying on a 1988 existing permit Dp #33-88, for a small cabin 31 meters from the top of the bluff, after 1990 a large house was built without a SUP or geotechnical approval. When Islands Trust found Chritchley in violation they informed him he could get a retroactive permit.<sup>212a</sup> **Then they dropped the case.** Chritchley is part of DCA which did the Silva Report (which Marlor says is the basis of the bylaw). Chritchley as DCA holds covenants on much of the Komass Bluff lands. Chritchley also has stairs down bluff with no permits.
- **Baxter**<sup>510</sup>, **the neighbour directly north of Ellis**, was issued a siting and use permit within 50m of the bluff without a DP, relying on initial sub-division permit DP #33-88. In January 2000 she was issued a SUP on Lot 1 section 24. DILTC says these lots built before 1999 had different rules but the permits were for 2000. These 4 lots required no development permits even though Stoneman was required permits for anything within 180m even though he had existing permits at 50m.
- **Neighbour Ella Day, 2900 Swan Road**<sup>507</sup> was harassed to get a second development permit beyond DP #33-88 for building her cottage. She did so on the allegations her buildings were illegal. Ella Day and Marnie Egan have had an ongoing dialogue concerning Day getting a retroactive permit<sup>507</sup>. Ella has much construction since 1999 with no development permit requirements including a barn very close to the bluff crest and stairs down bluff.

By comparison Mr. Ellis and the Stonemans were not allowed to rely on two existing development permits DE-DP\_03-09 and DEN-DP-2002.1, for the issuance of a SUP. Neither Mr. Ellis or the Stonemans were given the option of retroactive permits. Bylaw investigations have been reopened for these lots Jan 2013 DE BE 2012.8, DE BE 2012.9, DE BE 2012.10 and DE BE 2012.11.

- Neighbours to the south, Section 23  
The property south of Stonemans is no longer within Schedule E mapping of the Komass bluff DPA as shown above. The southern neighbours Rombolt (Witun) and Van Ess are both on the exact bluff as Stoneman and Ellis except they partook in the early process of DP location. See removal map, <sup>page 64</sup> both these properties were removed from the DP area –no reasons were given. Van Ess has cleared to farm right to the bluff edge.
- Albert Witun, now the Stonemans' immediate neighbour to the south was issued DE\_SUP\_2011.19 for construction of a home and buildings on the same bluff without geotechnical approval where minimum setbacks are 15 meters.<sup>79</sup>

All neighbours south to Fillongley Park are in the ALR but able to clear, and farm their land without the requirement of development permits while on the Ellis/Stoneman properties each time land is altered or vegetation removed a development permit is required.



## Stairs and Paths to the Beach

- On properties to the north and south of the Stonemans, Development permits have never been required for the construction of beach access. No one has ever been required to remove them.<sup>25, 15,16,17,18</sup>

Beach Stairs/Access Lot 1 Radcliffe Subdivision (Day)



Beach Stairs/Access Lot 2 Radcliffe Subdivision



(Critchley)

Beach Stairs/Access Lot 4 Radcliffe Subdivision (Baxter)





Beach Stairs/Access Lot A 2600 Swan Road



Stoneman setback

## Discrimination by Obstruction

Discrimination is also shown in the obstruction of Mr. Ellis and the Stonemans' attempts to comply with Trust requirements before exercising their vested rights to use their property to its zoned and permitted use.

- Ellis made Development Permit applications twice before litigation<sup>287,359, 1.69</sup>, including Holden, 1989 "Memo to file" both cases he was turned down. In court Marzari states <sup>11</sup>"Mr Ellis was not issued a DP permit which was applied for retroactively". In the Stoneman JR makes the same false statement.

43. In early 2005, just after the hearing of the First Ellis/Stoneman Action but before Reasons for Judgment were delivered, the Petitioners applied for a development permit to permit farming up to 15 metres from the crest of the Komas Bluff within the 50 Metre Buffer. The application was not accompanied by a geotechnical report recommending the change from the required 50 metre treed buffer under the existing development permit to the proposed 15 metre buffer, or any conditions that would support such an amendment.

Statement 43 is untrue and F Marzari had promised Ellis in 2004 he would have been given a permit if he produced the Madrone Report. How many permits are given out retroactively????

- Ellis submitted the Madrone Report at the request of Marzari<sup>142</sup>. Mazari said to Judge Groberman the Gordon Butt was not a geoteck and that Ellis had relied on an agrologist<sup>118</sup> When in fact she knew Gordon Butt was a geoteck.
- The EBA report in support of a 15m farming setback supplied pre litigation<sup>6d</sup> When asked by Judge Groberman if there are any more reports Marzri replies no.<sup>117 1.166</sup>
- 2004 DP applications turned down<sup>1.521.18, 1.69</sup>, Ellis explained to no avail<sup>127</sup> Marlor continues to refuse permit after court<sup>1.75</sup>
- In 2005 Stoneman/Ellis made an application to farm with a 15m setback (EBA setback), it was turned down<sup>348,401 EBA report</sup>
- DILTC continued to reject permits on the grounds on the basis the lands had to be restored to its previous condition not as Groberman said protection of *development*.
- In the DILTC statement of claim the Trust demanded the trees within 50m be replaced, this is bankrupting litigation where the neighbours were just allowed to get retroactive permits or investigations just forgotten.
- **Groberman Proceedings in Chambers, Nov 2006<sup>188</sup>**, "The remediation sought by the Local Trust Committee went far beyond the ambit of the bylaw and its purpose."



- **Stoneman applied to build outside the 50m setback on an existing permit**<sup>165</sup> having been told he could do so by David Marlor and from a staff report 2005 APPLICATIONS AND PERMITS 8.1 DE-DP-2005.1 & DE-DP-2005.2 Once the courts have determined remediation and it is carried out, then the existing development permit is met. No permits were ever issued in fact by DILTC where it should have been 15m it went back to 180m<sup>Jackson letter</sup>
- DILTC knew Islands Trust/Highways was discharging large amounts of water on the Ellis Stoneman land as early as 2004<sup>Thurber letter, and Forsyth</sup> yet she sued Ellis. F. Marzari had been warned of a potential for erosion<sup>EBA, DFO,</sup> from this ditch outfalls yet she made no efforts to relocate Trust ditches or actually deal with the problem. In fact she tells Ellis he cannot ditch anywhere on the property<sup>128</sup> under threat of further litigation.

If you are excavating outside of the 50-metre buffer zone, you should be aware that the Trust views this as potentially detrimental to the bluff itself, as the concentration of water flowing off the bluff from another ditch would appear to have contributed to a substantial slump on the southern portion of the bluff in December. Any further construction of the ditches on the Property can therefore be expected to exacerbate the contravention of the Development Permit in the buffer zone.

Is this concerned with other values than farming, "*detrimental to the bluff itself*", one cannot farm without ditching. Is DILTC trying to use the Ellis property as a collection sump for Highways ditches. It is ok for Highways/DILTC to ditch and dump water on private property but if Ellis tries to deal with this water he will be subject to further litigation.

