



STAFF REPORT

Date February 12, 2014

File No.: 6930-20

To: Denman Island Local Trust Committee
For meeting of February 25, 2014

From: Rob Milne, M.C.I.P.
Island Planner

Re: Beach Accesses and Vehicular Controls

Problem/Issue:

At the January 21, 2014 meeting the Local Trust Committee directed staff to look into the issue of the installation of controls on vehicular access at beach access points. This report responds to that direction.

BACKGROUND:

At their January 21, 2014 the Local Trust Committee adopted the two resolutions below.

DE-001-2014

It was MOVED and SECONDED,

that the Denman Island Local Trust Committee request staff to refer to the Marine Advisory Planning Commission the task of identifying which beach accesses on Denman Island are appropriate for installing controls on vehicular access and to advise the Local Trust Committee.

DE-002-2014

It was MOVED and SECONDED,

that the Denman Island Local Trust Committee request staff to consult with the Comox Valley Regional District on potential work on vehicular control structures at beach accesses.

Staff have now had an opportunity to discuss the issue with staff from both the Comox Valley Regional District (CVRD) and the Ministry of Transportation and Industry (MOTI). In addition, as directed by resolution DE-001-2014 a referral package will be prepared and provided to the Marine Advisory Planning Commission.

ISSUES SUMMARY:

As discussed at the January 21st LTC meeting the CVRD provides parks planning and development services to the Denman Island Local Trust Area and has completed an inventory of the location and status of various beach access points on Denman Island which are incorporated into in the Denman Island Official Community Plan as Schedules 'F' and 'G' (See attached).

In the context of the CVRD a number of beach access points have been licensed to the CVRD for beach access parks. Through discussions with CVRD parks staff it was identified that these beach access parks have been primarily developed to provide pedestrian access at locations where such access was not previously available and the issue of vehicle access to beach areas has not arisen. The licensing process includes the development of a management strategy for each access park as well as the prior development of a Letter of Agreement with MOTI to clarify roles and responsibilities of the two parties in the licensing of these access points. Principal amongst these is the responsibility for dealing with complaints which is delegated to the CVRD.

It appears that the interest of the LTC is in exploring the opportunity of installing barriers where road right-of-ways meet the beach at right-of-ways that are currently developed as roads and used for vehicular access to beaches (beach access points). This would have the effect of continuing to allow a vehicle to be driven to the end of a right-of-way for loading and unloading and perhaps parking, but would remove the ability to drive from the road onto the beach. If the CVRD were requested to become involved in such an initiative, it would be a new type of "park" use of a road right-of-way for the CVRD.

CVRD staff suggested that MOTI could be asked to consider the denial of vehicle access by way of current beach access points with a gate or chain if a sign were posted with an Islands Trust or CRVD phone number towards which complaints could be directed. The CVRD staff noted, though, that they thought this was unlikely as vehicular access is a historical use of the beach road accesses.

In discussion with MOTI staff from the Courtenay office it was also noted that although the Ministry might consider allowing the denial of vehicular beach access from such access points the Ministry would not be prepared to be an enforcement agency on the matter. It was further noted that in all likelihood any park created under a license of occupation would include a condition that denial of vehicular access, at least from points currently used for that purpose, would not be permitted.

STAFF COMMENTS:

In discussions with CVRD staff mention was made of two relevant BC court decisions, one in the provincial court and one in the Supreme Court which have dealt with the issue road accesses.

The provincial court case *Stevenson v. Surrey (District of)*, 1990 2251 (BCCA) dealt with the proposed development of a park on a dead-end, bluff top road access. The proposed park would have included pedestrian traffic including bicycles and wheelchairs, but prohibit motor vehicle traffic. It was the conclusion of the court that any park created out of a road access must have as its *principal* function the provision of

access rather than the provision of a “recreational pleasure” which the court deemed to be the case with the proposed park. The authorizing bylaw for the creation of the park was declared invalid.

The BC Supreme Court decision *Burke v. Columbia Shuswap Regional District, 2008 BCSC 66* dealt with the proposed use by the Regional District of a lakefront road access for park purposes. The Regional District became involved when an adjacent property owner applied to MOTI to include the road access into their property. Although not identified on their parks plan the Regional District objected to the incorporation of the lake access point on the grounds that they wished to develop it as a park to provide public access to the beach. Although the overall case dealt with other legal implications such as jurisdiction the case turned upon the issue of the purpose for which the road allowance was dedicated. It was the determination of the court that although the Regional District had an interest in bringing the access road within its parks plan the evidence made it clear that the Columbia Shuswap Regional District (CSRD) did not want the land for the purposes of developing it as a park but rather did not want to lose the public access to the lake. This, the court determined supported the CSRD’s contention that they considered the plot “necessary for the purpose for which it was intended”.

These court decisions and the information from CSRD and MOTI staff would seem to indicate that the Ministry may be reluctant to issue a right-of-way license if the intent is to deny vehicular access from beach accesses which have been historically used for this purpose and should they agree to do so such denial of access may not survive a court challenge. It is difficult to predict how either MOTI would respond to a situation which did not deal with an established history of vehicular use.

Staff have been advised that the CSRD legal advice did not deal with the specific issue of vehicle access to the water but did caution that “park” improvements should be kept to a minimum and focus on the primary of purpose of the access which is to get people to the water.

Another aspect that should be kept in mind when considering applying for licenses for beach access rights of way is that this process would have to be done through the CVRD parks function and would be contingent upon their capacity as well as the budget available to the LTC. Further investigation would be required to assess the potential impacts of the diversion of resources to address the issue of beach access issue from other projects such as the Cross Island Trail.

RECOMMENDATIONS:

It is the recommendation of staff:

THAT the Local Trust Committee give consideration to the information contained within this report and provide direction to staff on how they wish to proceed with this matter.

Prepared and Submitted by:

Rob Milne

February 12, 2014

MCIP, RPP
Island Planner

Date

Concurred in by:

Courtney Simpson

February 12, 2014

MCIP, RPP Regional Planning
Manager

Date

Attachments:

- Denman Island OCP Schedule 'F'
- Denman Island OCP Schedule 'G'