- Mazari was told by Thurber /Smith report that once the water was relocated there was no erosion yet she continued with litigation.
- Marzari used R.N. Green<sup>807</sup> to write a report for the courts that trees did not fall in the "buffer area" due to wind. Judge Groberman accepted this report. The report was written with no site visit, it ignored the Windfall Handbook of BC<sup>808</sup> which clearly states that saturated soils are prone to windfall as does a RPF report by Wollenheim and Scott.
- Island Trust used the remediation Thurber/Smith geotechnical report that planting 250 ferns and 150 salmonberries (Polster) would stabilize *an area of 5660 m<sup>2</sup> or 18% of the slope of the bluff*. Even though she knew this was nonsense she continues with litigation.
- In 2012 DILTC sent out a news release stating the Ellis Stoneman land was still unstable<sup>Miles Drew</sup> this was contrary to DILTC's geoteck reports and Consent Order.
- Bylaw 164 was written specifically targeted and Ellis/Stoneman, it was to remove the farming exemption on ALR land in Komasa Bluffs DPA. The Ellis Stoneman lands are the only ALR lands in the Komasa Bluff DPA **Meeting minutes DILTC re Bylaw 164**<sup>244</sup>, Feb 2004 Deletion of exemption allowing farming in DPA, no reasons given. . Passed July 04

- **DILTC passing bylaws in favour of Denman Conservancy, Email Jill Hatfield AGRI to Rodger Cheetham, ALC, Nov 1998** <sup>288</sup>

*“the word Draconian for these bylaws is inadequate”.*

Her comment on a forestry bylaws.

*“This community Forest Trust (the group that commissioned the Silva Report and tried to sell Komas Bluffs to the Pacific Heritage Group) was unable to raise enough funds to buy a big tract of land on the north end of the island. They want to make it so difficult for the logger that brought the property so they eventually get their hands on it, cynical, you bet”.*

In our case the previous owner of the property Leaky Logging was approached by the Denman Conservancy <sup>165a</sup> (under the auspices of the DILTC) on November 1999 to put a covenant on the front 50m of his property. He declined. Immediately Islands Trust put this 50m “bluff top buffer” on this land (requiring it to be surveyed off) They also ignored the Holden 1989 geotechnical report’s boundaries even though they commissioned the Holden 1989 report. This was an unwritten **buffer** that DILTC they have no intentions of any development because they “are protecting hazards”.

- In a **February 2004 Marzari to Ellis** <sup>171b</sup> concerning extensive clearcutting sanctioned by the Trust to the adjacent 1000 acres upland on the Ellis property

*“We note that the Trust did not allow one-third of the Island to be logged with no concern for drainage. “The Trust enacted bylaws to prevent the large scale clearcutting of the lands you refer to, however, the Court found that the Trust had no jurisdiction to prevent that logging. In addition, the Islands Trust did not approve the ditches on your property, either by bylaw or Development permit.”*

- DILTC agrees with Jill Hatfield’s statement of trying to prevent the loggers.
- F.Marzari says they did not approve the ditches on my property –this is incorrect because the DILTC signed off on the roads and subdivision plans that created these ditches onto the Ellis lands.

**In the end the only way the DILTC could prevent the loggers was by misusing the Development Permit process and never allowing a permit be issued. Playing the “regulation” game.**

## 18. THE TERM “BUFFER”

The words “buffer”, “setback”, “development permit area” AND “leave strip” have all been used to describe the 50 meters adjacent to the bluff on my property.

DILTC uses the idea of farming a buffer as wrong, in fact there is no buffer, that word has been invented to protect environment and give the idea an intrusion into a buffer is wrong.

The basic differences are:

A “**setback**” is a distance from a lot line or natural feature such as a bluff.

A “**development permit area**” (DPA) is an area in which development is regulated through the requirement of development permits.

An environmental “**buffer**” is an area of stable land meant to separate development from sensitive environment in order to protect, preserve and mitigate the effects of development on the sensitive area.  
.  
**BUT Bylaw 111 purpose is to protect development not protecting sensitive land by a buffer. If it was a sensitive area then one would be protecting environment. The development needs protecting. In actual fact rounding the bluff top slope and covering it with an unerodible surface would be in keeping with the meaning of the bylaw.**

A buffer acts as a covenant or natural preserve area.

A leave strip is the same as a buffer.

**The OCP makes no reference to a “buffer”. DILTC continues to misuse this word to imply some infringement on sacred area defined only by their planners and Louise Bell.**

Various Understandings

1. In the Denman Island OCP the DILTC represents the 50 meters adjacent to the bluff as part of a DPA, Text of Bylaws 60 <sup>1.149</sup>

2. Ed Pickard, Islands Trust planner represents the entire 50 meters was intended to be the width of the DPA.

PICKARD / MARLOR email <sup>1.24</sup> and Pickard staff report to the DILTC <sup>1.26</sup>

3. Doug Hopwood, architect of bylaw 111, understood the 50 meters was added by Trust staff for tree regulation on Komias Bluff. **Hopwood Report** <sup>1.147</sup>

4. Trustee Louise Bell understood the 50 meters was a bluff top forest and never meant to be developed. Louise Bell in the Hume article Sept 05

HUME ARTICLE <sup>1.176</sup>

A complaint about an incursion into a 50-meter bluff-top forest buffer mandated by the islands Development bylaws....confirmed by Louise Bell

Ellis Development Permit Application April 2013

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5. Mr. Justice Bauman understood it was a part of an invalid DPA integrated with another invalid DPA.

DILTC v. 4064 <sup>608</sup> DS, DILTC v. 4064 Investments Ltd., 2000 BCSC 1618

6. The ALC and Ministry of Agriculture understood that by resolution the boundaries of the DPA did not include a 50-meter buffer applicable to farming. **A buffer acts like a covenant.**

ALC RESOLUTION <sup>1.15</sup> *Land Commission Act*

Covenants 22 (2) A covenant that restricts or prohibits the use of agricultural land for farm purposes has no effect until approved by the commission.

7. David Marlor represented the 50 meters as part of a DPA knowing that the 50 meters was in fact a buffer established in Bylaw 111 as an unseen condition for obtaining a development permit.

MARLOR TO QUINN <sup>1.39 DB</sup>, MARLOR DISCOVERY <sup>9 DS</sup>,

8. Thurber engineering believes it to be a buffer akin to a construction setback to protect housing.

THURBER ENGINEERING Thurber Smith <sup>1.82DB</sup>,

#### 4.1 Upland Development

*Paragraph 84 of Mr. Justice Goberman's decision states that the remedial work should be aimed at enforcement of the Statute that has as its purpose the "protection of development from hazardous conditions". Under the statute, development is understood to include farming activities. However, from a geotechnical prospective, buffers are established along the crest of slopes, such as the Komas Bluffs, to protect housing development from potential slope instability and crest regression. In engineering terms, those buffer zones are referred to as "building setbacks".*

#### 4.2 Rate of Erosion

*Section 5.6 of Mr. Gerath's report, he suggests that the rate of crest retreat resulting from Mr. Ellis's activities in the buffer zone may be 5 to 10 times the natural rate, or 20 to 40 mm per year. I do not disagree with this generalized assessment but, considering the very dense nature of the glacial till which forms most of the slope between the crest and the foreshore, I consider the lower value to be more appropriate. Thus, over 20 years, the crest may recede about 400 mm over most, if not all of the Properties. This is a small fraction of the 50 m wide buffer established by bylaws.*

9. In DILTC v. Ellis, Mr. Justice Groberman clarified what was represented as a 50-meter setback was named "buffer". DILTC repeated the mis-used word "buffer" often to try to enhance their case. DILTC v. Ellis et al, 2005 BCSC 1238 L042564

*[10] A subsequent owner of the land proceeded to have the 50-metre setback (the "buffer") ...*

### OTHER EXAMPLES



## DILTC Response to the Stoneman JR Petition

- 8d 50m buffer  
9 within 50m from the crest (the 50m buffer)  
20 against land alterations in the 50m Buffer  
43 the required 50m treed buffer under the existing development permit, 15m buffer actually they  
are setbacks  
45 15meter buffer  
46 outside the 50meter buffer  
18 within the 50meter buffer

## Respondents Factum in DILTC v. Ellis

18. In 1999, a previous owner of the lands A.W. Leaky Logging Ltd., applied for a development permit under the OCP to harvest trees and clear lands for a Christmas tree farm up to 50m from the Komass Bluff (the "Buffer"). The Local Trust Committee issued A.W. Leaky Logging Ltd a development permit to clear the lands in the Komass Bluff DP area up to the Buffer. Provided that the Buffer was flagged and surveyed before clearing began (the first development permit)  
In 1999, a previous owner of the Lands, AW. Leaky Logging Ltd., applied for a development permit under the OCP to harvest trees and clear the Lands for a Christmas tree farm up to 50 metres from the Komass Bluff (the "Buffer"). The Local Trust Committee issued AW. Leaky Logging Ltd. a development permit to clear the Lands in the Komass Bluff DP Area up to the Buffer, provided that the Buffer was flagged and surveyed before clearing began (the "First Development Permit"). The First Development Permit was issued on January 11,2000 and was filed in the Land Title Office shortly thereafter.

## MEDIA RELEASES

- 101 Islands Trust Wins Komass Bluff Court Case SEPT 2005<sup>1.77</sup>  
para 3 The case dates back to 2002, when members of the Denman Island Community complained that Dean Ellis was removing trees from portions of his property that were within a buffer area established by the DILTC to protect unstable slopes of Komass Bluffs.  
Para 4 When Mr. Ellis continued to remove trees from the buffer area  
Last para that further incursions into this sensitive area will be avoided
- 102 Des Kennedy Oct 07 <sup>1.175</sup>  
The buffer area had been left intact by the previous owner.  
Restoration of the buffer zone

## OTHER REFERENCES TO BUFFER

98. Denman OCP Undisturbed Lands Focus Group 99 <sup>1.21</sup>  
New Goal: To preserve the forest vegetation along ridge-tops and cliff-tops  
Former OCP policy for Hazard areas <sup>1.157</sup>  
201 Open spaces  
Lands subject to soil erosion or slippage should be retained as open space

## LIES REGARDING THE BUFFER

1. Buffer was a DPA and could be developed Bylaw text

2. Letter from Marzari that buffer could be developed  
**9c Mazari to Stoneman May 04** para 4  
“Development , including the land on the **Buffer**, is permitted in accordance with the recommendations of such an assessment.”
3. Silva Report part of PAN <sup>1.175</sup> left untouched, and retained its forest cover
4. Bylaw 60 (do not have date) Guidelines 4. A vegetation **buffer** along the top of the bank shall be required if requested by the Ministry of Environment and park.

THE TRUST CONTINUES TO REPRESENT THE “BUFFER” AS CANNOT BE DEVELOPED.

No matter how many Geotechnical Reports are used (even those ordered by the court) it is still not adequate. See Courtenay Simpsons letter Feb 13, 2013 Dear Mr. Ellis,

*“As I have already advised, both your proposals to build steps down the face of the Komas Bluff, and to clear and farm the land up to 15 metres from the edge of the crest of the bluff, require new development permits. The existing geotechnical reports and development permits you reference are not sufficient for these purposes”.*

## 19. Komas Bluff Guidelines

Islands Trust using the guidelines for the Komas Bluff DPA to the wrong purpose of the bylaw as described by Judge Groberman

The guidelines were written for 919.1(a) protection of environment not 919.1(b) protection of development. Guidelines need to be rewritten to bring them in compliance with the appropriate legislation.

It is easy to see why these guidelines were written incorrectly from Mr Marlors statement in discovery ***The purpose of this development permit area is to protect the hazardous conditions along Komas Bluff and Louise Bell's "protecting a forest top buffer"***

919.1(1)(b)

*[82] Third, an order for the restoration of the lands would not be in keeping with the expressed purpose of the bylaw that established Komas Bluff PDA. The purpose of the bylaw was not preserve land in an unaltered state, nor even to protect the bluff. 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.***

Existing Guidelines OCP Komas Bluff DPA pg 46 and how they Should Read

3. 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.

**Should Read** Any development should be protected from erosion of soil or land slip, rock fall, mud flow, sloughing, or water degradation .

4. No permanent building should be permitted in any area subject to sloughing or damage from sloughing.

**Should Read** A permanent building should be protected from areas subject to sloughing or damage from sloughing.

5. 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.

**Should Read** A septic tank, deposit field, or irrigation system should be protected from sloughing or damage from sloughing or in any area containing unstable soil or water which is subject to degradation.

6. 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.

**Should Read** If development occurs drainage should be used to protect development.

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

**Should Read** If development occurs proper means should be used to control erosion along the top or the face of the bank. This guideline presumes trees stabilize a bank. Maybe read the Windthrow manual of BC. A strip of trees (clearcut edge) are notorious for falling especially if they are flooded. A low long rooted groundcover (or non erodible surface) would be more in keeping with protecting development behind the bluff.

8. All new lots created by subdivision should provide for suitable building sites in areas not subject to sloughing. Court ordered Thurber/Smith use a 20m for a building setback.

**Should Read** All new lots created by subdivision should provide for suitable building sites protected from subject to sloughing.

9. Subdivision applications should make provisions for clustering lots in areas away from the hazard area.

**Should Read** Subdivision applications should make provisions for clustering lots in areas protected from the hazard area. The land is zoned ALR and has a 40 acre minimum lot size, clustering lots is a non issue.

10. Prior to issuing a development permit, the local trust committee may require security in an amount acceptable to the local trust committee.

**Should be removed on ALR land as this is just a method of banning farming**

11. 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).

**Should be removed on ALR land as this is just a method of banning farming.**

12. Development permits issued in Development Permit Area No. 1: Komass 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.

**Should be removed on ALR land as this is just a method of banning farming.**

#### **Correspondence on this file to DILTC**

**June 24, 2010** Chris Jackson promise letter , was the Trust going to adhere to promise.  
**NO ANSWER**

**Oct 2012** concerning culverts discharging on my land **NO ANSWER**

**Feb 2, 2013** concerning culverts discharging on my land **NO ANSWER**

**Feb 13, Feb 20** submit letters asking what Geotechnical Reports are valid for a DP application **no answer**

**Feb 16 Letter to C Simpson and A Allwood** re flooding of my land from Highways ditches **NO ANSWER**

**Feb 22 2013** Ellis submits Geotechnical Reports and asks if they are acceptable to the DILTC for an application

**EBA March 18, 2009 EBA File: N13101236 Regarding: 2626 Swan Road, Denman Island, BC  
Geotechnical Re-Assessment of Intended Usage as Farmland  
And March 3, 2009 EBA File: N13101236 Regarding: 2626 Swan Road, Denman Island, BC  
Proposed Stairway  
Thurber/Smith court ordered remediation report 2006**

**Feb 26 2013** reply from Planner C Simpson

Dear Mr. Ellis,

As I have already advised, both your proposals to build steps down the face of the Komass Bluff, and to clear and farm the land up to 15 metres from the edge of the crest of the bluff, require new development permits. The existing geotechnical reports and development permits you reference are not sufficient for these purposes.

There are not currently any plans to undertake new hazard mapping on Denman Island.

Regards,

Courtney Simpson, MCIP, RPP

Feb 26, 2013

Thank-you for your email of Feb 26, 2013 Ellis supplies more Reports

These are all the reports already submitted to you to farm to 15m from bluff crest. Can you please elaborate what further geotechnical data you require.

March 2 2013 Ellis asks for reports David Marlor and F Marzari used to make statements about Ellis doing damage to his property and included the list of reports in this report to be used for upcoming DP application. Were they acceptable to the Trust? NO ANSWER

March 7, 2013

Dear Mr. Ellis,  
I will aim to provide a response to your email below next week.  
Regards,  
Courtney Simpson, MCIP, RPP NO ANSWER

March 4 2013 Ellis writes concerning the Guidelines of Komass Bluff not being consistent with 919.1(1)(b) NO ANSWER

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**20. Mutual Release between DILTC and 4064** just before suing Ellis , note 4064 will not do a JR or appeal and 4064 will not challenge the bylaw. DILTC paid off 4064 for about \$160,000.

*G. States the validity of the bylaws was remitted back to the Supreme Court* This did not happen.

The best part is page 4 #3 **this may not be correct in the facts of law.** Taxpayers dollars at work????  
DILTC Integrity ?????

RECORD 1

## MUTUAL RELEASE

## WHEREAS:

- A. The Denman Island Local Trust Committee (the "LTC") adopted Bylaws 110, 111, 112, 113 and 114 on May 13, 1999, (the "Bylaws") which applied in varying respects to lands on Denman Island (the "Lands") owned by 4064 Investments Ltd. ("4064").
- B. 4064 was involved in logging its Lands at the time of the adoption of the Bylaws.
- C. The LTC commenced Action A991804 ("Action A99") in the Supreme Court of British Columbia against 4064 in respect of enforcement of the Bylaws in relation to the Lands.
- D. 4064 commenced a proceeding L000571 pursuant to the *Judicial Review Procedure Act* (the "JR Application") in which it sought an order(s) for mandamus to compel the LTC to render decisions with respect to applications made by 4064 for development permits in relation to the Lands.
- E. 4064 brought a summary trial application in A99 in which it was successful at trial in having all of the Bylaws set aside in a judgment delivered November 7, 2000.
- F. The LTC brought an appeal to the British Columbia Court of Appeal from the summary trial; which appeal upheld the decision of the Supreme Court setting aside Bylaw 113 but overturned the decision invalidating the remaining Bylaws (the "Appeal").
- G. The validity of the remaining Bylaws was remitted back to the Supreme Court.
- H. The LTC obtained an interlocutory injunction order in Action A99 on June 1, 2000 restraining 4064 from logging trees in contravention of the provisions of the Bylaws and gave an undertaking to abide by any award the Court might make as to damages occasioned by the granting of the interlocutory injunction (the "Undertaking").

- L. The LTC filed a Notice of Motion in Action A99 in September 2000 seeking to have 4064 found in contempt of the interlocutory injunction order (the "Contempt Motion").
- J. There are several issues that are unresolved between the parties, including:
- i. entitlement to and scale of costs of the proceedings in the Supreme Court and Court of Appeal;
  - ii. the status of Action A99 and the LTC's contempt motion;
  - iii. the liability of the LTC in relation to the undertaking to damages.
- K. The LTC and 4064 are desirous of resolving the remaining issues in a single, comprehensive settlement without further litigation or proceedings.

Sec. 17

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the payment of [REDACTED] to 4064 by the LTC and the Islands Trust, and in consideration of the premises and covenants exchanged below, the LTC, the Islands Trust and 4064 agree as follows:

1. 4064, on behalf of itself, its principals, shareholders, partners, subcontractors, successors, trustees, receivers and assigns, hereby:
  - (a) irrevocably and absolutely waives, remises, releases and forever discharges the LTC, its members, the Islands Trust and its Executive Committee, their elected members, officers, employees, agents, successors and assigns (collectively the "Trust") of and from all causes of action, suits, proceedings, demands, debts, losses, damages, liabilities, rights, remedies and claims of any nature, kind or basis whatsoever which are or in any way connected with or related to, or arise from the facts and circumstances giving rise to:

3

- (i) Action A99 including, and without limiting the foregoing, the matters of costs and disbursements, the Undertaking, and the Contempt Motion,
    - (ii) the JR Application, and
    - (iii) the Appeal; and
  - (b) instructs its counsel to execute on its behalf consent dismissal orders without costs in any litigation or proceeding involving 4064 and the LTC or the Islands Trust.
2. The LTC and the Islands Trust, on behalf of themselves, their elected and appointed officials, officers, employees, successors and assigns, hereby:
- (a) irrevocably and absolutely waive, remise, release, and forever discharge 4064, its principals, shareholders, partners, subcontractors, successors, trustees and assigns of and from all claims, demands, liabilities (including liabilities for costs or for alleged contempt of a court order) in any way related to any litigation or proceeding between 4064 and the LTC or the Islands Trust which has accrued to the date of this Agreement, including Action A99, the JR Application and the Appeal.
  - (b) instructs their counsel to execute on their behalf consent dismissal orders without costs in any litigation or proceeding involving 4064 and the LTC or the Islands Trust, and
  - (c) irrevocably and absolutely instructs their counsel not to proceed with or set down for hearing the Notice of Motion delivered September 15, 2000 in Action A99 seeking to have 4064 fined for an alleged contempt for disobeying a Supreme Court order dated June 1, 2000.



4

3. The LTC, the Islands Trust and 4064 acknowledge and agree that the facts and law in respect of which this Agreement is made may prove to be other than, or different from, the facts and law in that connection now known or believed by the LTC, the Islands Trust or 4064 to be true and the LTC, the Islands Trust and 4064 each specifically accept and assume this risk and agree that this Agreement is not affected by any such difference and remains effective and binding unaffected by any such difference.
4. It is understood and agreed that this is a compromise settlement of mutual claims.
5. The LTC, the Islands Trust and 4064 acknowledge and agree that each has obtained independent legal counsel regarding this Agreement before executing this Agreement and that the contents have been read and fully understood.

As evidence of their agreement to be bound by the above terms as a contract, the parties have executed this Agreement on the date set out below.

Dated this 9 day of Jan, 2003.

The Corporate Seal of 4064 Investments )  
Ltd. was hereunto affixed in the presence )  
of its duly authorized signatory. )

[Signature]  
Name: )

C/S

The Corporate Seal of the Denman Island )  
Local Trust Committee was hereunto )  
affixed in the presence of its duly )  
authorized signatory(ies): )

[Signature]  
Name: )  
[Signature]  
Name: )

C/S

Mr Green based his **Expert Advice on Windthrow of Forested Buffer Re: DILTC vs Ellis. Lidstone, Young, Anderson File No. 0002-0506** solely “on the wind records”. Mr Green stated *the reduction of the majority of the forested buffer is not attributable to windthrow between 2002 and 2003*. This report was used by Judge Groberman, Judges’ rely on expert reports to form their decisions. I believe such an analysis in absence of site visit or consideration of the flooding of my property and is very unprofessional.

Mr Groberman stated

*[24] I am also satisfied on the evidence that only a tiny proportion of the clearing could conceivably have been wind-throw. The thinning of the forest cover does not coincide with periods of high wind, and it appears that the buffer survived strong storms in the winters of 2000-2001 and 2001-2002 without material degradation. Indeed, other buffer zones on the island have survived intact since the 1980s. It is Inconceivable that the buffer was destroyed by wind.*

Mr Groberman was led to believe as a result of the Green Report that it was inconceivable that the buffer was destroyed by wind.

Inconceivable means ..... Not capable of being imagined or grasped mentally; unbelievable:

Mr Green did not visit the site in preparation for the report on June 2004.

What Mr Green failed to recognize that the buffer was compromised as a result of saturated soils, high water tables, large additions of water, and the dense till nature of the slope virtually impermeable to water which tracked to the bluff slope causing water breakout between the till and colluvium layers. Even without the addition wind of high winds, such conditions can trigger landslide ,slumpage and windthrow.

**Mr Green did not access the condition of the drainage and water absorption properties of the soil in the Ellis land from recent land alterations.**

The upslope properties had been clearcut in 2000. The ability of clearcuts to absorb water is greatly reduced up to 4 years after logging because of the ability of the dying root systems to absorb water. Clearcuts often do not erode in the first years as water is retained. Also some of the upslope property had been cleared for farm preparation. Before the fescue grasses were established greater run off is expected. During 2002 and 2003, the period Mr Green states there could not be windthrow, were in fact the years the property was most susceptible to windthrow due to the breakdown of clearcut root systems, farm preparation and drainage from Highways ditches.

The work order from Ministry of Highways puts this lie to rest, as Highways admits to flooding my land and Island Trust forces that water to be kept on the land. The tree roots are completely saturates making them suseptable to any windthrow.

**January 2005 EBA Engineering, Bob Patrick, 2600 and 2626 Swan Road, Denman Island, Geotechnical Assessment of Intended Usage as Farmland.** Page 2 *The recent removal of vegetation on the upland terrace has likely accelerated the degradation due to increased overland flow and groundwater seepage to the bluffs.*

Page 3 3.0 Conclusions *The removal of trees in 2000 would likely have accelerated this degradation as more water would have been available to the slope.*

**Scott Feb 2004, page 2** *Also, the clearcut areas and subsequent clearing of land have raised the water table within the buffer areas.*

**Scott Feb 2004, page 2** *It is well known that the edge of forests adjacent to a clear-cut are more susceptible to blow down as a continuous forest acts as a wind break.*

*On the adjoining property on the NW side of the Ellis property a blowdown area along the clearcut boundary was observed.*

**Mr Green did not assess water flow, ground saturation or water tables.**

Mr Green ignored the large amounts of water being dumped on the property from Highways ditches that drained the upslope clearcuts both above (2000 acres) and below (30 acres) Swan Road .

- **Robin Storkey Ministry of Highways** wrote Peter Wightman, Sandy Baird and Jerry Leet of MOTH in June 2004. I quote from his letter.

*"To the south, there are two ditches that originate on the west side of Swan Road and cross in a culvert onto Pt.A & Pt. B, plan 74719."*

*"In order for the water to drain from the upland properties the developer had to provide adequate drainage on the upland side of the new road grade and across it"*

- Denman Island Ratepayers identified the water problem to MOTH and Islands Trust. In **June 2004, Dennis Forsyth, President Denman Island Ratepayers wrote to Peter Wrightman, Highways**, concerned *"about torrents of water from two culverts which direct runoff under Swan Road, disastrous to the Stability of Bluff"*
- **June 2002, EBA Report , Preliminary Slope Stability Assessment, Bob Patrick<sup>38</sup>** , *Two drainage ditches have been excavated which run along proposed new lot boundaries from Swan Road to top of bank ditches were dug to facilitate Ellis farm operations, Patrick warns water discharging from existing ditches will result in erosion. Identifies Highways ditches water as erosive.*
- **Thurber/Gerath Report 2004** *"In your opinion, is the Disturbance the natural result of wind, drainage or other weather conditions?"(page 14)* "I do not have forestry expertise needed to evaluate the possibility that natural wind occurrences caused specific damage, my opinion regarding adverse impacts of uncontrolled discharges of ditch water over the Bluff crest are

noted above, as have probable adverse effects of increased groundwater discharge along the crest."

- **Thurber/Gerath Report 2004** *It should be noted that record rainfalls occurred in the Vancouver and Victoria areas in mid –October 2003. This activity caused severe flood damage in the Pemberton area and triggered multiple landslides and debris flows in the Hayzic Valley near Mission. It is possible that record rains caused some erosion or landslide activity on the Bluff*

**Mr Green wrongly uses a comparison of another site on Denman which was echoed by Judge Groberman**

- Mr Green in **4.4 Condition of a Forested Buffer at the North End of Denman (Henry Bay)** says that buffer had remained intact. Had Mr Green actually visited the sites he would of found the Henry Bay buffer was on land sloping the opposite way than the Ellis property. The Ellis property slopes towards the bluff thus all water (from the 2000 clearcut acres upslope) collects on the bluff plateau. The trees left in the buffer form a dam. Whereas at Henry Bay the slope is back towards the land water does not collect on the bluff plateau.
- **June 2002, EBA Engineering, Bob Patrick, Preliminary Slope Stability Assessment, Swan Road Property, Denman Island, BC**

*The ground surface slopes gently (<5 degrees) from Swan Road down to the top of the bank. Page 2*

- **Mr Green did not analyze the soils or underlying impervious till layer**

Mr Green would of also found the soil types are different as the Henry Bay property are on erosive soils consisting of Quadra Sands that are very permeable (thus the trees would have a deep root system), where the Ellis property are Bowser and Parksville soils which are shallow over an impermeable layer of glacial till. The root systems on the Ellis lands are shallow. A map of the soil types from the Denman Farm Plan is enclosed.

The Thurber Report Page 7 map shows seepage zone under surface till

**Scott February 9, 2004** *10 trees were observed to be blown down within the remaining 50m buffer zone including a large cedar with a shallow root system.*

**Mr Green did not analyze the nature of the Komass Bluffs and the natural erosion**

**Scott Feb 2004**, page 2 *It should also be pointed out that the Komas Bluffs are naturally eroding and there will be a continuous undermining of the trees along the edge of the bank until they blow over.*

**Scott Feb 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 events.*

#### **Expert Reports that directly contradict Green**

- **Scott Feb 2004**, <sup>page 2</sup> *All of the above factors would contribute to destabilizing the standing trees within the 50m buffer zone and make these trees susceptible to blow down.*
- **Wollenheit RPF<sup>805</sup>**, in a letter to Robin Storkey, Highways, Sept 2003, regarding highways ditches discharging on adjacent land writes, *"The increase of the water table over the years is detrimentally affecting the site productivity and tree growth, and has made the stands susceptible to blowdown, which occurs now frequently"*

**Had Mr Green visited the land he would have seen an ALR farm planting operation**, any trees that were compromised by windthrow had to be removed. Only trees that were windfirm and would not fall on workers or damage the hay fields or equipment were left. Mr Greens statement that *the reduction of the forested buffer was not attributable to windthrow* is misleading. Mr Green did not make a site analysis of trees to determine if the "forested buffer" were in danger of windthrow or already had some effects of windthrow. Mr Greens statement assumes the trees left standing were windfirm. They were not. Time has shown trees continue to be blown over in the buffer but then we all know from the Windthrow handbook that if water is added to shallow soils on a clearcut edge.

#### **Had Mr Green visited the property he would have found the "forested buffer" already had been compromised of marketable timber (strong straight firs and cedars)**

- Scott points out that some marketable trees had been removed from the "forested buffer" leaving primarily unmarketable dead topped balsam's.
- [10] A subsequent owner of the land proceeded to have the 50-metre setback (the "buffer") flagged by a surveyor in September 2000. It cleared the land on the inland side of the buffer. It may be that a few trees within the buffer were removed, DILTC v. Ellis et al, 2005 BCSC 1238 L042564
- Affidavit of Thompson previous owner/logger "removed some trees"

**Had Mr Green visited the site he would have also found that the Ellis properties are at the end of Lambert Channel and there is a funnelling effect of SE and ESE winds between Hornby and Denman Island.**



Reports included

Sofor Consultants Ltd. Grant Scott site visits Feb 2004

**Wollenheit RPF<sup>805</sup>**, in a letter to Robin Storkey, Highways, Sept 2003

Denman Farm Plan soils

<http://www.islandstrust.bc.ca/ltc/de/pdf/defarmplanfinalnov152012.pdf>

Yours truly

Dean Ellis

examination of the buffer on June 21, 2002 air photos, it remains substantially intact after about 15 years exposure (Figure 8).

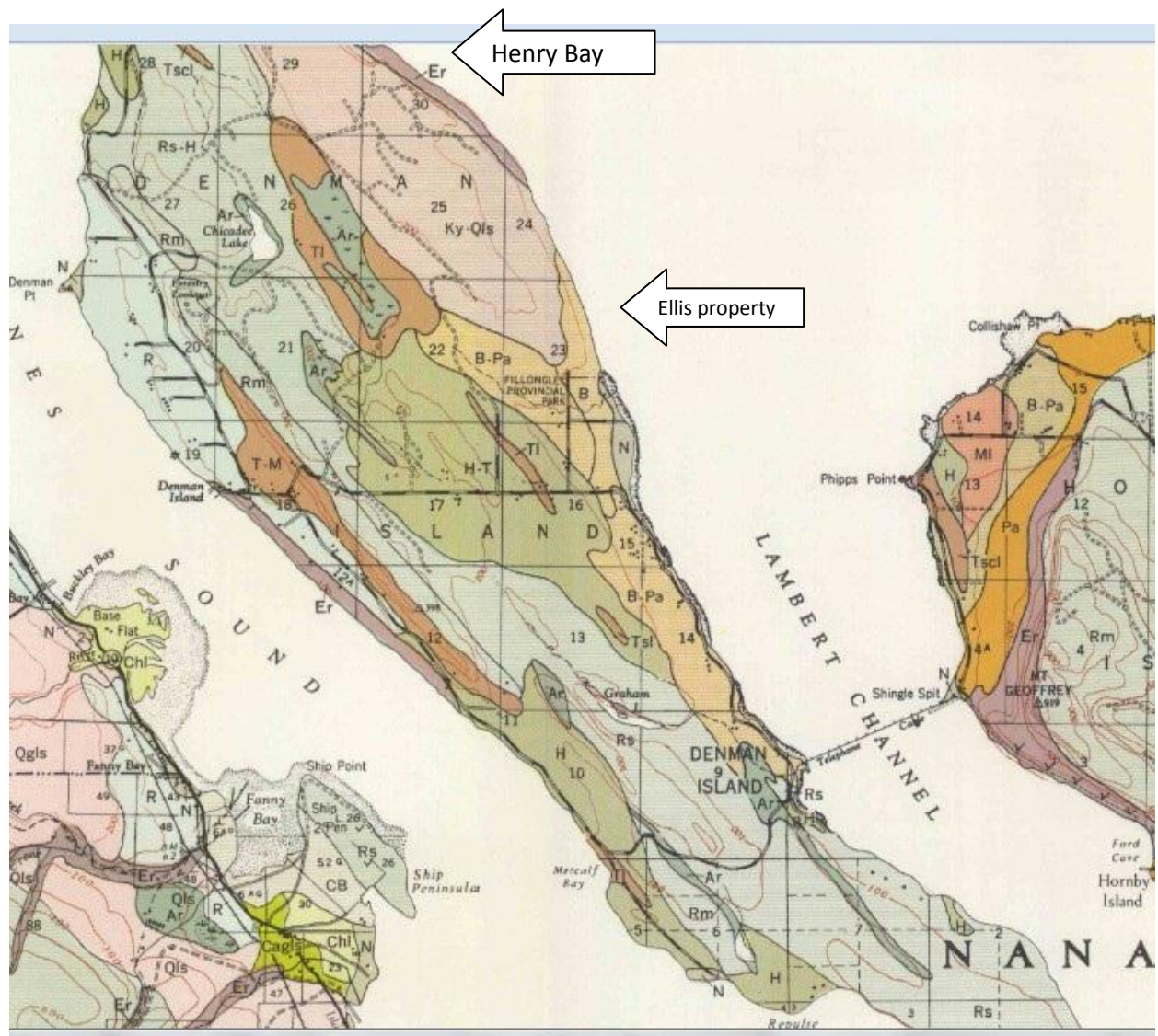


FIGURE 8. Approximately 20 meter wide forested buffer created from 1980's logging at northern end of Denman Island (June 21, 2002 air photo).

## 5. Conclusion

Endemic windthrow does occur in the forested buffer and elsewhere around the property. Examination of the oblique photos from February 2004 show six small red cedar, one large shallow rooted red cedar, one small and two medium Douglas-fir, and one medium red alder which appear to have been recently windthrown within the buffer from southeasterly winds. However, based on the wind records, the condition of the buffer on June 21, 2002 and October 4, 2003, and the older buffer at the north end of Denman Island, in my opinion the majority of the reduction of the forested buffer area is not attributable to windthrow.

Excerpt from Denman Farm Plan .....



Location	Soil Type	Soil Series	Soil Texture	Topography	Drainage	Notes
Surrounding Chickadee Lake, in pockets east of Chickadee Lake and west of Swan Rd., wetland areas in the southern part of the island.	Peat	Arrowsmith (Ar)	Peat	Depressional	Poorly drained.	Deep undecomposed organic material (peat), stone-free
Eastern part of the island, along Swan Rd., East Rd., Corrigan Rd., Jemima Rd., and Beaver Rd. Found mixed with Parksville Soils.	Brown Podzol	Bowser (B)	Loamy sand	Gently sloping	Imperfectly drained.	Coarse marine sediments underlain by glacial till or marine clay, stone-free.
Bluffs along western island ridges (west of Lacon Rd. and south of Denman Rd.) and north eastern ridges.		Eroded land (Er)	N/A	Very steeply sloping	Variable drainage	Escarpments, beach bluffs, etc.
Found mixed with Tolmie soils in central part of the island bisected by Denman Rd. and stretching north to end of N. Central Rd. Found also in southwestern portion of the island along Lacon Rd. between Woodham Rd. and Hilton Rd.	Brown Podzol	Haslam (H)	Shaly loam	Gently sloping to steeply sloping	Well drained	Glacial scoured consolidated shale and sandstone, few stones
Mixed with Qualicum soils in the northeastern portion of the island (east and north of Chickadee Lake).	Podzol	Kye (Ky)	Loamy sand	Level to gently sloping	Well drained	Stone free
Mixed with Tolmie soils in a narrow band running NW to SE just east of NW Rd. and Lacon Rd. from north of Percy Rd. to Woodham Rd.	Podzol	Merville (M)	Loam	Gently sloping	Moderately well drained, saturated during winter months	Medium-fine marine sediments underlain by marine clay or glacial till
Found in small pockets along easter bluff (east of Fillongley Prov Park), at the southern end of Lacon Rd., and at Denman Point.	Rendzina	Neptune (N)	Gravelly loamy sand and sandy loam	Gently sloping	Well drained	Loose gravelly loam sand or sandy loam over gravel, sand, shells, and organic debris. Few stones.
Mixed with Bowser soils, see Bowser location description.	Dark Grey Gleysol mix	Parksville (Pa)	Sandy loam	Level	Poorly drained, receives seepage from higher elevations	Coarse marine sediments underlain by glacial till or marine clay, stone-free.

***SOFOR CONSULTANTS Ltd.,***

**1850 Shinglespit Road,**

**Hornby Island,**

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**Email: [gcscott@telus.net](mailto:gcscott@telus.net)**

Mr. Dean Ellis,

Hornby Island B.C.,

VOR 1Z0

February 22, 2004

Dear Mr. Ellis;

During our site visit to your property on Denman Island on February 9, 2004 you asked me to respond to the following questions:

- 1. What is the condition of the trees and grasses planted as per the recommendations of October 30, 2003 Madrone Report?**

**Observations:**

On February 9 and 16 I observed the following trees along the 50 m buffer strip:



- Approximately 2500 Douglas fir seedlings were planted within the first 15 m from the edge of the bank,
- The seedlings are of good quality, purchased from Sylvan Vale tree nursery in Courtenay,
- The seedlings are one year old stock and were planted in the fall of 2003,
- There is evidence of some root development which is a good sign for survival this spring and summer,
- The planting density varies from a 1 meter grid on the more exposed sites to a 2 meter grid further from the bank edge,
- Approximately 80% of the trees survived the winter with roots well established at a proper planting depth,
- Of the remaining 20%; 50 seedlings were observed to be in pools of water and will probably not survive and the remainder had roots exposed by surface water runoff or frost heave,
- When this was pointed out to Mr. Ellis on February 9 he replanted the exposed seedlings by February 16,
- Possibly one half of the replanted seedlings will grow this spring and survive the first summer dry spell,
- While it is difficult to predict survival of seedlings it is estimated that up to 80% may survive if the first summer is not excessively dry and hot,
- In any event Mr. Ellis should, next fall, replant seedlings that do not survive the first summer drought,
- Mr. Ellis also planted 200 willow whips in three wet areas,
- As the willow planting stock is not from a commercial nursery the species and quality of the willow whips could not be ascertained.,
- Mr. Ellis also planted a number of arbutus seedlings along the bank that seemed to be well planted but browsed by deer,
- He also planted grass and clover that sprouted last fall and should become established this spring and summer.

**2. What is the probability of trees blowing down during winter storms that were left in the 50 m buffer zone by the previous owners?**

**Observations:**

- It was observed that some areas of the 50 m buffer had been cleared to the bank edge and other areas had been left mostly intact,
- It is well known that the edge of forests adjacent to a clear cut are more susceptible to blow down as a continuous forest acts as a wind break,
- The trees along the edge of the bluff will be more wind firm than those away from the bluff as they grew in windy conditions,
- Also, the clear cut areas and subsequent clearing of the land have raised the water table within the buffer areas,
- The land clearing within the 50 m buffer zone would disturb the roots of some of the remaining trees,
- All of the above factors would contribute to destabilizing the standing trees within the 50 m buffer zone and make the trees susceptible to blow down,

- On the adjoining property on the NW side of Mr. Ellis's property a blowdown area along the clearcut boundary was observed.
- On February 9, 10 trees were observed to be blown down within the remaining 50 m buffer zone including a large cedar with a shallow root system,
- It should also be pointed out that the Komas bluffs are naturally eroding and there will be continuous undermining of the trees along the edge of the bank until they blow over.

**3. How old are the stumps that are left in 50 m buffer zone?**

**Observations:**

- 10 remaining stumps are within the buffer zone that appear to be from the original logging prior to Mr. Ellis owning the property,
- It appears that the stumps are older than 2 years from the evidence of sap on the cut surface, the graying of the wood and the fact that the bark has separated from the wood and is rotting.

**4. Is there any evidence of machine tracks or tire marks within the grass planted areas?**

**Observations:**

- There is no evidence of machine tracks within the grass and seedling planted areas within 50 m of the bluff edge,
- This would indicate that there has been no machine activity within the 50 buffer zone since the trees and grasses were planted in the fall of 2003.

**5. What types and condition of trees can be seen from the edge of the bluff down to the high tide line?**

**Observations:**

- The bluff face itself is a complex mix of trees and undergrowth; it is not one contiguous forest type,
- The slope on bank varies from 100 degrees (vertical) where there is exposed clay and sandy soil to 45 degrees where there are trees and ground cover,
- There appears to be three general types of forest on the bank face (from the edge of the bluff down to the high tide line);
- The most northerly 1/3 with large Douglas fir, cedar, mature alder, a few maple and an established ground cover of salmon berry and sword ferns,
- The middle 1/3 contains immature alder and cedar with strong indications of jack-strawing (where the tree trunk is curved away from the bank and then straightens indicating the slumping of the soil and an unstable slope),
- The southern most 1/3 contains some areas of very young alder, less than 10 years old, that are on exposed soil and indicate extreme soil movement. There are also areas within this zone that contain older alder and cedar but all indicate jack-strawing and bank instability,
- Also, a number of trees on the very edge of the bank show the roots being exposed by the erosion of the bank and the trees almost hanging over the edge of the bank. These trees are extremely prone to blow-down by wind during winter storms.

The above observations were made during two site visits on February 9 and 16, 2004 and in conversation with Mr. Dean Ellis. The following documents were reviewed:

- Coastal Environment and Coastal Construction, A Discussion Paper by B.J. Holden, P.Eng, 1987, Ministry of Environment and Parks.
- Planting Recommendations for Erosion Control for Ellis Property, Komas Bluffs, Denman Island, Madrone Environmental Services Ltd., October 23, 2003
- Map of recent logging activity on northern Denman Island

Grant Scott

Registered Professional Forester

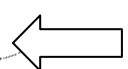
September 10, 2003

To: Robin Storkey, Area Manager  
Ministry of Transportation,  
550 Cornox Road,  
Courtenay, BC,  
V9N 3P6  
Phone: (250) 334-6951 Fax: (250) 334-1291

RE: Water control proposal for Swan Road adjacent to Lot 4-Plan # 53299 Denman Island, Nanaimo Land District.

Dear Robin Storkey,

This letter is written to seek authorisation to alter drainage structures negatively impacting private forestlands on Swan Road, Denman Island. s.22 contracted Econ Consulting in 1998 to develop a 'Management Plan' for the private forestland. The 'Management Plan' describes the site and proposes silviculture activities to benefit stand development for financial and ecological return. During the initial field work, terrain, soils and water features were identified and reviewed. It was concluded that the discharge of the water that is collected by the road ditch onto s.22 property is a poor solution since there is no natural drainage or channel. Therefore, the discharged water just creates swamps and slow moving subsurface flows. The vertical percolation is restricted by a compacted silt horizon in 1 m depth.

Subsequent field work, conducted on April 27, 2003 by myself confirmed that the water interception/diversion via a culvert on Swan road as well as two discharge swales are contributing to the perched water tables on the forested area (figure 2). The increase of the water table over the years is detrimentally affecting the site productivity and tree growth, and has made the stands susceptible to blowdown, which occurs now frequently. These factors are negatively impacting the forest management and recreation objectives for this property as well as the ecological and economic values of the land base. 

The proposed works to be completed by the client include the decommissioning of one concrete box culvert and two discharge swales, the establishment of approximately 20m of ditchline and installation of a new 600mm culvert. Actions are to be completed to restore existing drainage towards historical direction and concentrations while mitigating the risk to the forested stand. Detailed maps and description of activities are attached.

I would appreciate, if you could review the included information material and possibly inspect the road and drainage features in the field. The proposed solution is in my opinion the most sensible and is intended to serve the objectives of both, the Ministry of Transportation and the property owner. If no mutual solution can be found, the property owner will deal with the surplus water within the confines of s.22 property, which possibly will be not the best solution for the road drainage.

Please give me a call for any question. I hope the proposal is acceptable and authorization can be granted in the near future. Thank you for your interest and cooperation.

Sincerely yours,



Wolfram Wollenheit, R.P.F.

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TRA-2012-00245



April 24, 2009 EBA File: N13101236

Mr. Dean Ellis

3830 Sulal Place

Hornby Island BC, V0R 1Z0

**Regarding: 2626 Swan Road, Denman Island, BC**

**Removal of “Hazardous” Trees**

Dear Mr. Ellis:

## **1.0 INTRODUCTION**

EBA Engineering Consultants Ltd. (EBA) were requested by Mr. Ellis to provide comment, from a geotechnical perspective, regarding the removal of 85 trees from the top of bluff buffer zone.

These trees are either overhanging the bank, leaning, dead or have fallen.

We understand that Mr. Ellis has deemed these trees to be a hazard to persons and equipment undertaking farming activities on the adjacent property. EBA was not asked to comment on whether these trees represent a hazard.

On September 23, 2008, Mr. Patrick of EBA visited the site to observe the current conditions with respect to the removal of typical “hazardous” trees.

## **2.0 DISCUSSION / RECOMMENDATIONS**

### **2.1 FALLEN TREES**

Trees which have fallen away from the bluff (i.e., onto the upland) can be removed providing the disturbed area is revegetated to provide at least a similar level of benefit, from a geotechnical perspective, as the original vegetation.

Trees which have fallen over the bluff should be left, as they are due, to difficulty in removing them as well as to avoid further disturbance.

### **2.2 DEAD / DYING TREES**

Where these trees are back from the edge of the bluff (by 5 m or more) they can be cut off close to the ground and the wood removed but the roots left in place. Any disturbance to

N13101236

April 24, 2009

### **ISSUED FOR USE 2**

the ground surface should be remediated with new vegetation to provide at least a similar level of benefit, from a geotechnical perspective, as the original vegetation.

Where these trees are at the top of the bluff, (i.e., within 5 m of the slope crest) it will be problematic to remove them. Dead trees do not provide benefits to the stability of the slope, therefore removal, if practical, is judged to be acceptable if the roots are left in place. The trees should not be cut and allowed to fall over the bank, therefore some method of lifting the wood back from the bank will be required. Mr. Ellis has a large excavator which would be good for this purpose.

Any disturbance resulting from this work must be remediated with revegetation to provide at least a similar level of benefit, from a geotechnical perspective, as the original vegetation.

### **2.3 OVERHANGING TREES**

Overhanging trees would likely be too cost prohibitive to remove safely, therefore Mr. Ellis has decided to leave them to their own accord. Some of these trees will fall and take substantial areas of the bluff with them.

### **2.4 GENERAL**

Prior to taking any action regarding individual trees which are still standing, each should be assessed to determine:

- The hazard it represents;

- Its wind firmness;
- The hazards to workers involved with removal;
- The consequence of removal; and
- The revegetation / remediation necessary.

Where trees are removed, new vegetation to provide at least a similar level of benefit, from a geotechnical perspective, as the original vegetation.

### **3.0 CONCLUSIONS**

Trees provide benefits, from a geotechnical perspective, for slopes due to the reinforcement of the soil by the root system, the adsorption of groundwater and the interception of rainfall (which can reduce surface erosion). However, at the top of a slope they can result in a surcharge load on the slope and/or soil disturbance should they fall over.

During the assessment of the trees on this property, the above should be considered along with other factors.

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### **ISSUED FOR USE 3**

From a geotechnical perspective, as long as the removal is carried out carefully and the appropriate revegetation is undertaken after tree removal, the adverse impact on the slope should be minimized and should not have an adverse impact on development at the site.

### **4.0 CLOSURE**

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

Respectfully Submitted;



## Project Initiation Sheet

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**Project Name & SA:** Swan Road Drainage & SA 3

**Location**

- Swan Road (Radcliffe Road #0851 unopened r/w)
- Denman Island

**Scope**

- The existing cross culvert under Swan Road is directing drainage onto private lands. The property owner south of Radcliffe Road (Lot B, VIP74719) has contacted the Ministry to have this drainage relocated and contained entirely within the unopened r/w, he may pursue legal action. The property owner has done some ditching along his property to take the drainage to the bank and out to the ocean; however, the Islands Trust has made him plug the end of the ditching to stop the outflow over the bank and to prevent any bank erosion. The drainage is pooling and flooding his land before either seeping into the ground or making its way over the bank.
- Action
  - McElhanney has already completed a field survey of the existing culvert location and ditching, they've also proposed a drainage design.
  - Relocate the cross culvert on Swan Road and re-ditch along Radcliffe Road. Install an inlet structure near the top of bank and enclose the drainage through a 450 HDPE storm pipe down the bank to an outlet structure at the beach. All drainage to be located fully within road r/w.

**Priority:** Medium/HIGH

**Schedule:** 4-7 days

**Cost Estimate:** \$17, \$21

**Partner:** n/a

**Proposed Contract Type:** Tender

**Representatives/Electoral District**

- Ministry Rep:
- Area Manager: Angie Allwood
- MLA - Electoral District: Don McRae - Comox Valley

**Photos**